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FEDERAL TRADE COMMISSION

[File No. 142 3121]

Made in the USA Brand, LLC; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before August 22, 2014.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/usabrandconsent>

online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write "Made in the USA Brand, LLC - Consent Agreement; File No. 142 3121" on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/usabrandconsent>

by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Julia Solomon Ensor, Bureau of Consumer Protection, (202-326-2377), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 22, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 22, 2014. Write “Made in the USA Brand, LLC - Consent Agreement; File No. 142 3121” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial

information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublish.commentworks.com/ftc/usabrandconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Made in the USA Brand, LLC - Consent Agreement; File No. 142 3121” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 22, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Made in the USA Brand, LLC. ("Respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Respondent's marketing, sale, and distribution of licenses to use its "Made in USA" certification mark to companies wishing to make U.S.-origin claims for their products. According to the FTC's complaint, Respondent represented that products and entities using Respondent's certification mark were independently and objectively evaluated for compliance with Respondent's accreditation standard. These claims were false or misleading. Additionally, the complaint alleges that Respondent did not possess and rely upon a reasonable basis to substantiate its claims that entities promoted on its website sold products that are all or virtually all made in the United States. In fact, in numerous instances, entities promoted on Respondent's website have sold products containing significant imported content. Finally, the complaint alleges that Respondent distributed promotional materials to third-party marketers for

use in the marketing and sale of those third parties' products, providing the means and instrumentalities to those marketers to commit deceptive acts or practices. Accordingly, the complaint concludes that Respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Specifically, Part I prohibits Respondent from representing, expressly or by implication, that covered entities meet Respondent's accreditation standard, unless: (1) an entity with no material connection to that covered entity conducted an independent and objective evaluation to confirm that the accreditation standard was met; or (2) Respondent's mark and marketing materials prominently disclose that the accreditation standard may be met through self-certification.

Part II prohibits Respondent from making any country of origin claim about a product authorized to use Respondent's certification mark unless: (1) the claim is true, not misleading, and Respondent has a reasonable basis substantiating the representation; or (2) for representations made through use of Respondent's certification mark, Respondents clearly and prominently disclose that covered entities may meet the accreditation standard through self-certification.

Part III prohibits Respondent from providing third-party retailers with the means and instrumentalities to make the claims prohibited in Part I.

Parts IV through VIII are reporting and compliance provisions. Part IV requires Respondent to keep and make available to the Commission on request: copies of advertisements, labeling, packaging, and promotional materials containing the representations identified in Parts I and II; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations or the basis relied upon for the representations; and all acknowledgments of receipt of the Order. Part V requires Respondent to

disseminate the Order to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI requires notification to the FTC of changes in Respondent's corporate status. Part VII requires Respondent to submit an initial compliance report to the FTC within sixty (60) days of service and subsequent reports upon request.

Finally, Part VIII is a "sunset" provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

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