



## FEDERAL TRADE COMMISSION

[File No. 232 3035]

### **ExotoUSA LLC - Old Southern Brass; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Please write “ExotoUSA LLC - Old Southern Brass; File No. 232 3035” on your comment and file your comment online at

<https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex V), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Thomas Harris (202-326-3620), Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. 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 section 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a 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 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 at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “ExotoUSA LLC - Old Southern Brass File No. 232 3035” 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 <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “ExotoUSA LLC - Old Southern Brass File No. 232 3035” 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 V), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’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 your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule section 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule section 4.9(c). 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 section 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule section 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule section 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws 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 it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s

privacy policy, including routine uses permitted by the Privacy Act, see

<https://www.ftc.gov/site-information/privacy-policy>.

### **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 ExotoUSA LLC, d/b/a Old Southern Brass, and Austin Oliver (“Respondents”).

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and decide whether it should withdraw from the agreement or make final the agreement’s proposed order. This matter involves Respondents’ advertising of glassware, mugs, pens, and other novelty items as made in the United States and claims of association with the U.S. military.

According to the FTC’s complaint, Respondents (1) deceptively advertised certain products as made in the United States even though, in numerous instances, they were wholly imported, and (2) falsely claimed ExotoUSA LLC is veteran-operated, donates 10% of sales to military service charities, and incorporates bullets or bullet casings fired by the U.S. military into its products. Based on the foregoing, the complaint alleges Respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a).

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future. Consistent with the FTC’s Made in USA Labeling Rule, 16 CFR part 323, and its Enforcement Policy Statement on U.S.-Origin Claims, 62 FR 63756, 63768 (Dec. 2, 1997), Part I prohibits Respondents from making U.S.-origin claims for their products unless: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of

the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

Part II prohibits Respondents from making any representation, including any claim about the country of origin of a product or service or any claim Respondents have an association with the U.S. military, unless the representation is not misleading and Respondents have a reasonable basis substantiating it.

Parts III through V are monetary provisions. Part III imposes a judgment of \$4,572,137.66 and partially suspends that judgment on the basis of the Respondents' sworn financial statements. If the Commission concludes any Respondent made a material misrepresentation or omission in that Respondent's sworn financial statement, the suspension as to that Respondent is lifted and the full judgment is immediately due. Part IV includes additional monetary provisions relating to collections. Part V requires Respondents to provide sufficient customer information to enable the Commission to administer consumer redress, if appropriate.

Part VI is a notice provision requiring Respondents to identify and notify certain consumers of the FTC's action within 30 days after the issuance of the order, or within 30 days of the consumer's identification, if identified later. Respondents are also required to submit reports regarding their notification program.

Parts VII through X are reporting and compliance provisions. Part VII requires Respondents to acknowledge receipt of the order, to provide a copy of the order to certain

current and future principals, officers, directors, and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order.

Part VIII requires Respondents to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order.

Part IX requires Respondents to maintain certain records, including records necessary to demonstrate compliance with the order. Part X requires Respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview Respondents' personnel. Finally, Part XI 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 complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

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