

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of ExotoUSA LLC, d/b/a Old Southern Brass, and Austin Oliver, individually
and as an officer of ExotoUSA LLC
File No. 2323035

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 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 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 C.F.R. Part 323, and its Enforcement Policy Statement on U.S.-Origin Claims, 62 Fed. Reg. 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.