

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

)	
In the Matter of)	
)	FILE NO.
E.K. Ekcessories, Inc.)	
a corporation)	AGREEMENT CONTAINING
)	CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of E.K. Ekcessories, Inc. (“Proposed Respondent”). Proposed Respondent, having been represented by counsel, is willing to enter into the Agreement Containing Consent Order (“Consent Agreement”) resolving the allegations contained in the attached draft Complaint. Therefore,

IT IS HEREBY AGREED by and between E.K. Ekcessories, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed Respondent E.K. Ekcessories, Inc. is a Utah corporation with its principal office or place of business at 575 West 3200 South, Logan, Utah 84321.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Proposed Respondent, and the proceeding is in the public interest.
3. Proposed Respondent neither admits nor denies any of the allegations in the draft Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.
4. Proposed Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. Any claim under the Equal Access to Justice Act.

5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft Complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue, amend, and serve its Complaint (in such form as the circumstances may require) and its Decision and Order in disposition of the proceeding.

6. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and the attached Decision and Order, and (2) make information about it public.

7. When final, the Decision and Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondent by any means specified in Section 4.4(a) of the Commission's Rules, including without limitation delivery to the Proposed Respondent's address as stated in this Consent Agreement or to an office within the United States of the counsel for Proposed Respondent identified on this Consent Agreement, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service.

8. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

9. Proposed Respondent has read the draft Complaint and Decision and Order. Proposed Respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the Decision and Order after it becomes final.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. "Covered product" means products offered for sale by Respondent, including, but not limited to, outdoor accessories such as waterproof iPhone accessories, eyewear retainers,

bottle holders, lens cleaners, ID and credential holders, dog collars and leashes, and tie-downs and tow straps.

3. "Respondent" means E.K. Ekcessories, Inc., a corporation, and its successors and assigns.

I.

IT IS ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service are permanently restrained and enjoined from representing, expressly or by implication, that a Covered Product is made in the United States, unless the product is all or virtually all made in the United States.

II.

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, shall not make any representation, in any manner, expressly or by implication, regarding the country of origin of any Covered Product unless the representation is true, not misleading, and at the time it is made, Respondent possesses and relies upon a reasonable basis for the representation.

III.

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part, "means and instrumentalities" means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after service of this Order, Respondent shall deliver to the Commission a searchable electronic file containing the name and contact information of all distributors who purchased or otherwise received any product from Respondent on or after January 1, 2010 and through May 1, 2013. Such file shall: (1) include each distributor's name and address, and, if available, the telephone number and email address of each distributor; and (2) be accompanied by a sworn affidavit attesting to its accuracy.

V.

IT IS FURTHER ORDERED that within thirty (30) days after service of this Order, Respondent shall send by first-class mail, postage paid and return receipt requested, or by courier service such as FedEx with signature proof of delivery, an exact copy of the notice attached as Attachment A, showing the date of mailing, to all distributors identified pursuant to the Part IV of this Order. The notice required by this Part shall include a copy of this Order, but shall not include any other document or enclosures, and shall be sent to the principal place of business of each such distributor.

VI.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- D. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Acknowledgements provision of this Order; and
- E. Copies of all notification letters, with return receipts or signed proof of delivery if applicable, sent pursuant to Part V of this Order.

VII.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondent shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or

other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "In re E.K. Ekcessories, Inc., File No. _____."

IX.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this Order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a Complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a Complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such Complaint; and
- C. This Order if such Complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such Complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the Complaint had never been filed, except that the Order will not terminate between the date such Complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2013.

E.K. EKCESSORIES, INC.

By: _____ Date _____
Ed Kalbach
President
E.K. Ekcessories, Inc.

H. Dickson Burton Date _____
TraskBritt

Counsel for Respondent E.K. Ekcessories, Inc.

FEDERAL TRADE COMMISSION

By: _____ Date _____
Julia Solomon Ensor
Elisa K. Jillson

Counsel for Federal Trade Commission

APPROVED:

James Kohm
Associate Director
Division of Enforcement

Jessica Rich
Director
Bureau of Consumer Protection



IMPORTANT NOTICE ABOUT E.K. EKCESSORIES

ADVERTISING AND MARKETING

Dear Distributor:

In response to a settlement with the Federal Trade Commission (FTC), E.K. Ekcessories, Inc. (EK) has agreed not to make claims that products are made in the United States unless the referenced product is **all or virtually all made** in the United States. This is because the FTC has alleged that EK marketed certain products as made in the United States, when, in some instances, the products or certain components of those products were made outside the United States. Therefore, EK requests that you immediately stop using existing E.K. Ekcessories marketing materials, if any, that either: (1) describe all EK products, or (2) specifically describe [affected products], as made in the United States, of U.S.-origin, or “Truly Made in the USA.” Where applicable, EK will make revised marketing materials available to you shortly.

Furthermore, to the extent that you have EK-packaged products that are part of the **iCat, Dri Cat, Key biner, Card Holder, or Bottle Cat** lines in your possession with U.S.-origin claims on the packaging materials, we have included stickers that you should affix to the product packaging to cover claims that the items are made in the United States. Please find the enclosed instruction sheet, which will provide you with directions as to how to apply the stickers correctly.

Should you have any questions about compliance with this notification, please contact [Randall Anderson or Cort Saxton]. In addition, further information about this settlement can be obtained by visiting www.ftc.gov and searching for “E.K. Ekcessories.”

Sincerely,

Randall Anderson

Chief Operating Officer

E.K. Ekcessories



575 West 3200 South

Logan, Utah

435-753-8448

Attachment A