

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**MADE IN THE USA BRAND, LLC, a
limited liability company.**

FILE NO.: 142 3121

**AGREEMENT CONTAINING
CONSENT ORDER**

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

IT IS HEREBY AGREED by and between Made in the USA Brand, LLC, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Made in the USA Brand, LLC is an Ohio limited liability company with its principal office or place of business at 1398 Goodale Boulevard, Columbus, Ohio 43212.
2. Proposed Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision 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 order entered pursuant to this Agreement; and
 - d. Any claim under the Equal Access to Justice Act.
3. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this 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 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.

4. Proposed Respondent neither admits nor denies any of the allegations in the draft Complaint, except as specifically stated in this Order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.

5. This Agreement contemplates that, if it is accepted by the Commission, and, if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission’s Rules, the Commission may, without further notice to Proposed Respondent, (1)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 its decision containing the following order in disposition of the proceeding, and (2) make information about it public.

6. When final, the 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 Order shall become final upon service. Delivery of the Complaint and the 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 Agreement or to an office within the United States of the counsel for Proposed Respondent identified on this Agreement, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service.

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

8. Proposed Respondent has read the draft Complaint 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 Order after it becomes final.

ORDER

DEFINITIONS

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

1. “Accreditation Standard” means any independently-developed and objectively-applied criteria Respondent sets for Covered Entities to meet in order to use Respondent’s Certification Mark, which substantiate the claim being made.
2. “Certification Mark” means any certification mark that Respondent has registered with the United States Patent and Trademark Office including, but not limited to, the following marks:

A.





B.

3. “Clearly and prominently” shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. “Covered Entity” means any product, including any product line or group of products, or any company, group, or other association, that Respondent authorizes to use any of Respondent’s Certification Marks, seals, logos, brands, or other marketing or promotional material.

6. “Independent and Objective Evaluation” means an audit or verification check, conducted by a party other than a Covered Entity with no Material Connection to a Covered Entity, to confirm that a Covered Entity complies with Respondent’s Accreditation Standard.

7. “Material Connection” shall mean any relationship that materially affects the weight or credibility of Respondent’s Certification Mark and that would not be reasonably expected by consumers, provided that a reasonable certification fee shall not constitute a Material Connection.

8. “Respondent” means Made in the USA Brand, LLC, a limited liability company, and its successors and assigns.

**I.
PROHIBITED MISREPRESENTATIONS**

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 marketing, promoting, offering for sale, or selling any product, good, or service, are permanently restrained and enjoined from representing, expressly or by implication, that a Covered Entity meets Respondent’s Accreditation Standard, unless: (1) an entity with no Material Connection to that Covered Entity has conducted an Independent and Objective Evaluation to confirm that the Covered Entity meets the Accreditation Standard; or (2) Respondent’s Certification Mark, seal, logo, brand, or any other promotional materials clearly and prominently disclose that Covered Entities may meet Respondent’s Accreditation Standard through self-certification.

**II.
SUBSTANTIATION**

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 marketing, promoting, offering for sale, or selling any product, good, or service, shall not make any representation, in any manner, expressly or by implication, including but not limited to on Respondent’s website or other marketing material, regarding the country of origin of any Covered Entity unless: (1) the representation is true, not misleading, and at the time it is made, Respondent possesses and relies upon competent and reliable evidence to substantiate the representation; or (2) for representations made through use of Respondent’s Certification Mark, the Mark, seal, logo, brand, or any other promotional materials clearly and prominently disclose that Covered Entities may meet Respondent’s Accreditation Standard through self-certification.

**III.
MEANS AND INSTRUMENTALITIES**

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 product, good, or service, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I above. For the purposes of this Part, “means and instrumentalities” means any information, including, but not necessarily limited to, any Certification Mark, advertising, labeling, promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any Covered Entity.

IV.

RECORDKEEPING

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any Representation that includes or concerns any U.S.-origin claim, Respondent's Certification Mark, or advertising or promotional materials that contain Respondent's Certification Mark, 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; and
- D. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Distribution provision of this Order

V. ORDER DISTRIBUTION

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.

VI. NOTICE OF CORPORATE CHANGES

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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, D.C. 20580. The subject line must begin: “In re Made in the USA Brand, LLC, File No. _____.”

VII. COMPLIANCE REPORTING

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.

VIII. ORDER TERMINATION

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 _____, 2014.

MADE IN THE USA BRAND, LLC

By: _____
Marcie Gabor
President
Made in the USA Brand, LLC

Date

Robert Cochran
Ice Miller LLP

Date

Counsel for Respondent Made in the USA Brand, LLC

FEDERAL TRADE COMMISSION

By: _____
Julia Solomon Ensor

Date

Counsel for Federal Trade Commission

APPROVED:

James Kohm
Associate Director
Division of Enforcement

Jessica Rich
Director
Bureau of Consumer Protection