

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of Chemence, Inc., a corporation, and James Cooke, individually and as an officer of Chemence, Inc., File No. X160032

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Chemence, Inc. and James Cooke (“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 will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves Respondents’ advertising, labeling, sale, and distribution of cyanoacrylate “superglue” products as made in the United States. According to the FTC’s complaint, Respondents represented that the cyanoacrylate “superglue” products they manufactured and supplied to trade customers were all or virtually all made in the United States. In fact, significant proportions of the chemical inputs, and overall costs, to manufacture Respondents’ cyanoacrylate “superglues” are attributable to foreign materials. In numerous instances, foreign materials accounted for more than 80% of materials costs and more than 50% of overall manufacturing costs for these products. The complaint also alleges that, by distributing promotional materials containing misrepresentations regarding the U.S. origin of their products, Respondents provided trade customers the means and instrumentalities to commit deceptive acts or practices. Based on the foregoing, the complaint alleges that Respondents engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, and violated a 2016 federal court order in the process.

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 Enforcement Policy Statement on U.S. Origin Claims, Part I prohibits Respondents from making U.S.-origin claims for their products unless either: (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 country-of-origin claim about a product or service unless the claim is true, not misleading, and Respondents have a reasonable basis substantiating the representation.

Part III prohibits Respondents from providing third parties with the means and instrumentalities to make the claims prohibited in Parts I or II.

Parts IV through VI are monetary provisions. Part IV imposes a judgment of \$1,200,000. Part V includes additional monetary provisions relating to collections. Part VI requires Respondents to provide sufficient customer information to enable the Commission to administer consumer redress, if appropriate.

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

Parts VIII through XI are reporting and compliance provisions. Part VIII 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 IX 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 X requires Respondents to maintain certain records, including records necessary to demonstrate compliance with the order. Part XI 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 XII 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.