2223023

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of **LIONS NOT SHEEP APPAREL, LLC, a limited liability company,** **LIONS NOT SHEEP PRODUCTS, LLC, a limited liability company,** **LIONS NOT SHEEP VENTURES, LLC, a limited liability company,** **LIONS NOT SHEEP LLC, a limited liability company, and** **SEAN WHALEN, individually and as an officer of LIONS NOT SHEEP APPAREL, LLC; LIONS NOT SHEEP LLC; LIONS NOT SHEEP PRODUCTS, LLC; and LIONS NOT SHEEP VENTURES, LLC.**	**DECISION AND ORDER** **DOCKET NO. C- 4772**

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: (1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts

necessary to establish jurisdiction; and (2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:

   a. Respondent Lions Not Sheep Apparel, LLC, a Utah limited liability company with its principal office or place of business at 14572 S 790 W #C Bluffdale, Utah 84065.

   b. Respondent Lions Not Sheep Products, LLC, a Utah limited liability company with its principal office or place of business at 14572 S 790 W #C Bluffdale, Utah 84065.

   c. Respondent Lions Not Sheep Ventures, LLC, a Utah limited liability company with its principal office or place of business at 14572 S 790 W #C Bluffdale, Utah 84065.

   d. Respondent Lions Not Sheep LLC, a Utah limited liability company with its principal office or place of business at 14572 S 790 W #C Bluffdale, Utah 84065. Lions Not Sheep LLC owns 100% of Lions Not Sheep Apparel, LLC, Lions Not Sheep Products, LLC, and Lions Not Sheep Ventures, LLC.

   e. Respondent Sean Whalen, the sole owner and manager of Lions Not Sheep LLC. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Lions Not Sheep Apparel, LLC, Lions Not Sheep Products, LLC, Lions Not Sheep Ventures, LLC, and Lions Not Sheep LLC (collectively, "Lions Not Sheep" or "Corporate Respondents"). His principal office or place of business is the same as that of the Proposed Corporate Respondents.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

A. "**Clear(ly) and conspicuous(ly)**" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. On a product label, the disclosure must be presented on the principal display panel.

6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "**Made in the United States**" means any representation, express or implied, that a product or service, or a specified component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is "made," "manufactured," "built," "produced," or "crafted" in the United States or in America, or any other U.S.-origin claim.

C. "**Product or Service**" means any good or service, including any plan or program.

D. "**Respondents**" means all of the Corporate Respondents and the Individual Respondent, individually, collectively, or in any combination.

1. "**Corporate Respondents**" means Lions Not Sheep Apparel, LLC, Lions Not Sheep Products, LLC, Lions Not Sheep Ventures, LLC, and Lions Not Sheep LLC, and their successors and assigns.

1. "**Individual Respondent**" means Sean Whalen.

E. "**Textile Fiber Product**" means any product subject to the Textile Fiber Products Identification Act, 15 U.S.C. §§ 70-70k.

Provisions

I.
Prohibited Misrepresentations Regarding U.S.-Origin Claims

IT IS ORDERED that Respondents, and Respondents' officers, agents, 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 the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Product or Service, must not make any representation, expressly or by implication, that a product is Made in the United States unless:

A. 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; or

B. 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

C. 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.

II.
Prohibited Misleading and Unsubstantiated Representations

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, 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 the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Product or Service, must not make any representation, expressly or by implication, including any representation regarding the country of origin of any Product or Service, unless the representation is non-misleading, including that, at the time such representation is made, Respondents possess and rely upon a reasonable basis for the representation.

III.
Required Disclosure

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, 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 the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Textile Fiber Product must:

A. If such Textile Fiber Product is imported, label such Textile Fiber Product with the name of the country where the imported product was processed or manufactured.

B. If such Textile Fiber Product is either (1) Made in the United States; (2) Made in the United States in whole or in part of imported materials; or (3) partially manufactured in a foreign country and partially manufactured in the United States, disclose those facts on the product label.

C. In any product description in any mail order catalog or mail order promotional material, Clearly and Conspicuously state whether the Textile Fiber Product is Made in the United States, imported, or both in a manner that is consistent with the origin labeling of the Textile Fiber Product advertised.

IV.
Monetary Relief

IT IS FURTHER ORDERED that:

A. Respondents must pay to the Commission $211,335.00, which Respondents stipulate their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Respondents will escrow these funds with counsel within three weeks of signing the Consent Agreement.

B. Such payment must be made within 8 days of the effective date of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

V.
Additional Monetary Provisions

IT IS FURTHER ORDERED that:

A. Respondents relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondents' practices alleged in the Complaint. Any money not used is to be deposited to the U.S. Treasury. Respondents have no right to challenge any activities pursuant to this Provision.

E. In the event of default on any obligation to make payment under this Order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for 10 days beyond the date that payment is due, the entire amount will immediately become due and payable.

F. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.

G. Respondents acknowledge that their Taxpayer Identification Numbers (Social Security or Employer Identification Numbers), which Respondents must previously submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

VI.
Customer Information

IT IS FURTHER ORDERED that Respondents must directly or indirectly provide sufficient customer information, including sufficient identification of all resellers, to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Respondents must provide it, in the form prescribed by the Commission representative, within 14 days.

VII.
Notice to Customers

IT IS FURTHER ORDERED that Respondents must notify customers as follows:

A. Respondents must identify all consumers who purchased any Lions Not Sheep product from lionsnotsheep.com or any other website, online sales platform, or business profile controlled or maintained by any Respondent, including on any third-party sales platform, on or after May 1, 2020 and through the date Respondents signed the Consent Agreement in this matter ("Affected Customers").

1. Such Affected Customers, and their contact information, must be identified to the extent such information is in Respondents' possession, custody or control;

2. Affected Customers include those identified at any time, including after Respondents' execution of the Consent Agreement through the eligibility period, which runs for 1 year after the issuance date of the Order.

B. Respondents must notify all identified Affected Customers by mailing or emailing each a notice in the form shown in Attachment A. The communication containing the notification letter may contain a copy of this Order, but no other document or enclosure.

C. Respondents must notify all Affected Customers within 30 days after the issuance date of this Order and any Affected Customers identified thereafter within 30 days of their identification.

D. Respondents must report on their notification program under penalty of perjury:

1. Respondents must submit a report within 60 days of entry of this Order and at the conclusion of the program summarizing its compliance to date.

2. If a representative of the Commission requests any information regarding the program, including any of the underlying customer data, Respondents must submit it within 10 days of the request.

3. Failure to provide required notices or any requested information will be treated as a continuing failure to obey this Order.

VIII.
Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and each Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX.
Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:

1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order,

unless previously submitted to the Commission.

2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. Each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must 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 Lions Not Sheep Apparel, LLC, 222302.

X.
Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, each Corporate Respondent and Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;

B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Records of all consumer complaints and refund requests concerning the subject matter of this Order, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;

E. A copy of each unique advertisement, label, or other marketing material making a representation subject to this Order; and

F. For 5 years from the date of the last dissemination of any representation covered by this Order, all materials that were relied upon in making the representation.

XI.
Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XII.
Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 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 Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the 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 Provision 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.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: July 28, 2022

ATTACHMENT A: NOTICE TO CUSTOMERS

The notification email or letter must be in the following form, from an authorized Lions Not Sheep Apparel, LLC address or email address, appearing on Lions Not Sheep Apparel, LLC's letterhead if in letter form, and containing Sean Whalen's signature line with full contact information for Lions Not Sheep Apparel, LLC:

Subject: Settlement of FTC deceptive advertising case

Dear <Name of customer>:

Our records show that you bought Lions Not Sheep-branded clothing, hats, or accessories that we labeled or advertised as "Made in USA." We're writing to tell you that the Federal Trade Commission, the nation's consumer protection agency, has sued us for making false claims.

To settle the FTC's lawsuit, we're contacting you to tell you that the product you bought was not all or virtually all "Made in USA." In fact, although we screen or embroider products in the USA, many of the items we sell are imported.

If you have questions about this lawsuit, visit [get short URL]. For more information about "Made in USA" advertising, visit [get short URL].

Sincerely,

[Sean Whalen]
[Lions Not Sheep Apparel, LLC]

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

July 28, 2022

Anonymous commenter

Re: *In the Matter of Lions Not Sheep Apparel, LLC,* Matter No. 2223023

Dear commenter:

Thank you for commenting on the Federal Trade Commission's proposed consent agreement in the above-referenced proceeding. The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you state the FTC should "strengthen the protection and privacy of American consumers." You do not propose any revisions to the draft complaint or the consent agreement. Therefore, after considering your comment, the Commission has determined that the relief set forth in the consent agreement is appropriate and sufficient to remedy the violations alleged in the complaint.

Although this matter does not pertain to privacy, the injunctive relief in the Decision and Order will protect consumers by preventing the Respondents from engaging in the acts and practices alleged in the Complaint and by deterring other would-be violators. Additionally, the Decision and Order includes complementary relief, including a monetary judgment, notice provision, and provisions to aid the Commission in monitoring the Respondents' compliance.

At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. The final Decision and Order and other relevant materials are available on the Commission's website at http://www.ftc.gov. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

April J. Tabor
Secretary