



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

Office of the Secretary

April 16, 2019

Concerned Citizens

*RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675*

*In the Matter of Underground Sports Inc., d/b/a Patriot Puck; Hockey Underground Inc.,
d/b/a Patriot Puck; Ipuck Inc., d/b/a Patriot Puck; IPuck Hockey Inc., d/b/a Patriot
Puck; and George Statler III, Matter No. 1823113, C-4674*

Dear Concerned Citizens:

Thank you for commenting on the Federal Trade Commission's proposed consent agreements in the above-referenced proceedings. The Commission has considered your comments and placed them 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 comments, you stated that the Commission should impose tougher rules and penalties on companies that knowingly make deceptive "Made in USA" claims.

The above-referenced proceedings are administrative settlements. The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation.¹ Our primary goal in cases such as these is to stop deceptive advertising by putting the Respondents under order. If, in the future, Respondents violate their orders, the Federal Trade Commission could pursue civil penalties of up to \$42,530 per violation.

Administrative consent orders securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive "Made in USA" claims. To date, the FTC has only had cause to initiate two civil penalty order enforcement proceedings against the more than twenty prior respondents in cases involving U.S.-origin claims.²

¹ Fines are similarly unavailable as a remedy in federal court actions, although Section 13(b) of the FTC Act allows the FTC to pursue monetary equitable relief in addition to prohibitory relief in that venue.

² See <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty> (announcing settlement with iSpring that imposed a \$110,000 civil penalty for violating prior order regarding U.S.-origin claims); <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools> (announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).

However, as noted in Commissioner Slaughter’s and Chairman Simons’s statement issued in conjunction with the announcement of the above-referenced proceedings, the Commission agrees there may be cases where it can further maximize its enforcement reach through strategic use of additional remedies. For example, there may be cases in which consumers paid a clear premium for a product marketed as “Made in USA” or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim. In such instances, additional remedies such as monetary relief or notice to consumers may be warranted. Requiring law violators to provide notice to consumers identifying the deceptive claim can help mitigate individual consumer injury—an informed consumer would have the option to seek a refund, or, at the very least, stop using the product.

Although the Commission’s review of available remedies is ongoing, we have determined that a forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the above-referenced proceedings, which began well before the current complement of Commissioners were instated. Therefore, after considering your comments, the Commission has determined that the relief set forth in the draft Decisions and Orders is appropriate and sufficient to remedy the violations alleged in the complaints.

At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification. The final Decisions and Orders 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 comments.

By direction of the Commission, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary



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April 16, 2019

Consumers Union

*RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675*

*In the Matter of Underground Sports Inc., d/b/a Patriot Puck; Hockey Underground Inc.,
d/b/a Patriot Puck; Ipuck Inc., d/b/a Patriot Puck; IPuck Hockey Inc., d/b/a Patriot
Puck; and George Statler III, Matter No. 1823113, C-4674*

Dear Mr. Brookman:

Thank you for commenting on the Federal Trade Commission's proposed consent agreements in the above-referenced proceedings. The Commission has considered your comments and placed them 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 comments, you expressed concern that the Commission's approach in the above-referenced proceedings is too lenient to deter deceptive "Made in USA" claims in the marketplace. Accordingly, you stated that the Commission should reconsider the pending settlements and incorporate additional remedies, including monetary damages and notice to consumers.

The above-referenced proceedings are administrative settlements. The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation.¹ Our primary goal in cases such as these is to stop deceptive advertising by putting the Respondents under order. If, in the future, Respondents violate their orders, the Federal Trade Commission could pursue civil penalties of up to \$42,530 per violation.

Administrative consent orders securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive "Made in USA" claims. To date, the FTC has only had cause to initiate two civil penalty order enforcement proceedings against the more than twenty prior respondents

¹ Fines are similarly unavailable as a remedy in federal court actions, although Section 13(b) of the FTC Act allows the FTC to pursue monetary equitable relief in addition to prohibitory relief in that venue.

in cases involving U.S.-origin claims.²

The Decisions and Orders in these matters strike a careful balance between addressing the deceptive conduct alleged in the Complaints without constraining non-deceptive claims or imposing undue burden. Notably, these cases do not involve significant consequential damages to consumers. The particular products at issue—hockey pucks, backpacks, and wallets—function as advertised, and consumers do not incur additional costs to use or return these particular products. Accordingly, standard dissemination of the Decisions and Orders through the Commission’s usual channels—including publication on the website, notices in the Federal Register, blog posts, and social media posts—should sufficiently put consumers on notice of these actions.³

You correctly note that the Commission has the legal authority to seek restitution in the first instance in federal court pursuant to Section 13(b) of the FTC Act, and that the Commission need not demonstrate that consumers paid a price premium to seek such a remedy. The statement issued by Commissioner Slaughter and Chairman Simons in conjunction with the announcement of the above-referenced proceedings does not argue that the Commission must make such a showing. Rather, the statement suggests that, as the Commission reviews “Made in USA” matters going forward, whether consumers paid a price premium or based their purchasing decision on health or safety concerns might be important factors for the Commission to take into account when determining the appropriate remedies to pursue for a particular case.

Although the Commission’s review of available remedies is ongoing, we have determined that a forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the above-referenced proceedings, which began well before the current complement of Commissioners were instated. Therefore, after considering your comments, the Commission has determined that the relief set forth in the draft Decisions and Orders is appropriate and sufficient to remedy the violations alleged in the complaints.

At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification. The final Decisions and Orders and other relevant materials are available on the Commission’s website at

² See <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty> (announcing settlement with iSpring that imposed a \$110,000 civil penalty for violating prior order regarding U.S.-origin claims); <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools> (announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).

³ In contrast, the Commission determined that a consumer notice provision was appropriate in the recently-settled iSpring matter, which involved a company that reverted to making false U.S.-origin claims for water filtration systems in violation of a previous FTC order. See <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty>.

<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 comments.

By direction of the Commission, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary



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Office of the Secretary

April 16, 2019

Mr. Alan Wachs
Smith, Gambrell & Russell, LLP

RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675

Dear Mr. Wachs:

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 stated that your client was harmed by the conduct alleged in the Commission's complaint. Accordingly, you requested that the Commission reopen the proceeding to require: (1) an admission of liability; and (2) one year of corrective advertising.

The Commission carefully considers the facts of each case in determining whether an admission is appropriate. Although the Commission has very rarely required first-time offenders to admit liability, we regularly pursue such relief in conjunction with contempt actions. Agency regulations specifically contemplate settlements stating that respondents neither admit nor deny liability. *See* 16 CFR § 2.32 (stating that consent agreements "may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint"). Consistent with these regulations, the consent agreement with Respondents included this language.

Administrative consent orders containing this language and securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive "Made in USA" claims. To date, the FTC has only had cause to initiate two civil penalty order enforcement proceedings against the more than twenty prior respondents in cases involving U.S.-origin claims.¹

¹ *See* <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty> (announcing settlement with iSpring that imposed a \$110,000 civil penalty for violating prior order regarding U.S.-origin claims); <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools>

The Decision and Order in this matter strikes a careful balance between addressing the deceptive conduct alleged in the Complaint without constraining non-deceptive claims or imposing undue burden. Notably, this case does not involve significant consequential damages to consumers. The particular products at issue—backpacks and wallets—function as advertised, and consumers do not incur additional costs to use or return these particular products. Accordingly, standard dissemination of the Decision and Order through the Commission’s usual channels—including publication on the Commission’s website, notices in the Federal Register, blog posts, and social media posts—should sufficiently put consumers on notice of this action.²

However, as noted in Commissioner Slaughter’s and Chairman Simons’s statement issued in conjunction with the announcement of the above-referenced proceeding, the Commission agrees there may be cases where it can further maximize its enforcement reach through strategic use of additional remedies. For example, there may be cases in which consumers paid a clear premium for a product marketed as “Made in USA” or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim. In such instances, additional remedies such as monetary relief or notice to consumers may be warranted. Requiring law violators to provide notice to consumers identifying the deceptive claim can help mitigate individual consumer injury—an informed consumer would have the option to seek a refund, or, at the very least, stop using the product. Furthermore, if the Commission determines that merely prohibiting future misrepresentations would not dispel misperceptions conveyed through prior misrepresentations, the FTC may order corrective advertising, as you propose. *See Warner-Lambert Co. v. FTC*, 562 F.2d 749 (D.C. Cir. 1977).

Although the Commission’s review of available remedies is ongoing, we have determined that a forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the above-referenced proceeding, which began well before the current complement of Commissioners were instated. Therefore, after considering your comment, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaints.

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

(announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).

² In contrast, the Commission determined that a consumer notice provision was appropriate in the recently-settled iSpring matter, which involved a company that reverted to making false U.S.-origin claims for water filtration systems in violation of a previous FTC order. *See* <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty>.

work, and we thank you again for your comment.

By direction of the Commission, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary



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April 16, 2019

Mr. Max Parker

RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675

Dear Mr. Parker:

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 question whether Respondents comply with the Berry Amendment, 10 U.S.C. § 2533a, to the extent that they sell products to the Department of Defense ("DoD"). You also raise concerns that Respondents may be violating their order.

The FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices. Marketers seeking to use U.S.-origin claims to sell their products to consumers must comply with Section 5 of the FTC Act, which requires companies to possess substantiation for their marketing claims. The Berry Amendment does not cover business to consumer or business to business transactions. Instead, it relates specifically to, and applies standards that apply only to, country-of-origin claims used in DoD procurement and contracting processes. Compliance with the Berry Amendment is therefore outside the scope of the FTC's enforcement authority and, accordingly, the above-referenced proceeding. Questions and concerns about the Berry Amendment should be directed to the DoD.

The FTC's Bureau of Consumer Protection Enforcement Division routinely monitors order compliance. The Division assigns experienced compliance attorneys to each completed case. They are responsible for ensuring that Respondents file timely compliance reports. With that information in hand, they evaluate the reports and conduct compliance reviews to make sure the order is having its intended effect. If a report leaves them with questions, they follow up with the Respondents for more information. Sometimes the result is a full investigation of possible order violations. Administrative consent orders securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive "Made in USA" claims. If, in the future, however, the Enforcement Division determines that Respondents have violated their order, the

Federal Trade Commission could pursue civil penalties of up to \$42,530 per violation.

Your comment does not propose any revisions to the draft Complaint or Decision and Order. Therefore, after considering your comment, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaint.

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, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary



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April 16, 2019

Mr. Raphael Wakefield

*RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675*

Dear Mr. Wakefield:

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 stated that the above-referenced proceeding should be reopened to include a substantial financial penalty.

The above-referenced proceeding is an administrative settlement. The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation.¹ Our primary goal in cases such as this one is to stop deceptive advertising by putting the Respondents under order. If, in the future, Respondents violate their order, the Federal Trade Commission could pursue civil penalties of up to \$42,530 per violation.

Administrative consent orders securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive "Made in USA" claims. To date, the FTC has only had cause to initiate two civil penalty order enforcement proceedings against the more than twenty prior respondents in cases involving U.S.-origin claims.²

¹ Fines are similarly unavailable as a remedy in federal court actions, although Section 13(b) of the FTC Act allows the FTC to pursue monetary equitable relief in addition to prohibitory relief in that venue.

² See <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty> (announcing settlement with iSpring that imposed a \$110,000 civil penalty for violating prior order regarding U.S.-origin claims); <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools> (announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).

However, as noted in Commissioner Slaughter's and Chairman Simons's statement issued in conjunction with the announcement of the above-referenced proceeding, the Commission agrees there may be cases where it can further maximize its enforcement reach through strategic use of additional remedies. For example, there may be cases in which consumers paid a clear premium for a product marketed as "Made in USA" or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim. In such instances, additional remedies such as monetary relief or notice to consumers may be warranted. Requiring law violators to provide notice to consumers identifying the deceptive claim can help mitigate individual consumer injury—an informed consumer would have the option to seek a refund, or, at the very least, stop using the product.

Although the Commission's review of available remedies is ongoing, we have determined that a forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the above-referenced proceeding, which began well before the current complement of Commissioners were instated. Therefore, after considering your comment, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaints.

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, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary



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April 16, 2019

Senators Brown, Baldwin, and Murphy

*RE: In the Matter of Sandpiper of California, Inc. and PiperGear USA, Inc.,
Matter No. 1823095, C-4675*

*In the Matter of Underground Sports Inc., d/b/a Patriot Puck; Hockey Underground Inc.,
d/b/a Patriot Puck; Ipuck Inc., d/b/a Patriot Puck; IPuck Hockey Inc., d/b/a Patriot
Puck; and George Statler III, Matter No. 1823113, C-4674*

Dear Senators:

Thank you for commenting on the Federal Trade Commission's proposed consent agreements in the above-referenced proceedings. The Commission has considered your comments and placed them 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 comments, you expressed concern that the Commission's approach in the above-referenced proceedings neither adequately penalizes the Respondents in these matters, nor is likely to deter other companies from making deceptive "Made in USA" claims in the marketplace. Accordingly, you stated that the Commission should use its full authority pursuant to Section 5 of the FTC Act to incorporate additional remedies into the settlements, including monetary damages and compelled admissions.

The above-referenced proceedings are administrative settlements. The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation.¹ Our primary goal in cases such as these is to stop deceptive advertising by putting the Respondents under order. If, in the future, Respondents violate their orders, the Federal Trade Commission could pursue civil penalties of up to \$42,530 per violation.

The Commission carefully considers the facts of each case in determining whether an admission is appropriate. Although the Commission has very rarely required first-time offenders to admit liability, we regularly pursue such relief in conjunction with contempt actions. Agency regulations specifically contemplate settlements stating that respondents neither admit nor deny liability. *See* 16 CFR § 2.32 (stating that consent agreements "may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint"). Consistent with these regulations, the consent

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agreement with Respondents included this language.

Administrative consent orders containing this language and securing at least 20 years of conduct relief buttressed by the threat of significant penalties have been largely successful in keeping companies under order from making deceptive “Made in USA” claims. To date, the FTC has only had cause to initiate two civil penalty order enforcement proceedings against the more than twenty prior respondents in cases involving U.S.-origin claims.²

However, as noted in Commissioner Slaughter’s and Chairman Simons’s statement issued in conjunction with the announcement of the above-referenced proceedings, the Commission agrees there may be cases where it can further maximize its enforcement reach through strategic use of additional remedies. For example, there may be cases in which consumers paid a clear premium for a product marketed as “Made in USA” or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim. In such instances, using the federal court forum to pursue additional remedies such as monetary relief or notice to consumers may be warranted. Requiring law violators to provide notice to consumers identifying the deceptive claim can help mitigate individual consumer injury—an informed consumer would have the option to seek a refund, or, at the very least, stop using the product.

Although the Commission’s review of available remedies is ongoing, we have determined that a forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the above-referenced proceeding, which began well before the current complement of Commissioners were instated. Therefore, after considering your comments, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaint.

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 comments.

By direction of the Commission, Commissioners Slaughter and Chopra dissenting.

April J. Tabor
Acting Secretary

² See <https://www.ftc.gov/news-events/press-releases/2019/04/marketer-water-filtration-systems-pay-110000-civil-penalty> (announcing settlement with iSpring that imposed a \$110,000 civil penalty for violating prior order regarding U.S.-origin claims); <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools> (announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).