Concurring Statement of Commissioner Rebecca Kelly Slaughter,
In Which Chairman Joe Simons Joins
Regarding the Matters of Nectar Sleep, Sandpiper/PiperGear, and Patriot Puck
September 12, 2018

When companies falsely claim that their products are made in the U.S.A., they take advantage of consumers who choose to spend their dollars supporting domestic products and the companies who expend resources in order to make the claim proudly and truthfully. Today, the Commission is announcing three enforcement actions[1] targeting companies and an individual who we allege falsely claimed their products were made in the U.S.A. in violation of Section 5 of the FTC Act. In *Patriot Puck*, respondent George Statler III and his companies marketed hockey pucks imported from China as "Made in America" and "The only American Made Hockey Puck!" The *Nectar Sleep* respondents included the statement "Designed and Assembled in the USA" in product descriptions for mattresses wholly imported from China. And in Sandpiper/PiperGear, respondents marketed imported backpacks and wallets on websites claiming "Featuring American Made Products" and shipped imported wallets with cards labeled "American Made." The Commission's complaints allege that these claims were plainly false and the respondents have all agreed to strong administrative consent orders.

Each of the administrative consent orders prohibits the respondents from making these types of claims in the future[2] and requires the respondents to engage in recordkeeping and reporting that will assist the FTC in monitoring compliance.[3] Any violation of these orders can result in a civil penalty of over $40,000 *per violation*.[4] There is evidence that these potential

[1] To date, the Commission has initiated 25 enforcement actions arising from misleading U.S.-origin claims, targeting entities that engage in intentional deception or refuse to come into prompt compliance. FTC staff also works extensively with companies to achieve compliance in this area, issuing more than 130 closing letters addressing potential U.S.-origin claims. These letters highlight that where companies make errors or potentially deceptive claims to consumers, Commission staff works with them to quickly come into compliance. In addition to enforcement actions and compliance counseling, the Commission's program to protect consumers from deceptive U.S.-origin claims involves significant business education efforts. In 1997, the Commission issued an Enforcement Policy Statement on U.S. Origin Claims that explains the types of U.S.-origin claims that can be made and the substantiation needed to support them. Commission staff has also issued comprehensive guidance, press releases and blogs in this area to promote compliance.

[2] Specifically, the orders prohibit respondents from making deceptive unqualified U.S.-origin claims about their products and lay out the type of substantiation required to make truthful claims. The orders also govern the manner and type of qualification needed to make a lawful qualified claim regarding U.S.-origin. The orders further prohibit 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.

[3] Each of the orders requires the 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. Respondents are also required to maintain certain records, including records necessary to demonstrate compliance with the order. The orders also require respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview respondents' personnel. The orders remain in effect for 20 years.

[4] Outside of specific rules, the FTC does not have authority to seek civil penalties for violations of Section 5 of the FTC Act. The FTC does have authority to seek civil penalties for any violations of its administrative orders. *See* 15 U.S.C. § 45(l) and 16 C.F.R. § 1.98(d) (2018).

penalties have served as powerful deterrents: to date the FTC has only had cause to initiate one contempt proceeding[5] against the more than twenty prior respondents in cases involving U.S.-origin claims.

In this area, administrative consent orders securing permanent injunctive relief buttressed by the threat of significant civil penalties have been largely successful in keeping former violators on the straight and narrow and have no doubt served as a warning to others that false claims will be identified and pursued. Therefore, we are voting in support of the relief set forth in the final and proposed administrative orders announced today.

We write separately to highlight the possibility that the FTC can further maximize its enforcement reach, in all areas, through strategic use of additional remedies. For example, in the U.S.-origin claim context, there may be cases in which consumers paid a clear premium for a product marketed as "Made in the U.S.A." or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim.[6] 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.

The Commission has already begun a broad review of whether we are using every available remedy as effectively as possible to fairly and efficiently pursue vigorous enforcement of our consumer protection and competition laws. If we find that there are new or infrequently applied remedies that we should be seeking more often, the Commission will act accordingly—and, where appropriate, signal to the public how we intend to approach enforcement. In our view, a thoughtful review and forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the cases before us today.[7]

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[5] *See* 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).

[6] Of the three cases the FTC is announcing today, we note that consideration of additional remedies such as notice could have been of particular value in the *Nectar Sleep* matter, which involved U.S.-origin claims about mattresses. The fact that purchasers of Nectar Sleep mattresses can seek a refund for any reason for 365 days after their original purchase, https://www.nectarsleep.com/p/returns/, and that purchasers received mattresses with accurate country-of-origin labels, contributed to our decision to vote in favor of the final *Nectar Sleep* order.

[7] It is worth noting that all of the cases announced today began well before the current complement of Commissioners were instated, and therefore before staff could reasonably have been expected to anticipate our particular priorities and views on enforcement. To renegotiate these settlements at this point, after litigation strategy was developed and executed, would require substantial investment of staff time and effort and diversion of resources from other important cases. A forward-looking set of remedy priorities will help staff develop litigation strategy in an efficient way.