

Complaint

IN THE MATTER OF

E.K. EKCESSORIES, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4419; File No. 132 3156**Complaint, December 4, 2013 – Decision, December 4, 2013*

This consent order relates to false and misleading marketing, sale, and distribution of outdoor equipment by respondent E.K. Ekcessories, Inc. According to the complaint, E.K. Ekcessories, Inc. represented that all of its products are “Truly Made in the USA,” when, in fact, some of respondent’s products were not made in the United States. The complaint further alleges that respondent lacked a reasonable basis to substantiate its claims. The order bars respondent from making unqualified U.S.-origin claims for its products unless the product is completely or nearly completely made in the United States. The order further bars respondent from making any “Made in the USA” or other country of origin claim about a covered product unless the claim is true, not misleading, and respondent has a reasonably basis substantiating the representation. Respondent is also prohibited from providing third-party retailers with the means to make false claims regarding the origin of respondent’s products. Respondent is also required to notify all retailers of this order and to instruct them to remove deceptive “Made in the USA” claims from respondent’s products and marketing materials.

Participants

For the *Commission*: *Julia Ensor and Elisa Jillson.*

For the *Respondent*: *Dickson Burton, TraskBritt.*

COMPLAINT

The Federal Trade Commission, having reason to believe that E.K. Ekcessories, Inc. (“Respondent”), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent E.K. Ekcessories, Inc. (“EK”), is a Utah corporation with its principal office or place of business at 575 West 3200 South, Logan, Utah 84321.

Complaint

2. Respondent has advertised, labeled, offered for sale, and distributed products to consumers, including, but not limited to, outdoor equipment such as waterproof iPhone accessories, eyewear retainers, bottle holders, lens cleaners, ID and credential holders, dog collars and leashes, and tie-downs and tow straps (“Ekcessories”). Respondent advertises these products on its website, www.ekusa.com, and offers for sale, sells, and distributes them directly to the public throughout the United States.

3. Respondent provides third parties with marketing materials for use in the marketing and sale of Respondent’s Ekcessories.

4. The acts and practices of Respondent alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Respondent has disseminated or has caused to be disseminated advertisements, packaging, and promotional materials for Ekcessories, including, but not necessarily limited to, the attached Exhibits A through F. These materials contain the following statements:

A. “Truly Made in the USA”;



(Exhibit A, iBob product packaging; Exhibit B, iCat Hang It product packaging; Exhibit C, www.ekusa.com homepage)

B. “For 28 years E.K. Ekcessories has been producing superior quality made accessories in our 60,000 sq. ft facility in Logan, Utah”;
(Exhibit C, www.ekusa.com homepage).

C. “[O]ur source of pride and satisfaction abounds from a true ‘Made in USA’ product.”

Complaint

(Exhibit D, EK Product Catalogue).

D. “Made in the USA”

(Exhibit D, EK Product Catalogue; Exhibit E, www.ekusa.com product pages; Exhibit F, “News” section of www.ekusa.com).

6. In numerous instances, including but not limited to the promotional materials shown in Exhibits A-F, Respondent has represented that its products are made in the USA.

7. In reality, Respondent’s products are not all made in the USA.

COUNT I (False or Misleading Representation)

8. Through the means described in Paragraphs 5 and 6, Respondent has represented, expressly or by implication, that each of its products is all or virtually all made in the United States.

9. In truth and in fact, in numerous instances, Respondent’s products were made outside the United States. Therefore, the representation set forth in Paragraph 8 is false or misleading.

COUNT II (Unsubstantiated Representation)

10. Through the means described in Paragraphs 5 and 6, in numerous instances, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 8.

11. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 8, at the time the representation was made. Therefore, the representation set forth in Paragraph 10 is false or misleading.

Decision and Order

COUNT III (Means and Instrumentalities)

12. Respondent has distributed the promotional materials described in Paragraphs 5 and 6 to third-party retailers for use in the marketing and sale of Respondent's products. In so doing, Respondent has provided the means and instrumentalities to these third-party retailers for the commission of deceptive acts or practices.

VIOLATION OF SECTION 5

13. The acts and practices of Respondent, as alleged in this Complaint, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this fourth day of December, 2013, has issued this Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violation of the Federal Trade Commission Act; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by

Decision and Order

Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this Decision and Order, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent E.K. Ekcessories, Inc. is a Utah corporation with its principal office or place of business at 575 West 3200 South, Logan, Utah 84321.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

1. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. "Covered product" means products offered for sale by Respondent, including, but not limited to, outdoor accessories such as waterproof iPhone accessories, eyewear retainers, bottle holders, lens cleaners, ID and

Decision and Order

credential holders, dog collars and leashes, and tie-downs and tow straps.

3. “Respondent” means E.K. Ekcessories, Inc., a corporation, and its successors and assigns.

I.

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 promoting or offering for sale any good or service are permanently restrained and enjoined from representing, expressly or by implication, that a Covered Product is made in the United States, unless the product is all or virtually all made in the United States.

II.

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 good or service, shall not make any representation, in any manner, expressly or by implication, regarding the country of origin of any Covered Product unless the representation is true, not misleading, and at the time it is made, Respondent possesses and relies upon a reasonable basis for the representation.

III.

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 good or service, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part,

Decision and Order

“means and instrumentalities” means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after service of this Order, Respondent shall deliver to the Commission a searchable electronic file containing the name and contact information of all distributors who purchased or otherwise received any product from Respondent on or after January 1, 2010 and through May 1, 2013. Such file shall: (1) include each distributor’s name and address, and, if available, the telephone number and email address of each distributor; and (2) be accompanied by a sworn affidavit attesting to its accuracy.

V.

IT IS FURTHER ORDERED that within thirty (30) days after service of this Order, Respondent shall send by first-class mail, postage paid and return receipt requested, or by courier service such as FedEx with signature proof of delivery, an exact copy of the notice attached as Attachment A, showing the date of mailing, to all distributors identified pursuant to the Part IV of this Order. The notice required by this Part shall include a copy of this Order, but shall not include any other document or enclosures, and shall be sent to the principal place of business of each such distributor.

VI.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;

Decision and Order

- 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;
- D. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Acknowledgements provision of this Order; and
- E. Copies of all notification letters, with return receipts or signed proof of delivery if applicable, sent pursuant to Part V of this Order.

VII.

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.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation 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

Decision and Order

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, DC 20580. The subject line must begin: “In re E.K. Ekcessories, Inc., File No. 1323156.”

IX.

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.

X.

This order will terminate on December 4, 2033, 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.

Decision and Order

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.

By the Commission.

Decision and Order

ATTACHMENT A



IMPORTANT NOTICE ABOUT E.K. EKCESSORIES

ADVERTISING AND MARKETING

Dear Distributor:

In response to a settlement with the Federal Trade Commission (FTC), E.K. Ekcessories, Inc. (EK) has agreed not to make claims that products are made in the United States unless the referenced product is **all or virtually all made** in the United States. This is because the FTC has alleged that EK marketed certain products as made in the United States, when, in some instances, the products or certain components of those products were made outside the United States. Therefore, EK requests that you immediately stop using existing E.K. Ekcessories marketing materials, if any, that either: (1) describe all EK products, or (2) specifically describe [affected products], as made in the United States, of U.S.-origin, or "Truly Made in the USA." Where applicable, EK will make revised marketing materials available to you shortly.

Furthermore, to the extent that you have EK-packaged products that are part of the **iCat, Dri Cat, Key biner, Card Holder, or Bottle Cat** lines in your possession with U.S.-origin claims on the packaging materials, we have included stickers that you should affix to the product packaging to cover claims that the items are made in the United States. Please find the enclosed instruction sheet, which will provide you with directions as to how to apply the stickers correctly.

Should you have any questions about compliance with this notification, please contact [Randall Anderson or Cort Saxton]. In addition, further information about this settlement can be obtained by visiting www.ftc.gov and searching for "E.K. Ekcessories."

Sincerely,

Randall Anderson

Chief Operating Officer

E.K. Ekcessories

EK EKCESSORIES

575 West 3200 South
Logan, Utah

435-753-8448

Attachment A

Decision and Order

EXHIBIT A



Decision and Order

EXHIBIT A

Decision and Order

EXHIBIT B

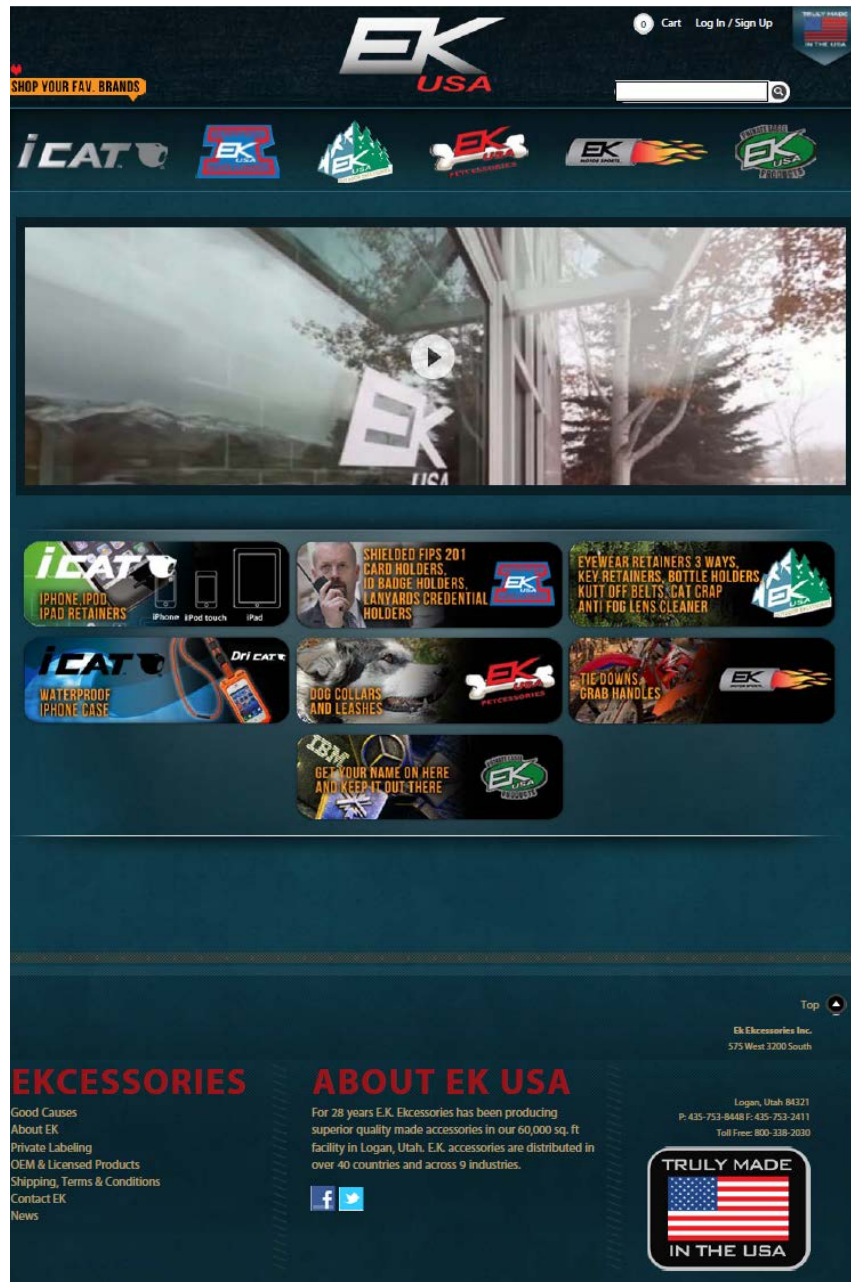


Decision and Order

EXHIBIT B

Decision and Order

EXHIBIT C



Decision and Order

EXHIBIT D



Quality in each EK Ekcessorie is reflected by our people, our expanded production facility, and our ultimate product. Here, there's a working environment that fosters creativity, efficiency, sound manufacturing and marketing principles. Together with great staff and employees, plus a great facility, more than great things happen. Moreover, our source of pride and satisfaction abounds from a true "Made in USA" product.



1993

EK expands its facility by over 5,000 square ft.

1994

#1 On-Time delivery recognition by REL.

1995

Winning The Cat Tracks That Others Follow.

1996

A 1956 Tucker Snow Cat is purchased from Alfa Ski Resort, commemorating and branding EK's 10th anniversary.

Turning heads while writing up orders in our 20' x 30' smoking log cabin trade show booth.

Decision and Order

EXHIBIT D



Decision and Order

EXHIBIT E

iBob

<http://ekusa.com/ibob>



[Cart](#) [Log In / Sign Up](#)



IBOB





11015P- Additional protection for your device. Attach the iBob to your Dri Cat and keep your device afloat. Retention is loss prevention. Compatible with the iPhone 4/4s/5 and Galaxy S III cases. Case not included. Made in the USA.

11015P- Additional protection for your device. Attach the iBob to your Dri Cat and keep your device afloat. Retention is loss prevention. Compatible with the iPhone 4/4s/5 and Galaxy S III cases. Case not included. Made in the USA.

[Read Less](#)

\$15.99

Color * 

Quantity *

[ADD TO CART](#)

Good Causes

About EK

Private Labeling

OEM & Licensed Products

Shipping, Terms & Conditions

Contact EK

News

For 28 years E.K. Ekcessories has been producing superior quality made accessories in our 60,000 sq. ft facility in Logan, Utah. E.K. accessories are distributed in over 40 countries and across 9 industries.

Top

EK Ekcessories Inc.

575 West 3200 South

Logan, Utah 84321

P: 435-753-8448 F: 435-753-2411

Toll Free: 800-338-2030

1 of 1

4/29/2013 2:51 PM

Decision and Order

EXHIBIT E


0 Cart Log In / Sign Up

[SHOP YOUR FAV. BRANDS](#)








ICAT HANG IT- IPHONE 3/4/4S, IPOD AND IPAD



Item #11015C The patent pending iCat Hang It is designed to keep your iPhone, iPod or iPad close at hand while significantly reducing loss. The Hang It offers a secure attachment, connected to 100% nylon braid and carabiner that can easily be attached to belt loops, purses or backpacks. Available in over 20 colors. Made in the USA. Compatible with the iPhone 3,4 and 4S, iPad, iPod classic and 4th generation or any Apple device with the 30 pin connector.

[Read More](#)

\$24.99

Color *

Quantity *

[Add to Cart](#)

EKCESSORIES

- [Good Causes](#)
- [About EK](#)
- [Private Labeling](#)
- [OEM & Licensed Products](#)
- [Shipping, Terms & Conditions](#)
- [Contact EK](#)
- [News](#)

ABOUT EK USA

For 28 years E.K. Ekcessories has been producing superior quality made accessories in our 60,000 sq. ft facility in Logan, Utah. E.K. accessories are distributed in over 40 countries and across 9 industries.




Top ▲

Ek Ekcessories Inc.
 575 West 3200 South
 Logan, Utah 84301
 P: 435-753-9448 F: 435-753-2411
 Toll Free: 800-338-2030

EXHIBIT E

Cart

Log In / Sign Up

Shop Your Fav. Brands

EK USA

icats

EK USA

EK USA

EK USA

EK USA

EK USA

EK GUARDIAN CARD HOLDER W/ DETACHABLE LANYARD *CALL FOR GSA PRICING*



Item #10935B FIPS 201 approved! The ultimate in loss prevention and protection for ID badges. The Guardian is a sealed water and impact resistant cast that floats and protect your card from unauthorized scanning. The Guardian comes with our durable soft end breakaway lanyard that keeps the badge facing forward and has a detachable buckle for added convenience. Perfect for TWIC Cards, CAC Cards and military applications where keeping the ID safe and secure is of utmost importance. Includes Sport Lanyard Plus w/soft end. Weights only 1.78oz Made in the USA. Patent #D600,913 S

[Read More](#)

\$59.99

Color *

Quantity *

1

Add to Cart

Good Causes

About EK

Private Labeling

OEM & Licensed Products

Shipping, Terms & Conditions

Contact EK

News

For 28 years E.K. Ekcessories has been producing superior quality made accessories in our 60,000 sq. ft facility in Logan, Utah. E.K. accessories are distributed in over 40 countries and across 9 industries.

f

t

Top

E.k. Ekcessories Inc.

575 West 3200 South
Logan, Utah 84321
P: 435-753-8448 F: 435-753-2411
Toll Free: 800-398-2030

Decision and Order

EXHIBIT F

The screenshot shows the EK USA website. The header features the EK USA logo, a shopping cart icon with '0' items, and a 'Log In / Sign Up' link. Below the header is a navigation bar with logos for iCAT, EK USA, and other brands. A left sidebar contains links: Good Causes, About EK, Private Labeling, OEM & Licensed Products, Shipping, Terms & Conditions, Contact EK, and News. The main content area displays a news article titled 'Utah Accessories Maker EK Celebrates 25 Years'.

News

Utah Accessories Maker EK Celebrates 25 Years

Ed Kalbach wouldn't describe his personality as "intense." Instead, he pauses, and quickly retorts: "No, I'd describe myself as obsessive-compulsive—but in a good way." Thanks to his obsessive focus on product innovation, he's grown EK Accessories into a multi-million dollar operation with some 7,000 SKUs in a half-dozen catalogs.

Today, 25 years after launching his company at Booth #32043, Kalbach employs more than 100 people in Logan, Utah. His 30,000-square-foot factory and makes everything from the ubiquitous Cat Strap to private label tie-down straps for Harley-Davidson and Honda. All Made in the USA.

Kalbach, who admits he skimmed through high school and never went to college, launched EK Accessories and his first product, Cat Flaps, at an SIA show in 1985. Cat Flaps flopped, but his next two products, Cat Crap, a lens anti-fogging film, and Cat Straps, sunglass retainers, caught fire. He's never looked back.

Today, Kalbach sells products into seven separate industries ranging from pet stores to the safety and security industry. Southwest Airline employees sport EK lanyards, the U.S. Army buys his key rings, he makes grab handles and roll-bar accessories for the four-wheel crowd, and then there's his promotional products catalog.

Kalbach, a self-described motor-head, holds more than two dozen patents and when he looks back on his 25 years building the company it was the Cat Strap that put him on the map. And it was simple, he said. He took a piece of climbing cord, stuck some rubber gas-line tubing off a motorcycle engine on both ends, and then jammed sunglass temples into the gas-line. Call it a Cat Strap.

He went to SIA to hawk them and left with a \$60,000 order from some Oakley reps. Not bad for a 21-year-old ski bum living on \$125 a week who had rolled into Utah driving an old Chevy Blazer. Kalbach, however, wanted a bit more cash to live on. He opened a motorcycle repair shop and added a ski exchange. And then he got inventive.

It was the Cat Strap that helped spawn dozens of outdoor accessories. He soon took 3- and 5-millimeter climbing cord and added lanyards, key retainers, wristwatch bands and zipper pulls to his line. And in 1988 he introduced patterned webbing into the outdoor market, and he defies anyone to prove differently.

In 1991 he built a new factory in Logan and later, keeping his eye on developing trends, moved away from the neon craze into earth-tone patterns in rope and webbing—another first, he said.

Over the years, REI named his company number one for on-time delivery; EK was picked as Utah's fastest

Decision and Order

EXHIBIT F

growing company, and Kalbach was later named Utah's Small Business Person of the Year. Kiplinger's Personal Finance Magazine put him on its cover in 1998 and EK was picked as an official licensee for the 2002 Salt Lake Winter Olympics. He's received more honors than there's space to list them.

But Kalbach is proud of two things when discussing his company: First, he's most proud of his employees, many of whom have worked with him for years. And he readily admits that it's their work that has helped make the company successful. No one has been laid off in what most now call the Great Recession.

Next, Kalbach makes everything in Logan, Utah. "Some people tell me I can't compete with China, and I go ballistic. China will never kick my butt," he says, as a quick smile spreads across his face.

25 Years and Still Growing!

Logan, UT -January 6, 2010-Since its founding in 1985 EK Eccessories has grown into the world leader in outdoor accessories. From a humble beginning in a small ski shop on Main Street in Logan, Utah where EK owner Ed Kalbach developed his first of countless creations, beginning with the Cat Flap side shield for Cat Eye style sunglasses, that opened the door for the ever popular Cat Strap Eyewear Retainer and Cat Crap Lens Cleaner/Anti Fog that were soon to follow.

Over the years EK Eccessories has received numerous awards and supported countless organizations. All of which have contributed to its success as a company.

EK Eccessories uses and will continue to use only the highest quality materials to create its outstanding lines of accessories and will continue to make them here in the USA. This is not just any accessories company but, a global leader with quality consumer products in the Outdoor, Pet, Safety Security, Motor Sport, and Ad specialty industries with market presentation in over 40 countries worldwide. EK Eccessories has provided thousands of accessories to companies and individuals who seek quality durability and performance.

EK Eccessories looks forward to the coming years, continued growth, and is committed to continuing to provide a superior quality accessories line.

EK MOTORSPORTS NAMED OFFICIAL LICENSEE OF AMERICAN HONDA MOTOR CO. PRODUCTS

Logan UT— March 15, 2007. Logan, UT based EK Motorsports, a division of EK Eccessories and a leading manufacturer for off-road accessories is now an official licensee for American Honda.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from E.K. Ekcessories, Inc. (“respondent”).

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 respondent’s marketing, sale, and distribution of outdoor equipment with claims that the products are of U.S.-origin. According to the FTC’s complaint, respondent represented that all of its products are “Truly Made in the USA.” In fact, some of respondent’s products are not made in the USA.

The complaint alleges that respondent’s claims that all of its products are “Truly Made in the USA,” made in Logan, Utah, or “Made in the USA” were false and misleading for some products. The complaint also alleges that respondent did not possess and rely upon a reasonable basis to substantiate its claims, and that respondent distributed deceptive promotional materials to third-party retailers for use in the marketing and sale of its products. Accordingly, the complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent respondent 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 forbids respondent from making unqualified U.S.-origin claims for its products unless the product is all or virtually all made in the USA.

Part II prohibits respondent from making any “Made in the USA” or other country of origin claim about a covered product

Analysis to Aid Public Comment

unless the claim is true, not misleading, and respondent has a reasonable basis substantiating the representation.

Part III prohibits respondent from providing third-party retailers with the means and instrumentalities to make the claims prohibited in Parts I and II.

Parts IV and V require respondent to identify its third-party retailers and deliver a letter to them that instructs them to remove deceptive “Made in the USA” claims from respondent’s products or marketing materials.

Parts VI through X are reporting and compliance provisions. Part VI requires respondent to keep and make available to the Commission on request: copies of advertisements, labeling, packaging, and promotional materials containing the representations identified in Part I; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations; all acknowledgments of receipt of the order; and all notification orders sent pursuant to Part V. Part VII requires respondent to disseminate the order to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VIII requires notification to the FTC of changes in respondent’s corporate status. Part IX requires respondent to submit an initial compliance report to the FTC within sixty (60) days of service and subsequent reports upon request.

Finally, Part X 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.

Complaint

IN THE MATTER OF

**MACNEILL ENGINEERING COMPANY, INC.
d/B/A CHAMP**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4422; File No. 122 3292**Complaint, December 11, 2013 – Decision, December 11, 2013*

This consent order addresses allegations that respondent MacNeill Engineering Company, Inc., doing business as CHAMP, violated the Federal Trade Commission Act in its marketing, sale, and distribution of plastic golf tees. According to the complaint, CHAMP represented that its plastic golf tee products were biodegradable and, upon disposal, would completely break down and decompose into elements found in nature within a reasonably short time. The complaint alleges these claims were false and misleading and that respondent did not possess any substantiation for its claims. The order bars respondent from representing any of its products or packaging are biodegradable unless (1) the entire item will completely decompose into elements found in nature within one year after disposal; or (2) respondent clearly and prominently states the time to complete decomposition or explains the extent to which the item will decompose. The order further requires respondent to implement scientific protocols that replicates the physical conditions found in a landfill or existing using the method or facility stated in respondent's representations regarding its product's biodegradability.

Participants

For the *Commission*: *Korin Felix, Elisa Jillson, and Katherine Johnson.*

For the *Respondent*: *Kerry Timbers, Sunstein Kann Murphy & Timbers, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that MacNeill Engineering Company, Inc., also d/b/a CHAMP ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: