Dissenting Statement of Commissioner Rebecca Kelly Slaughter,

Regarding the Matters of Sandpiper/PiperGear and Patriot Puck

April 1 , 2019

Let me cut to the quick: I have changed my vote on these particular cases because I now believe that I got this wrong the first time around.

I misunderstood an important aspect of the FTC's authority, and then I repeated my misunderstanding to a wider audience. So I write to clear up this misunderstanding, to say thank you to the public commenters whose insightful contributions helped me to better understand these issues, and to explain why I have changed my vote on these matters. I now vote against approving these consent orders with Patriot Puck and Sandpiper/PiperGear, both brazen violators of the Federal Trade Commission Act's prohibition against deceiving consumers by claiming a wholly imported product is "Made in U.S.A."

Last September, I voted in support of the FTC's publishing for public comment the proposed consent orders that placed the offending companies and one executive under order but did not require admissions. [illegible] FTC's [illegible] cases [illegible] recent decades and across administrations of both parties. In a concurring statement,[1] I wrote that the companies and executive would be placed under order and therefore subject to civil penalties for any future deception or other violations of the order. I noted that these prospective penalties are quite big, that record-keeping requirements would tend to keep the companies honest, and that these types of orders had mostly kept previous "Made in U.S.A." deceivers from re-offending. All of this remains true.

I based my earlier vote on two interrelated factors: (1) the resolutions of

My earlier concurring statement contained no inaccuracy, but, in a follow-up tweet[3] and in testimony before the Senate,[4] I expressly linked the notion of price premium with "our limited authority." This was my misunderstanding: I had understood that the FTC had the authority to disgorge ill-gotten gains only where there was evidence of a price premium paid by consumers for American-made goods over cheaper imports.[5] To be clear: Our authority has no such limitation. Instead, that consideration was prudential: The FTC historically has opted against expending large resources to pursue disgorgement remedies with first-time "Made in U.S.A." violators. This strategy has favored bringing more companies under order to stop their violations over pursuing fewer, more resource-intensive cases that might impose on lawbreakers more severe consequences.

This is a fair approach in light of other important consumer-protection priorities. I will continue to support it in appropriate cases. But it is reasonable to question, as Commissioner Chopra and many commenters have, whether more widespread compliance could be better achieved by the FTC's seeking more aggressive remedies in egregious cases. I am persuaded that, for brazenly deceptive representations that a wholly imported product is "Made in U.S.A.," consent orders without disgorgement or admissions fail to exact a meaningful cost from the lawbreaking company and its executives sufficient for effective general deterrence.

Reasonable minds may differ on particular litigation strategy, but in my view the two

I read every public comment filed in response to the proposed consent orders, and I extend my thanks to all who took the time to write us. Even the single-sentence comments are