

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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Fortessa Inc)
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_____)

Case No. 09-22

ORDER

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (2009)) (the "Regulations"), against Fortessa Inc ("Fortessa"), a domestic concern, organized under the laws of the United States and doing business in the State of Virginia, based on allegations set forth in the Proposed Charging Letter, dated 10 December 2009, that alleged that Fortessa committed two violations of the Regulations;

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Specifically, the charges are:

1. *One Violation of 15 C.F.R. §760.2(d) - Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons*

During the year 2004, Fortessa engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, on one occasion, Fortessa, with intent to comply with, further or support an unsanctioned foreign boycott, furnished information concerning its or another person's business relationships with or in a boycotted country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

2. *One Violation of 15 C.F.R. §760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States*

During the year 2004, Fortessa engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

In connection with these activities, Fortessa, on one occasion, received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. Fortessa failed to report its receipt of this request to the Department of Commerce, as directed by Section 760.5 of the Regulations.

BIS and Fortessa having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED THAT:

FIRST, a civil penalty of \$ 8,000 is assessed against Fortessa and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions

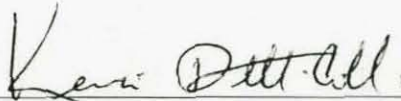
SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, Fortessa will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$ 8,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Fortessa.

Accordingly, if Fortessa should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Fortessa's export privileges for a period of one year from the date of the entry of this Order.

FOURTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Fortessa

This Order, which constitutes the final agency action in this matter, is effective immediately.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce for
Export Enforcement

Entered this 27th day of January, 2010

Attachments

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. Department of Commerce
Bureau of Industry and Security
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: James Vidale

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390-70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900-904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 4 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collection Standards (31 C.F.R. §901.2(b)).

Fortessa Inc

Case No. 09 - 22

This agreement is made by and between Fortessa Inc (“Fortessa”), a domestic concern, organized under the laws of the United States and doing business in the State of Virginia, and the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the “Act”).¹

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, BIS has notified Fortessa of its intention to initiate an administrative proceeding against Fortessa pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated 10 December 2009, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Fortessa has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Fortessa fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Fortessa states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Fortessa neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Fortessa agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, Fortessa and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over Fortessa with respect to the matters alleged in the Proposed Charging Letter.
2. BIS will impose a civil penalty in the amount of \$ 8,000. Fortessa will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$ 8,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Fortessa. Failure to make payment of this amount shall result in the denial of all of Fortessa's export privileges for a period of one year from the date of entry of the Order.

4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Fortessa hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by Fortessa pursuant to this Settlement Agreement and the Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Fortessa with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.

6. Fortessa understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Fortessa that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement.


Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against Fortessa in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

This paragraph shall not limit Fortessa's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

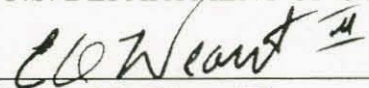
FORTESSA INC



Scott M. Hamburger
CEO, Co-president

DATE: 1/5/10

U.S. DEPARTMENT OF COMMERCE



Edward O. Weant III
Director
Office of Antiboycott Compliance

DATE: 1-26-10

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

PROPOSED CHARGING LETTER

10 December 2009

Fortessa Inc
22601 Davis Drive
Sterling, VA 20164

Attention : Scott Hamberger,
CEO

Case No. 09.22

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Fortessa Inc ("Fortessa"), on two occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").²

We charge that you committed one violation of Section 760.2(d) of the Regulations, in that, on one occasion, with intent to comply with, further or support an unsanctioned foreign boycott, you furnished information concerning your or another person's business relationships with or in a boycotted country.

We also charge that you committed one violation of Section 760.5 of the Regulations, in that, on one occasion, you failed to report to the Department of Commerce ("Department") your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

¹ The alleged violations occurred during the years 2004 and 2005. The Regulations governing the violations at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004 and 2005)). The prior years' Regulations are substantially the same as the 2009 version of the Regulations which govern the procedural aspects of this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).



We allege that:

You, Fortessa Inc, are, and at all times relevant were, a domestic concern doing business in the State of Virginia. As such, you are a United States person as defined in Section 760.1(b) of the Regulations.

During the year 2004, you engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

Charge 1 (15 C.F.R. § 760.2(d) - Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons)

In connection with the activities referred to above, on or about 24 December 2004, you furnished to Advising Bank of Letter of Credit # 7000-04/20686 a certificate on Fortessa letterhead, which contained the following information concerning your or another person's business relationships with or in a boycotted country:

No portion of the subject products is connected in any way, directly or indirectly, to Israel or Israeli beneficiaries.

Providing this information, with intent to comply with, further or support an unsanctioned foreign boycott, is an activity prohibited by Section 760.2(d) of the Regulations, and not excepted. We therefore charge you with one violation of Section 760.2(d).

Charge 2 (15 C.F.R. § 760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)

In connection with the activities referred to above, on or about 15 December 2004, you received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. The boycott request contained a documentary requirement to furnish a Fortessa certificate stating:

the goods are not from Israel.

Section 760.5 of the Regulations requires United States persons to report to the Department their receipt of such requests. You failed to report to the Department your receipt of this request.

By failing to report your receipt of this request, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with one violation of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.³

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.⁴

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Industry and Security at:

³ Administrative sanctions may include any or all the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007)).
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see § 764.3(a)(3) of the Regulations).

⁴ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman>.

Office of the Chief Counsel for Industry and Security
Room H-3839
Bureau of Industry and Security
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Sincerely,

Edward O Weant, III
Director
Office of Antiboycott Compliance