

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Muscle Gauge Nutrition, LLC
10 Conchester Road
Glen Mills, Pennsylvania 19342

Respondent

ORDER RELATING TO
MUSCLE GAUGE NUTRITION, LLC

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Muscle Gauge Nutrition, LLC, of Glenn Mills, Pennsylvania (“MGN”), of its intention to initiate an administrative proceeding against MGN pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to MGN that alleges that MGN committed one violation of the Regulations. Specifically, the charge is:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2011. The Regulations governing the violation at issue are found in the 2011 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Charge 1 15 C.F.R. § 764.2(h) – Evasion

On or about June 30, 2011, MGN engaged in transactions or took actions with intent to evade the Regulations. Specifically, on one occasion, MGN's Operations Manager altered the sales invoice for an attempted export through the United Arab Emirates ("UAE") to Iran of a shipment of whey protein supplements, items that were subject to the Regulations³ and the Iranian Transactions Regulations ("ITR")⁴ and had a declared value of \$93,000. Pursuant to Section 560.204 of the ITR maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

On the morning of June 30, 2011, MGN's Operations Manager sent its freight forwarder's routing agent a sales invoice via email for the items that listed the "bill to" party as the customer, a company located in Tehran, Iran, and the "ship to" party as a transportation logistics company located in Deira, UAE. Later the same day, MGN's Operations Manager received an email from an employee of the freight forwarder notifying him that Iran was currently subject to a U.S. embargo and that an OFAC license was required to export items to a sanctioned country. The employee requested a copy of MGN's export license in order for the freight forwarder to proceed with the shipping arrangements. Shortly thereafter on the same day, the Operations Manager sent the freight forwarder's routing agent a revised invoice via email with a message that referred to a "typo" on the previous invoice. The revised invoice listed the UAE transportation logistics company and its Deira, UAE address in both the "bill to" and "ship to" boxes. According to a July 2011 interview with Office of Export Enforcement Special Agents, MGN's Operations Manager contacted the UAE transportation logistics company by telephone following receipt of the email message regarding the OFAC licensing requirement. The Operations Manager claimed that he was advised that the Iranian address was incorrect and that he should use the UAE transportation logistics company's address instead. MGN's actions were taken to export the U.S. origin supplements to Iran without the required U.S. Government authorization and to avoid detection by law enforcement authorities. Ultimately, the shipment was detained and seized by the U.S. Government. In so doing, MGN committed one violation of Section 764.2(h) of the Regulations.

³ The items were designated as EAR99, a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c).

⁴ 31 C.F.R. Part 560.

WHEREAS, BIS and MGN have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:


FIRST, MGN shall be assessed a civil penalty in the amount of \$62,500. MGN shall pay the U.S. Department of Commerce \$45,000 in three installments as follows: \$15,000 not later than November 20, 2012; \$15,000 not later than January 22, 2013; and \$15,000 not later than March 22, 2013. If any of the three installment payments is not fully and timely made, any remaining scheduled installment payments and any suspended penalty shall become due and owing immediately. Payment of the remaining \$17,500 shall be suspended for a period of two years from the date of the Order, and thereafter shall be waived, provided that during this two-year payment probationary period under this Order, MGN has committed no violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of \$45,000 as set forth above.

SECOND, that pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), 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, MGN will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MGN. Accordingly, if MGN should fail to pay the civil penalty in a full and timely manner as set forth above, the undersigned may issue an Order denying all of MGN's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

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



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 27 day of September, 2012.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Muscle Gauge Nutrition, LLC
10 Conchester Road
Glen Mills, Pennsylvania 19342

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Muscle Gauge Nutrition, LLC, of Glen Mills, Pennsylvania (“MGN”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

WHEREAS, BIS has notified MGN of its intentions to initiate an administrative proceeding against MGN, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to MGN that alleges that MGN committed one violation of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2011. The Regulations governing the violation at issue are found in the 2011 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Charge 1 15 C.F.R. § 764.2(h) – Evasion

On or about June 30, 2011, MGN engaged in transactions or took actions with intent to evade the Regulations. Specifically, on one occasion, MGN's Operations Manager altered the sales invoice for an attempted export through the United Arab Emirates ("UAE") to Iran of a shipment of whey protein supplements, items that were subject to the Regulations³ and the Iranian Transactions Regulations ("ITR")⁴ and had a declared value of \$93,000. Pursuant to Section 560.204 of the ITR maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

On the morning of June 30, 2011, MGN's Operations Manager sent its freight forwarder's routing agent a sales invoice via email for the items that listed the "bill to" party as the customer, a company located in Tehran, Iran, and the "ship to" party as a transportation logistics company located in Deira, UAE. Later the same day, MGN's Operations Manager received an email from an employee of the freight forwarder notifying him that Iran was currently subject to a U.S. embargo and that an OFAC license was required to export items to a sanctioned country. The employee requested a copy of MGN's export license in order for the freight forwarder to proceed with the shipping arrangements. Shortly thereafter on the same day, the Operations Manager sent the freight forwarder's routing agent a revised invoice via email with a message that referred to a "typo" on the previous invoice. The revised invoice listed the UAE transportation logistics company and its Deira, UAE address in both the "bill to" and "ship to" boxes. According to a July 2011 interview with Office of Export Enforcement Special Agents, MGN's Operations Manager contacted the UAE transportation logistics company by telephone following receipt of the email message regarding the OFAC licensing requirement. The Operations Manager claimed that he was advised that the Iranian address was incorrect and that he should use the UAE transportation logistics company's address instead. MGN's actions were taken to export the U.S. origin supplements to Iran without the required U.S. Government authorization and to avoid detection by law enforcement authorities. Ultimately, the shipment was detained and seized by the U.S. Government. In so doing, MGN committed one violation of Section 764.2(h) of the Regulations.

WHEREAS, MGN has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

³ The items were designated as EAR99, a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c).

⁴ 31 C.F.R. Part 560.

WHEREAS, MGN fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, MGN enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, MGN states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, MGN neither admits nor denies the allegations contained in the Proposed Charging Letter;

WHEREAS, MGN wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, MGN agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over MGN, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanction shall be imposed against MGN in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:
 - a. MGN shall be assessed a civil penalty in the amount of \$62,500. MGN shall pay the U.S. Department of Commerce \$45,000 in three installments as follows: \$15,000 not later than November 20, 2012; \$15,000 not later than January 22, 2013; and \$15,000 not later than March 22, 2013. Payment shall be made in the manner specified in the

attached instructions. If any of the three installment payments is not fully and timely made, any remaining scheduled installment payments and any suspended penalty shall become due and owing immediately. Payment of the remaining \$17,500 shall be suspended for a period of two years from the date of the Order, and thereafter shall be waived, provided that during this two-year payment probationary period under the Order, MGN has committed no violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of \$45,000 as set forth above.

b. The full and timely payment of the civil penalty agreed to in Paragraph 2.a, is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MGN. Failure to make full and timely payment of the civil penalty as set forth in Paragraph 2.a may result in the denial of all of MGN's export privileges under the Regulations for one year from the date of the failure to make such payment.

3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof, MGN hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. MGN also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transaction identified in the Proposed Charging Letter or in connection with collection

of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the date MGN pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against MGN in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in the Proposed Charging Letter.

5. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

6. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

7. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

8. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

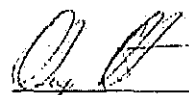
BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

Date: 9/29/12

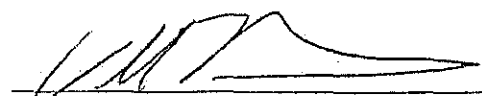
MUSCLE GAUGE NUTRITION, LLC



Osage Osunde
Co-Owner

Date: 9/24/12

Reviewed and approved by:



William T. Wilson, Esq.
MacElree Harvey
Counsel for Muscle Gauge Nutrition, LLC

Date: 9/20/12

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Muscle Gauge Nutrition, LLC
10 Conchester Road
Glen Mills, Pennsylvania 19342

Attention: Osage Osunde
Co-Owner

Dear Mr. Osunde:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Muscle Gauge Nutrition, LLC of Glen Mills, Pennsylvania (“MGN”) has committed one violation of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that MGN committed the following violation:

Charge 1 15 C.F.R. § 764.2(h) - Evasion

On or about June 30, 2011, MGN engaged in transactions or took actions with intent to evade the Regulations. Specifically, on one occasion, MGN’s Operations Manager altered the sales invoice for an attempted export through the United Arab Emirates (“UAE”) to Iran of a shipment of whey protein supplements, items that were subject to the Regulations³ and the Iranian Transactions Regulations (“ITR”)⁴ and had a declared value of \$93,000. Pursuant to Section 560.204 of the ITR maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The charged violation occurred in 2011. The Regulations governing the violation at issue are found in the 2011 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2011)). The 2011 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

³ The items were designated as EAR99, a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2011).

⁴ 31 C.F.R. Part 560 (2011).

exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

On the morning of June 30, 2011, MGN's Operations Manager sent its freight forwarder's routing agent a sales invoice via email for the items that listed the "bill to" party as the customer, a company located in Tehran, Iran, and the "ship to" party as a transportation logistics company located in Deira, UAE. Later the same day, MGN's Operations Manager received an email from an employee of the freight forwarder notifying him that Iran was currently subject to a U.S. embargo and that an OFAC license was required to export items to a sanctioned country. The employee requested a copy of MGN's export license in order for the freight forwarder to proceed with the shipping arrangements. Shortly thereafter on the same day, the Operations Manager sent the freight forwarder's routing agent a revised invoice via email with a message that referred to a "typo" on the previous invoice. The revised invoice listed the UAE transportation logistics company and its Deira, UAE address in both the "bill to" and "ship to" boxes. According to a July 2011 interview with Office of Export Enforcement Special Agents, MGN's Operations Manager contacted the UAE transportation logistics company by telephone following receipt of the email message regarding the OFAC licensing requirement. The Operations Manager claimed that he was advised that the Iranian address was incorrect and that he should use the UAE transportation logistics company's address instead. MGN's actions were taken to export the U.S. origin supplements to Iran without the required U.S. Government authorization and to avoid detection by law enforcement authorities. Ultimately, the shipment was detained and seized by the U.S. Government. In so doing, MGN committed one violation of Section 764.2(h) of the Regulations.

* * * * *

Accordingly, MGN is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions and any other liability, sanction, or penalty available under law, including but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁵
- Denial of export privileges; and/or

⁵ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

- Exclusion from practice before BIS.

If MGN fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. 15 C.F.R. §§ 766.6 and 766.7 (2011). If MGN defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to MGN. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

MGN is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. 15 C.F.R. § 766.6 (2011). MGN is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2011).

The Regulations provide for settlement without a hearing. 15 C.F.R. § 766.18 (2011). Should MGN have a proposal to settle this case, MGN or its representative should transmit it through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, MGN's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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

In addition, a copy of MGN's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Parvin R. Huda
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Muscle Gauge Nutrition, LLC
Proposed Charging Letter
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Parvin R. Huda is the attorney representing BIS in this case; any communications that MGN may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-5301.

Sincerely,

Doug R. Hassebrock
Director
Office of Export Enforcement

Enclosure