

Opening Statement of the Honorable Lee Terry
Subcommittee on Commerce, Manufacturing, and Trade
Markup of “H.R. 4013, Low Volume Motor Vehicle Manufacturers Act of 2014, H.R. 4450, Travel Promotion, Enhancement, and Modernization Act of 2014, and H.R. _____, Targeting Rogue and Opaque Letters (TROL) Act of 2014”
July 9, 2014

(As Prepared for Delivery)

Tomorrow, we will consider three pieces of legislation:

- HR 4013, the Low Volume Motor Vehicle Manufacturers Act of 2014
- HR 4450, the Travel Promotion, Enhancement, and Modernization Act of 2014
- Targeting Rogue and Opaque Letters (TROL) Act of 2014

First, we will consider the Low Volume Motor Vehicle Manufacturers Act, a commonsense piece of legislation sponsored by my colleague, John Campbell.

The replica car industry is a different animal—these manufacturers produce a small number of cars every year and cater to a specific consumer.

The legislation we will consider tomorrow is narrowly focused on these manufacturers to exempt them from a handful of regulations that need not apply to small-scale manufacturers.

I also note that the legislation is the product of good faith negotiations between the different stakeholders and I'm glad they were able to compromise.

I thank Mr. Campbell for his legislation and I am pleased to consider the bill tomorrow in my subcommittee.

We will also consider a bill authored by my colleague Gus Bilirakis, which would reauthorize the Travel Promotion Act.

Under the Travel Promotion Act, the travel and tourism industry operates Brand USA, a public-private partnership that benefits our districts a great deal.

Brand USA comes at no cost to American taxpayers, and its outreach efforts have proven to be a vital investment.

Last year, they helped bring in 1.1 million visitors, who spent about \$3.4 billion, supporting about 53,181 jobs.

I am also pleased that Mr. Bilirakis has done great work in requiring more transparency of Brand USA and making additional requirements to ensure the Brand USA board has the right mix of expertise.

I thank Mr. Bilirakis and look forward to considering the bill tomorrow.

Tomorrow we will also consider the TROL Act, a piece of legislation that takes on the deceptive patent demand letter problem.

Several of us in the House and Senate have endeavored to find a solution to abusive demand letters.

Any solution involves a difficult balance between first amendment limitations, legitimate patent holders and small businesses that are being harmed.

As the inventor Thomas Edison once said, “The most certain way to succeed is to try one more time.”

We want to continue to work to get more support, but have been pleased with the support shown from such diverse groups as the Innovation Alliance, the App Developers Alliance, the DMA, the 4As, the AAJ, the ACU, 21C and many others.

Now, I am also aware of concerns recently raised by the Federal Trade Commission, and echoed by some of the stakeholders in the past couple days.

We’ve looped the Commission in on our successive drafts, and Commission staff has helped us draft our savings clause.

So I am a little surprised that now the FTC is worried that their ability to get an injunction under Section 5 is compromised “under the bill.”

The bill does not alter the FTC’s authority to get an injunction under Section 5 and to make sure courts understand that, we inserted the savings clause with the help of the FTC.

Some stakeholders are also arguing that the FTC and state AG’s should not have to prove knowledge or impute knowledge to a defendant in order to get civil penalties, despite the fact that in order to get civil penalties under current law the FTC has to prove knowledge.

We took the standard in the bill from case law interpreting the FTC’s ability to hold the officer of a company liable for restitution on account of such company’s unfair or deceptive acts or practices.

The difference with our legislation is that the FTC does not need to promulgate rules—nor does it need to have obtained an injunction—before pursuing civil penalties.

We brought the FTC into our deliberative process on this bill and I’m disappointed at the manner and timing in which these concerns were raised, and in the validity of the concerns I noted above.

It is our hope that after hearing the concerns raised at mark-up that we will be able to bring the stakeholders together and further strengthen this legislation.

We sought to have a collaborative process and I am pleased that staff from Mr. Welch’s and Mr. McNerney’s offices as well as minority staff from the committee were invited to all the negotiations on the legislation.

With so many stakeholders with differing perspectives, the process has been difficult—but our product reflects the input of the most divergent interests on this subject.

Accordingly, our bill strikes the appropriate balance:

For those with big patent portfolios that routinely send short licensing communications to other sophisticated actors, this bill protects their business practices, and is mindful of their First Amendment protections.

For those with who receive trolling letters, the bill provides assurance that if they receive a demand letter, there are two important protections:

1) It requires the sender to provide enough information for the recipient to appropriately respond; and

2) It bars the sender from making false or misleading statements.

I would like to thank the stakeholders for their hard work in helping us arrive at this balanced piece of legislation.

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