

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JDSO, INC., Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	4:25-cv-00444-SHL-SBJ ORDER GRANTING DEFENDANT’S MOTION TO DISMISS FOR LACK OF JURISDICTION
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I. INTRODUCTION.

In 2022, the United States Alcohol and Tobacco Tax and Trade Bureau (“TTB”) informed Plaintiff JDSO, Inc. (“JDSO”), that its permit to produce, sell, and transport distilled spirits was terminated based on JDSO’s ostensible failure to provide notice of a change in ownership. Later, TTB concluded that JDSO had provided the requisite notice after all, and thus the permit should not have been terminated. JDSO now seeks damages from the United States under the Federal Tort Claims Act (“FTCA”), arguing that TTB’s negligence in evaluating the company’s compliance with the change in control regulations caused millions of dollars in losses. (ECF 1.) The United States moves to dismiss for lack of jurisdiction, arguing that the FTCA did not waive sovereign immunity for claims of this nature. (ECF 17.) For reasons stated below, the Court agrees with the United States and therefore GRANTS the Motion to Dismiss for Lack of Jurisdiction.

II. BACKGROUND.

A. Factual Background.

JDSO is an Iowa corporation doing business as Red Boot Distillery. (ECF 1, ¶ 9.) The company’s business is regulated in part by the TTB, which is an agency of the United States Department of Treasury. (Id., ¶ 1.) Among other responsibilities, the TTB issues Basic Permits to distilleries to give them permission to engage in distilling activity. (Id., ¶ 1.)

JDSO was incorporated in 2018 and originally had two shareholders, Joseph Dehner and Stuart Oxer, each of whom owned 50% of the company’s stock. (ECF 17-3, p. 2.) On December 13, 2019, Oxer bought out Dehner’s stock and became the sole shareholder. (Id.; ECF 17-4.) On December 21, 2019, JDSO submitted a change-in-control application to TTB to amend its Basic Permit to reflect this change in ownership, as required by 27 U.S.C. § 204(g). (ECF 1, ¶ 12; ECF

17-5.) On January 13, 2020, while the application was pending, Oxer transferred his shares into a revocable trust (the “Trust”) for estate planning purposes. (ECF 1, ¶ 13.) He did not immediately file additional paperwork to notify TTB of this secondary transfer.

On February 20, 2020, a TTB applications specialist asked JDSO for updated organizational documents in connection with the December 2019 change-in-control application. (Id., ¶ 14; ECF 17-5.) Among other things, the applications specialist stated: “Please provide updated Organizational Documents or similar documentation showing transfer of ownership from Joseph Dehner to Stuart Oxer.” (ECF 17-5, p. 2, ¶ 4.) Oxer responded later that day by copying the specialist’s queries into a new email and providing in-line responses, in **bold** font, next to the original question. (ECF 17-6.) In response to the request for documents related to the transfer of shares to Oxer, Oxer responded, “**-Attached.**” (Id., p. 2, ¶ 4.) The email attached two sets of documents: first, documents showing Dehner’s transfer of stock to Oxer, and second, documents showing Oxer’s subsequent transfer to the Trust. (ECF 1, ¶ 13; ECF 17-6.) Other than attaching these documents, Oxer did not highlight the second transfer from himself to the Trust in his email response to the applications specialist. (ECF 17-6.) On February 21, 2020, TTB approved the change in control application and amended JDSO’s Basic Permit. (ECF 1, ¶ 15; ECF 17-7, p. 2.)

Almost three years later, in December 2022, TTB issued JDSO a Notice of Potential Civil and Criminal Liability (the “Notice”). (Id., ¶ 16; ECF 17-8.) The Notice stated TTB “has determined that JDSO, Inc.’s (JDSO) Basic Permits . . . terminated by operation of law, on or about February 14, 2020 due to an unreported change in control.” (ECF 17-8, p. 2.) It also stated, among other things:

A TTB Investigation disclosed that JDSO did not timely report to TTB that a change in control took place on January 13, 2020. The stock certificate dated January 13, 2020 shows all 100,000 shares transferred from Stuart Oxer to the Stuart Oxer and Wendi Harris Revocable Trust, therefore this is the date of the change in control that went unreported to TTB.

(Id.) The Notice warned JDSO that it was unlawful to engage in distilling activities without a Basic Permit issued pursuant to the Federal Alcohol Administration Act. The Notice concluded: “Any continued operations as such subjects JDSO to all applicable...criminal and civil penalties.” (Id.)

After issuing the Notice, TTB prohibited JDSO from accessing certain functions on the agency’s Permits Online System. (ECF 1, ¶ 18.) Without access to this System, JDSO could not obtain approvals for labels, formulas, or certificates of label approval. (Id.) This rendered JDSO unable to serve existing customers or develop new customers. (Id.) TTB later admitted that JDSO’s

basic permits never terminated and always remained in full force and effect, presumably because Oxer had attached the document to his email in February 2020 showing the transfer of his shares to the Trust. (Id., ¶ 20.)

As a result of TTB's mistake, JDSO suspended operations for "several days, and over the following months and years JDSO suffered substantial losses, including over \$3.5 million in lost business and profits." (Id., ¶ 19.) JDSO asserts that these damages derive from TTB's "non-discretionary duty to accurately process, handle, and account for documents and information submitted by JDSO." (Id., ¶ 22.) That is, according to JDSO, TTB's actions "did not involve policy choices grounded in social, economic, or political considerations, but [were] instead a negligent failure to perform a routine administrative function with reasonable care." (Id., ¶ 23.)

B. Procedural Background.

JDSO previously filed an action against the United States for injunctive relief and damages based on TTB's failure to release a tax lien associated with the mistaken termination of the permit. *See JDSO, Inc. v. United States*, No. 4:24-cv-00084-SHL-SBJ, 2024 WL 6990711 (S.D. Iowa Dec. 11, 2024). The case was dismissed for lack of subject matter jurisdiction because: (a) TTB finally released the lien, thus rendering the request for injunctive relief moot, and (b) JDSO did not have a viable cause of action for damages due to sovereign immunity. *Id.* at *3–7. JDSO later filed this new case asserting one claim, for negligence, pursuant to 28 U.S.C. § 1346(b). (ECF 1, ¶¶ 25–30.) The United States moves to dismiss based on lack of subject-matter jurisdiction. (ECF 17-1.) JDSO resists. (ECF 21.)

III. LEGAL STANDARDS.

Sovereign immunity "shields the Federal Government and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). "Sovereign immunity is jurisdictional in nature. Indeed, the 'terms of [the United States'] consent to be sued in any court define that court's jurisdiction to entertain the suit.'" *Id.* (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)); *United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.").

The FTCA waives sovereign immunity for "certain torts committed by federal employees acting within the scope of their employment." *Hutchison v. United States*, 71 F.4th 1115, 1117 (8th Cir. 2023) (internal quotation marks omitted) (quoting *Brownback v. King*, 592 U.S. 209, 212 (2021)). "As relevant here, it gives district courts 'exclusive jurisdiction' over negligence suits

‘under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.’” *Id.* (quoting 28 U.S.C. § 1346(b)(1)). “In those circumstances, the United States is on the hook for damages ‘in the same manner and to the same extent as a private individual under like circumstances.’” *Id.* (quoting 28 U.S.C. § 2674). However, the FTCA’s “waiver is subject to statutory exceptions” outlined in 28 U.S.C. § 2680. *Martin v. United States*, 605 U.S. 395, 395 (2025). Section 2680(h) bars claims for several intentional torts, including “misrepresentation” and “interference with contract rights.” 28 U.S.C. 2680(h); *Millbrook v. United States*, 569 U.S. 50, 52 (2013) (“We have referred to § 2680(h) as the ‘intentional tort exception.’” (citation omitted)). “If one of the exceptions applies, the bar of sovereign immunity remains.” *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 485 (2006).

When a defendant moves to dismiss for lack of subject matter jurisdiction, the Court must determine whether the motion raises a “facial” or “factual” attack. *See Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 914 (8th Cir. 2015). “In a facial attack, ‘the court merely [needs] to look and see if plaintiff has sufficiently alleged a basis of subject matter jurisdiction.’” *Id.* (quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). “Accordingly, ‘the court restricts itself to the face of the pleadings and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6).’” *Id.* (quoting *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990)). “Conversely, in a factual attack, ‘the existence of subject matter jurisdiction [is challenged] in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.’” *Id.* at 914–15 (alternation in original) (quoting *Menchaca*, 613 F.2d at 511). “Thus, the nonmoving party would not enjoy the benefit of the allegations in its pleadings being accepted as true by the reviewing court.” *Id.* at 915. Either way, “[t]he plaintiff bears the burden of establishing subject matter jurisdiction.” *Hilger v. United States*, 87 F.4th 897, 899 (8th Cir. 2023).

IV. LEGAL ANALYSIS.

The United States argues that two exceptions to the waiver of sovereign immunity under the FTCA apply here: the exceptions for misrepresentation and interference with contract rights. (ECF 17-1.) If either exception applies, sovereign immunity has not been waived and the Court lacks jurisdiction. *Dolan*, 546 U.S. at 485. The United States characterizes its Motion to Dismiss as a facial challenge to subject matter jurisdiction, although it also asks the Court to consider

materials outside the complaint, “including documents incorporated by reference, matters of public record, and exhibits whose authenticity is unquestioned.” (ECF 17-1, p. 4 (citing *Stahl v. U.S. Dep’t of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003) and *United States v. Fink*, 393 F. Supp. 2d 935, 939 (D.S.D. 2005).) JDSO does not appear to dispute the authenticity of any of these materials, and thus the Court will consider them. The Court will, however, focus primarily on the face of the pleadings, with all factual allegations accepted as true and interpreted in the light most favorable to JDSO. *Branson Label, Inc.*, 793 F.3d at 914.

A. The Misrepresentation Exception Bars JDSO’s Claim.

The United States relies, first, on the FTCA’s misrepresentation exception, which states that the waiver of sovereign immunity “shall not apply to . . . [a]ny claim arising out of . . . misrepresentation.” 28 U.S.C. § 2680(h). This provision “relieves the Government of tort liability for pecuniary injuries which are wholly attributable to reliance on the Government’s negligent misstatements.” *Robinson v. United States*, 139 F.4th 994, 997 (8th Cir. 2025) (quoting *Block v. Neal*, 460 U.S. 289, 297 (1983)). “But it does not bar negligence actions which focus not on the Government’s failure to use due care in communicating information, but rather on the Government’s breach of a different duty.” *Block*, 460 U.S. at 297. “Application of the misrepresentation exception thus turns on what caused [JDSO’s] injury.” *Robinson*, 139 F.4th at 997.

In *United States v. Fowler*, 913 F.2d 1382, 1387 (9th Cir. 1990), the Ninth Circuit described the distinction between claims for misrepresentation and claims for negligence as “slippery.” This case illustrates the point. The United States argues that JDSO was injured by inaccurate statements in the December 2022 Notice to the effect that JDSO’s Basic Permit “terminated by operation of law, on or about February 14, 2020 due to an unreported change in control” (ECF 17-8, p. 2.) By contrast, JDSO argues that the Notice is not inaccurate because one of the sentences in the Notice states merely that “the [TTB] **has determined** that [the permit] terminated by operation of law” (ECF 21, p. 6 (emphasis original) (quoting the Notice).) In JDSO’s view, this sentence is literally true because the TTB indeed “determined” that the permit terminated by operation of law. The fact that this “determination” later turned out to be incorrect does not mean the TTB did not make it. In addition, and in any event, JDSO argues that the source of its injury was (a) TTB’s underlying negligent failure to recognize that Oxer attached documents to an email to TTAB in February 2020 showing the transfer of shares from himself to the Trust, and/or (b) the loss of access to the Permits Online System. (ECF 21, p. 5.).

1. The Notice Contains Misrepresentations.

The Court concludes, as a threshold matter, that the Notice made misrepresentations when it declared:

A TTB Investigation disclosed that JDSO did not timely report to TTB that a change in control took place on January 13, 2020. The stock certificate dated January 13, 2020 shows all 100,000 shares transferred from Stuart Oxer to the Stuart Oxer and Wendi Harris Revocable Trust, therefore this is the date of the change in control that went unreported to TTB. JDSO's [permits] terminated after 30 days of the change on or about February 14, 2020.

(ECF 17-8, p. 1.) Parsing the language—and accepting as true the allegations of JDSO's Complaint—there are misrepresentations in each of the three sentences in this paragraph: Sentence One inaccurately says that “JDSO did not timely report [the change in control] to TTB”; Sentence Two inaccurately says there was a change in control on January 13, 2020, “that went unreported to TTB”; and Sentence Three inaccurately says JDSO's permits “terminated after 30 days of the change on or about February 14, 2020.” As TTB itself allegedly later admitted, JDSO *did* report the change in control when Oxer attached the document to his email in February 2020, and thus the permits “always remained in full force and effect.” (ECF 1, p. 4.)

In arguing otherwise that the Notice did not contain misrepresentations, JDSO focuses on a sentence stating, in part, that TTB “determined” that the permits terminated by operation of law based on JDSO's failure to provide notice of the change in control. JDSO argues that this sentence is literally true because TTB indeed made this determination, even though it was wrong. The Court disagrees that this makes the sentence literally true, as any reasonable reader would understand it to be an implicit representation that JDSO in fact failed to provide notice of the change in control. *See, e.g., United States v. Matia*, 157 F.4th 305, 310 (3d Cir. 2025) (recognizing that misrepresentations can be implicit); *United States v. Anderson*, 980 F.3d 423, 429 (5th Cir. 2020) (same). Even if one accepts JDSO's position that this sentence is literally true, however, JDSO's position fails in light of the direct misrepresentations later in the Notice.

2. The Misrepresentations in the Notice Caused JDSO's Injuries.

The next question is whether the misrepresentations in the Notice caused JDSO's injuries. *See Robinson*, 139 F.4th at 997. JDSO argues this is not the case, asserting that the true source of injury was the negligence of the TTB official who failed to realize what Oxer attached to his email and/or JDSO's eventual loss of access to the Permits Online System. The United States, by contrast, argues that JDSO's inability to access the System was a “derivative consequence of TTB's

communication regarding the Permit's status. . . . JDSO would have sustained the same amount of economic harm regardless of whether TTB blocked JDSO's access to the [System]." (ECF 17-1, p. 12.) The Court agrees with the United States.

As a starting point, JDSO's Complaint itself recognizes the close relationship between the misstatement in the Notice and JDSO's injuries, alleging:

17. The [Notice] threatened civil and criminal penalties if JDSO continued to operate and directed JDSO to apply for new permits.

18. JDSO was prohibited by the TTB's actions from performing certain functions on TTB's [Permits Online System], could not obtain required approvals for labels, formulas, and certificates of label approval, and as a result was unable to serve existing customers or develop new alcoholic beverage customers.

19. As a result of the TTB's actions referenced herein, **including the issuance of the [Notice]**, JDSO was forced to suspend operations for several days, and over the following months and years JDSO suffered substantial losses, including over \$3.5 million in lost business and profits.

29. The harm to JDSO was foreseeable: issuance of the [Notice], based and issued upon incorrect information . . . predictably caused a permittee (JDSO) to suspend operations, lose access to the permitting and label and formula approval systems, and suffer substantial business losses.

(ECF 1, ¶¶ 17–19, 29 (emphasis added).) Under any fair reading of these allegations, JDSO is asserting that the misrepresentations in the Notice caused the company to “suspend operations” and “suffer[] substantial losses.” This comports with common sense. It is difficult to imagine that JDSO would have continued to operate despite the threats of civil and criminal penalties that emanated from TTB's statement that JDSO failed to comply with change in control regulations. The misrepresentations in the Notice therefore “caused” JDSO's injuries in the legally relevant sense. *See Com. Union Ins. Co. v. United States*, 928 F.2d 176, 179 (5th Cir. 1991) (describing the issue as “whether the chain of causation from the alleged negligence to the alleged injury depends upon the transmission of misinformation by a government agent”).

JDSO could avoid this conclusion if the Complaint also alleged (a) a separate duty that TTB breached, and (b) a causal relationship between the separate breach and JDSO's injuries. *See Block*, 460 U.S. at 297; *Hamre v. United States*, 799 F.2d 455, 457 (8th Cir. 1986) (applying exception where the misrepresentation was the “proximate cause” of the injury). JDSO's Complaint does not meet this bar. It does not, for example, allege that the underlying error by the

TTB official in February 2020, standing alone, caused any injuries. Nor could it. The mistake was made in February 2020, but JDSO did not suspend operations and begin suffering losses until it received the Notice in December 2022. But for the Notice, JDSO would have suffered no injuries. The company's losses were therefore caused by the misrepresentations in the Notice, and thus the misrepresentation exception applies. *See Gollehon Farming v. United States*, 17 F. Supp. 2d 1145, 1153 (D. Mont. 1998), *aff'd*, 207 F.3d 1373 (Fed. Cir. 2000) (dismissing FTCA claims that were “grounded upon the dissemination of misinformation by the FGIS).

This result is unchanged by JDSO's argument that the loss of access to the Permits Online System was the true cause of its injuries. The loss of access did not happen spontaneously. Instead, as JDSO itself alleges, “issuance of the [Notice], based and issued upon incorrect information . . . predictably caused a permittee (JDSO) to . . . lose access to the permitting and label and formula approval systems, and suffer substantial losses.” (ECF 1, ¶ 29.) In other words, JDSO lost access to the Permits Online System when TTB inaccurately communicated that the company failed to comply with change of control requirements. This makes the case analogous to *Robinson v. United States*, 139 F.4th at 997–98, in which a Federal Aviation Administration (“FAA”) official negligently miscalculated the plaintiff's expected retirement benefits. The Eighth Circuit held that the misrepresentation exception applied because it was only when the FAA official's mistake was communicated to the plaintiff—who relied on that information in deciding to retire—that the injuries occurred. *See id.* That is, the “‘gist of the claim’ lies in the negligence underlying a misrepresentation.” *Id.* at 997 (quoting *United States v. Neustadt*, 366 U.S. 696, 711 (1961)).

The logic of *Robinson* applies with equal force here. Although the causal chain started with the TTB official's mistaken failure to recognize the significance of the attachment to Ozer's email, JDSO did not begin suffering injuries until that mistake was communicated to JDSO in the Notice. Accordingly, the “‘gist of the claim’ lies in the negligence underlying a misrepresentation.” *Id.* The United States is therefore protected by sovereign immunity.

B. The Court Will Not Address the Interference with Contract Exception.

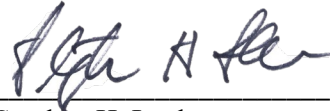
Because the misrepresentation exception applies, the Court does not need to decide whether the United States also is protected by sovereign immunity based on the “interference with contract rights” exception to the FTCA.

V. CONCLUSION.

Because JDSO's negligence claim is based on misrepresentations, the United States is entitled to sovereign immunity. The Motion to Dismiss for Lack of Jurisdiction (ECF 17) is therefore GRANTED. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated July 24, 2026.

A handwritten signature in dark ink, appearing to read "Stephen H. Locher", written over a horizontal line.

Stephen H. Locher
UNITED STATES DISTRICT JUDGE