

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

)	
In the Matter of)	
)	Docket No.
Down to Earth Designs, Inc.,)	
a corporation)	
)	
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Down to Earth Designs, Inc., d/b/a gDiapers (“Respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Oregon corporation with its principal place of business at 2808 NE Martin Luther King Jr. Boulevard, Portland, Oregon, 97212.
2. Respondent has advertised, labeled, offered for sale, sold, and distributed the following products throughout the United States:
 - A. gDiapers: A diaper system that consists of two components: (i) a reusable outer shell (gPants), and (ii) an inner liner, either a disposable pad (gRefills) or a reusable cloth insert. Respondent has offered for sale and sold gPants and gRefills separately and in combination with each other.
 - B. gWipes: Moist wipes for use on babies’ skin.
3. Respondent has advertised, offered for sale, and sold gRefills and gWipes as disposable products on its website, www.gdiapers.com, and through other online media, including but not limited to advertisements on third-party websites, social media advertisements, and email advertisements sent to potential customers. Additionally, Respondent has advertised, offered for sale, sold, and distributed these products through various retailers and distributors throughout the United States.

4. The acts and practices of Respondent alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Respondent disseminates, has disseminated, or has caused the dissemination of promotional materials relating to its gDiapers and gWipes products to retailers and consumers. In numerous instances, including but not limited to the promotional materials shown in Exhibits 1-19, Respondent has represented that:

A. gRefills and gWipes are biodegradable:

100% ecodorable*
***cute & biodegradable.**

Ex. 1 (gDiapers website).

100% biodegradable

Exs. 2, 3 (gDiapers website). *See also* Exs. 4, 5 (online advertising).

100% biodegradable for a happy planet.

Ex. 4 (online advertising).

disposable.
biodegradable.
adorable.

Exs. 6, 7 (online advertising).

biodegradable* gRefills

Ex. 8 (packaging).

biodegradable gWipes

Ex. 9 (packaging).

B. gRefills and gWipes biodegrade when trashed:

**100% biodegradable
disposable diaper inserts
So gentle on the earth you can flush, compost, or toss.**

Ex. 1 (gDiapers website).

**Flush.
Compost.
Toss.
gDiapers. No garbage.**

Ex. 10 (online advertising). *See also* Ex. 11 (online advertising).

**a diaper shouldn't last forever.
50 million diapers enter the landfill every day. Each one takes
up to 500 years to break down. gDiapers are the only earth-
friendly diapers that are 100% biodegradable. gDiapers
biodegradable gRefills can be flushed, home composted, or
tossed.**

Ex. 3 (gDiapers website).

**Put the poop in the toilet and toss the baby wipe. You can
breathe easier knowing that a gWipe will break down much
faster than other disposable baby wipes on the market.**

Ex. 12 (gDiapers website).

**toss
a plastic-free option that's easier on the planet**

Ex. 13 (gDiapers website). *See also* Ex. 8 (packaging).

no landfill necessary.

Ex. 15 (online advertising).

C. gRefills biodegrade when flushed:

100% Biodegradable

So gentle on the earth you can flush, compost, or toss.

Ex. 1 (gDiapers website).

gDiapers biodegradable gRefills can be flushed, home composted, or tossed.

Ex. 3 (gDiapers website). *See also* Ex. 2 (gDiapers website).

D. gRefills are “certified” biodegradable:

gRefills are certified 100% biodegradable.

Exs. 13 (gDiapers website), 16 (email advertising), 8 (packaging).

E. gRefills and gWipes are compostable, including in home composts:

gRefills can be . . . home composted

Exs. 2, 3 (gDiapers website).

gWipes can be home composted

Ex. 12 (gDiapers website).

Flush.

Compost.

Toss.

gDiapers. No garbage.

Ex. 10 (online advertising).

Flush, compost, or throw them away!

Ex. 11 (online advertising).

gRefills in your own backyard.

* * *

Collect your yard waste, your fruit and veggie scraps from the

kitchen, your coffee grounds and your baby's wet gRefills and watch how they work together to break down into useful and valuable compost.

Ex. 14 (gDiapers website).

F. gRefills offer an environmental benefit because they can be flushed:

**Earth-friendly diapers
Flush your diapers.**

Ex. 17 (online advertising).

Eco-friendly diapers.

* * *

Flush, compost, or throw them away!

Ex. 11 (online advertising).

**Flush
You're putting poop where it belongs**

Exs. 13 (website); *see also* 8 (packaging).

G. gDiapers are plastic free:

plastic free, naturally.

Ex. 18 (online advertising).

No plastic, chlorine, or guilt!

Ex. 11 (online advertising).

End plastic diaper use.

Ex. 19 (online social media advertising).

6. In numerous instances, no disclaimers accompanied the representations listed in Paragraph 5. *See, e.g.*, Exs. 9, 10, 11. In other instances, Respondent made qualifying statements – *e.g.*, disclaimers that only wet gRefills or gWipes can be composted, or that gRefills and gWipes are biodegradable only in composting environments – but in numerous instances those qualifiers were not clear and conspicuous or proximate to the

claim. For example, while Respondent's home page advertised gRefills with unqualified compostable claims, *see* Ex. 1, it disclosed that only "wet ones" (*i.e.*, wet gRefills) can be composted on different web pages. *See, e.g.*, Exs. 3, 13. Similarly, in contrast to the unqualified biodegradable claims on the front of gRefills and gWipes packaging, Respondent revealed on back and side panels that the products biodegrade in only "home and commercially-approved composts." *See, e.g.*, Exs. 8, 9.

7. Consumers likely interpret unqualified degradable claims to mean that the entire product or package will completely decompose into elements found in nature within a reasonably short period of time after customary disposal. For items entering the solid waste stream, consumers likely interpret unqualified degradable claims to mean that the item will completely decompose within one year after customary disposal. 16 C.F.R. § 260.8(b),(c).

8. Consumers likely interpret unqualified compostable claims to mean that all the materials in the item will break down into, or otherwise become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner (*i.e.*, in approximately the same time as the materials with which it is composted) in an appropriate composting facility, or in a home compost pile or device. 16 C.F.R. § 260.7(b).

9. Approximately 92 percent of total municipal solid waste in the United States is disposed of in landfills, incinerators, or recycling facilities. Landfills, incinerators, and recycling facilities do not present conditions for biodegradation or composting within a reasonably short period of time.

10. Consumers of gRefills dispose of the majority of used gRefills by throwing them away in the trash ("trashing"). Trashing gRefills and gWipes leads to their final disposal in a landfill or incinerator.

11. In fact, gRefills and gWipes do not biodegrade in landfills or incinerators in a reasonably short period of time.

12. Municipal wastewater facilities filter out a portion of flushed gRefills and send that material to landfills. Of the material that is not filtered out, only a part may degrade in the wastewater stream during the treatment process. Of the remainder, a portion is landfilled or incinerated. As a result, a significant portion of flushed gRefills do not biodegrade.

13. Only wet used gRefills and gWipes are safe to compost.

14. Respondent has not obtained any independent, third-party certification that gRefills are biodegradable.

15. gDiapers are not plastic free. The gPants component of the gDiapers system contains, among other things, plastic.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I: FALSE OR MISLEADING REPRESENTATIONS

16. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that:
- A. gRefills and gWipes are biodegradable—*i.e.*, will completely break down and decompose into elements found in nature within one year after customary disposal;
 - B. gRefills and gWipes will biodegrade when trashed;
 - C. gRefills will biodegrade when flushed;
 - D. gRefills are “certified” biodegradable;
 - E. No part of used gRefills will end up in a landfill or incinerator after disposal by trashing or flushing; and/or
 - F. gDiapers are plastic free.
17. In truth and in fact:
- A. gRefills and gWipes will not completely break down and decompose into elements found in nature within one year after customary disposal;
 - B. gRefills and gWipes will not biodegrade when trashed;
 - C. gRefills will not biodegrade when flushed;
 - D. gRefills are not “certified” biodegradable;
 - E. Part of used gRefills will end up in a landfill or incinerator after disposal by trashing or flushing; and/or
 - F. gDiapers are not plastic free.
18. Therefore, the representations set forth in Paragraph 16 were, and are, false or misleading.
19. Respondent’s false or misleading representations constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade

Commission Act, 15 U.S.C. § 45(a).

COUNT II: FAILURE TO DISCLOSE, OR FAILURE TO DISCLOSE CLEARLY
AND CONSPICUOUSLY, THAT COMPOSTABILITY IS LIMITED TO WET
GREFILLS AND GWIPES

20. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that used gRefills and gWipes are home compostable – *i.e.*, will break down into, or otherwise become part of, usable compost in a safe and timely manner in a home compost pile or device.

21. Respondent has failed to disclose that gRefills and gWipes soiled with solid waste will not break down into, or otherwise become part of, usable compost in a safe and timely manner in a home compost pile or device. Where Respondent has made such disclosures, in numerous instances they have not appeared in a clear and conspicuous manner.

22. This additional information, described in Paragraph 21, would be material to consumers in deciding whether to purchase gDiapers' products.

23. Respondent's failure to disclose the material information in Paragraph 21, in light of the representations made in Paragraph 20, constitutes a deceptive act and practice in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT III: UNSUBSTANTIATED REPRESENTATIONS

24. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that:

- A. gRefills and gWipes will biodegrade when trashed;
- B. gRefills will biodegrade when flushed;
- C. gRefills offer an environmental benefit because they can be flushed; and/or
- D. gWipes are home compostable.

25. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 24 at the time the representations were made.

26. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 24, at the time the representations were made. Therefore, the representation set forth in Paragraph 25 was,

and is, false or misleading.

27. Respondent's practices constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

IN WITNESS THEREOF, the Federal Trade Commission has issued this Complaint against Respondent and has caused it to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this ____ day of _____, 2014. By the Commission.

SEAL:

Donald S. Clark
Secretary