

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

_____))
In the Matter of))
))
Carnie Cap, Inc.,) Docket No. C-4421
a corporation))
_____))

COMPLAINT

The Federal Trade Commission, having reason to believe that Carnie Cap, Inc. (“respondent”), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Carnie Cap, Inc., is an Illinois corporation with its registered place of business at 1100 13th Street, Moline, IL 61265.
2. Respondent advertises, offers for sale, sells and distributes rebar impalement protection systems, including the “Carnie Cap System” (“Carnie Caps”) to the public throughout the United States. Respondent advertises these goods through the Internet site www.carniecap.com, and offers for sale, sells, and distributes these goods through various distributors located throughout the United States. Respondent advertises that Carnie Caps are biodegradable because of an additive known as Eco-One.
3. 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.
4. To induce consumers to purchase Carnie Caps, respondent disseminates, has disseminated, or has caused to be disseminated advertisements and promotional materials, including, but not limited to, those attached in Exhibits 1-5.
5. In its advertising and promotional materials, including, but not limited to, those shown in Exhibits 1-5, Respondent has made the following statements and depictions:

A. Respondent's Website (Exhibit 1):

Home Page and Product Information Biodegradability Facts Page:

“Carnie Caps are now 100% Biodegradable

Most of us agree that our planets resources are worth saving. We at Carnie Cap have refined our product to ensure that once disposed of in landfill, they will cause the minimum impact to the environment by fully biodegrading over time to help ensure that we pass on a cleaner planet to future generations.” (Ex. 1, at 1).

B. Respondent's Print Materials:

i. Carnie Cap Biodegradability Flyer (Exhibit 2):



(Ex. 2, at 1).

ii. Eco-One Product Brochure (Exhibit 3):



100% BIODEGRADABLE

(Ex. 3, at 1).

“Eco-One® is an organic additive that renders products manufactured from plastic resins biodegradable in landfills and composting environments. Biodegradation facilitated by Eco-One® has been confirmed using ASTM D5511 which validates methane off-gassing, a critical output of biodegradation in landfills.” (Id.).

iii. Eco-One Frequently Asked Questions (Exhibit 4):

How long does it take these products to biodegrade in landfills?

This will depend on the amount of Eco-One® in the product, the conditions of the landfill, and the thickness and composition of the product. The average landfill is a very good environment for biodegradation because it is warm, moist, and full of soil micro-organisms and food waste that cause the micro-organisms to eat the plastic. We believe complete biodegradation will take place on average between 9 months to 5 years. (Ex. 4, at 2).

iv. **Eco-One Technical Overview Page (Exhibit 5):**



(Ex. 5, at 1).

6. Approximately 92 percent of total municipal solid waste in the United States is disposed of either in landfills, incinerators, or recycling facilities. These disposal methods do not present conditions that would allow respondent's Carnie Caps to completely break down and decompose into elements found in nature within a reasonably short period of time.

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.

8. American Society for Testing and Materials ("ASTM") International D5511, *Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials under High Solids Anaerobic Digestion Conditions* ("ASTM D5511"), and other scientific tests relied on by respondent do not assure complete decomposition of Carnie Caps in a reasonably short period of time or in respondent's stated timeframes, e.g., nine months to five years, and do not replicate, i.e., simulate, the physical conditions of either landfills, where most trash is disposed, or other disposal facilities stated in the representations.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

FALSE OR MISLEADING REPRESENTATIONS

9. Through the means described in Paragraphs 2, 4, and 5, respondent has represented, expressly or by implication, that:

- A. Carnie Caps are biodegradable, i.e., will completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
- B. Carnie Caps are biodegradable in a landfill;
- C. Carnie Caps are biodegradable in a stated qualified timeframe;

- D. Carnie Caps are biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe as a result of an additive known as Eco-One; and
 - E. Carnie Caps have been shown to be biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe under various scientific tests including, but not limited to, ASTM D5511.
10. In truth and in fact:
- A. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
 - B. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after disposal in a landfill;
 - C. Carnie Caps will not completely break down and decompose into elements found in nature within respondent's stated qualified timeframes after customary disposal;
 - D. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal, after disposal in a landfill, or within respondent's stated qualified timeframe, as a result of respondent's use of an additive known as Eco-One; and
 - E. Carnie Caps have not been shown to completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal, after disposal in a landfill, or within respondent's stated qualified timeframe, under various scientific tests, including, but not limited to, ASTM D5511.
11. Therefore, the representations set forth in Paragraph 9 were, and are, false or misleading.

UNSUBSTANTIATED REPRESENTATIONS

12. Through the means described in Paragraphs 2, 4, and 5, in numerous instances respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9, at the time the representations were made.

13. In truth and in fact, at the time respondent made the representations referred to in Paragraph 9, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 12 is false or misleading.

14. Respondent's practices, as alleged in this complaint, therefore constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

IN WITNESS WHEREOF, 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 eleventh day of December, 2013.

By the Commission.

Donald S. Clark
Secretary