

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of gDiapers, File No. 122 3268

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Down to Earth Designs, Inc. d/b/a gDiapers, a corporation (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves respondent’s marketing, sale, and distribution of diapers and baby wipes with claims of various environmental benefits. According to the FTC’s complaint, respondent represented that its diapers and wipes are biodegradable, “certified 100% biodegradable,” garbage free when trashed or flushed, and plastic free. The complaint alleges that these claims were false and misleading. The complaint also alleges that respondent failed to disclose adequately that consumers can safely compost only wet used inserts and wipes. Finally, the complaint alleges that respondent did not possess and rely upon a reasonable basis to substantiate its claims that its products biodegrade when trashed or flushed, offer an environmental benefit because they can be flushed, and that its wipes are home compostable. Accordingly, the complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. As detailed below, Part I prohibits respondent from making specific environmental claims about any product or package unless the claim is true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.A forbids respondent from making unqualified degradable claims about a product or package unless the item completely decomposes into elements found in nature within one year after customary disposal. Consistent with the FTC’s Green Guides, the proposed order limits “customary disposal” to landfills, incinerators, or recycling facilities. If the item does not completely decompose within one year after customary disposal, Part I.A requires respondent to clearly and prominently disclose: (1) either the time to complete decomposition or the rate and extent of decomposition with a further disclosure that the stated rate and extent of decomposition does not mean that the item will continue to decompose; and (2) if the item does not decompose in (or by) a customary disposal facility or method, the type of non-customary disposal facility or method, and the availability of such facility or method to consumers where the item is marketed or sold.

Part I.A also requires that, at the time of any such representation, respondent must possess and rely upon competent and reliable scientific evidence substantiating the representation. If respondent relies on a scientific technical protocol for substantiation, that protocol must do two things. First, it must assure that the entire product will either completely

decompose in one year or the stated timeframe, or that it will decompose at the rate and to the extent stated in the representation. Second, such protocol must replicate (*i.e.*, simulate) the physical conditions found in a landfill or the disposal facility or method stated in the representation.

Part I.B prohibits respondent from making unqualified compostable claims unless all materials in the item will break down into, or otherwise become part of, usable compost in a safe and timely manner (*i.e.*, in the same time as the materials with which it is composted) in a home compost, or in a municipal or institutional composting facility, in which case respondent must clearly and prominently disclose that fact and the limited availability of such facilities.

Under Part I.C, if respondent claims that a disposable diaper or wipe is compostable, it must clearly and prominently disclose that the product cannot be composted if soiled with human waste other than urine.

Part I.D prohibits respondent from representing that any product or package is “free of” any substance unless the representation is true and not misleading, and substantiated, and unless the product or package advertised does not contain substances that pose the same or similar environmental risks and the “free of” substance has been associated with the product category.

Part I.E prohibits respondent from making general environmental benefit representations unless it discloses the product, package, or service’s specific environmental benefit, and each reasonable interpretation of the representation is true and substantiated.

Part I.F prohibits the respondent from representing that any product, package, or service offers any environmental benefit unless the representation is true, not misleading, and substantiated, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed consent order prohibits respondent from making misrepresentations about certifications, including misrepresentations that a third-party certifier has evaluated a product, package, or service based on its environmental benefits or attributes, or that the third-party certifier has done so using objective standards.

Parts III through VI are reporting and compliance provisions. Part III requires respondent to keep and, upon request, make available to the Commission for copying: advertisements, labeling, packaging, and promotional materials containing the representations identified in Part I; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations; and all acknowledgments of receipt of the order. Part IV requires respondent to disseminate the order to subsidiaries, principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part V requires notification to the FTC of changes in respondent’s corporate status. Part VI requires respondent to submit an initial compliance report to the FTC within sixty (60) days of service and subsequent reports upon request.

Finally, Part VII is a “sunset” provision, which provides that the order terminates after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.