

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Ecobaby Organics, Inc., File No. 1223129

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Ecobaby Organics, Inc., 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 and sale of natural latex mattresses. According to the FTC’s complaint, respondent makes three types of claims about these mattresses. First, respondent claims that its mattresses are certified by the National Association of Organic Mattress Industry (“NAOMI”), an independent third-party certifier with appropriate expertise in evaluating whether respondent’s mattresses meet objective standards. However, the complaint alleges that NAOMI is an alter ego of respondent and not an independent third-party certifier and, indeed, awarded its seal to its own products without applying objective standards. Accordingly, the complaint alleges that such representations are deceptive practices in violation of Section 5(a) of the FTC Act.

Second, respondent represents that its mattresses are chemical-free; Formaldehyde-free; free of VOCs, such as Toluene and Benzene; and without toxic substances. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

Third, respondent claims that tests show that its mattresses are VOC-free, chemical-free, and Formaldehyde-free. The complaint alleges that tests do not support these claims. Thus, 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 four provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of VOC-free and chemical free mattresses. It prohibits respondent from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs based on the Green Guides’ guidance on making free-of claims.¹ It also prohibits respondent from making chemical-free claims.

Part II addresses VOC claims, non-toxic claims, environmental benefit or attribute claims, and certain health claims made about mattresses. It prohibits such representations unless

¹ See Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62, 122, 62,123 (Oct. 11, 2012).

the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

Part III addresses representations about third-party certifications. It prohibits any misrepresentations about the degree to which an independent third-party certifier has evaluated respondents mattresses based on environmental or health attributes, or evaluated those attributes based on the application of objective standards.

Part IV addresses claims that testing supports respondents' advertising claims for its mattresses. It prohibits any misrepresentations about the existence, contents, validity, results, conclusion, or interpretations of any test, study, or research.

Parts V through VIII require Ecobaby to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.