

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES
Washington, D.C.

In the Matter of

ECM BioFilms, Inc.,
a corporation, also d/b/a
Enviroplastics International,

Respondent.

Docket No. 9358

PUBLIC DOCUMENT

**RESPONDENT'S SUPPLEMENTAL ANSWERS TO
COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. 3.32, and on agreement of the Parties, Respondent ECM BioFilms, Inc. ("ECM") supplements its Answers and Objections to Complaint Counsel's First Request for Admissions ("Requests"). All statements, objections, answers, admission, denials, and/or qualifications not discussed in this supplement remain unchanged.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST FOR ADMISSION NO. 4

"Exhibit CX-00001, "Certificate of Biodegradability of Plastics" is representative of the certificates that ECM provided to at least some of its customers."

SUPPLEMENTAL RESPONSE NO. 4:

Answer: Admitted in part, denied in part. ECM objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous, particularly with respect to the terms "representative," "some," and "customers." ECM objects to and denies this Request to the extent that it assumes that ECM insinuated, implied, marketed,

or advertised any undefined message, meaning, and/or particular advertisement through use of Exhibit CX-00001.

Without waiving any and all general and specific objections in ECM's "Respondent's Answers to Complaint Counsel's First Request for Admissions," ECM admits that the document contained in Exhibit CX-00001 was conveyed to certain of ECM customers before October 2012, after which time, ECM exclusively used the document contained in Attachment A for its U.S. customers.

REQUEST FOR ADMISSION NO. 5

"Exhibit CX-00002, ECM-FTC-000066, a biodegradable logo ("Logo"), is representative of the logos that ECM provided to at least some of its customers."

SUPPLEMENTAL RESPONSE NO. 5:

Answer: Admitted in part, denied in part. ECM objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous, particularly with respect to the terms "representative," "some," and "customers." ECM objects to and denies this Request to the extent that it assumes that ECM insinuated, implied, marketed, or advertised any undefined message, meaning, and/or particular advertisement through use of Exhibit CX-00002.

Without waiving any and all general and specific objections in ECM's "Respondent's Answers to Complaint Counsel's First Request for Admissions," ECM admits that the document contained in Exhibit CX-00002 was conveyed to certain of ECM customers before October 2012, after which time, ECM exclusively used the document contained in Attachment B for its U.S. customers.

REQUEST FOR ADMISSION NO. 6

“The documents that ECM submitted to Federal Trade Commission staff, with Bates numbers between ECM-FTC-000001 and ECM-FTC-000241, constitute all of the scientific tests and studies that ECM submitted in response to the FTC Access Letter requesting substantiation for its claims that ECM Plastics are Biodegradable (“ECM Substantiation Materials”).

SUPPLEMENTAL RESPONSE NO. 6:

Answer: Admitted in part, denied in part. ECM admits that, pursuant to the FTC’s Access Letter of Aug. 30, 2011, it provided the Commission staff with the documents identified in this request. ECM also provided the FTC with scientific correspondence, brochures, and advertising claims which qualify or add to the scientific documents referenced in the above request. Accordingly, ECM denies that the documents referenced in this Request No. 6 constitute the entire universe of responsive information on this point, or that ECM’s substantiation is limited to that specific subset of information, notwithstanding the net impression or totality of the facts and material available on that point.

**SPECIFIC OBJECTIONS AND RESPONSES TO ADDITIONAL REQUESTS
FOR ADMISSION FOR THE PURPOSES OF AUTHENTICITY AND
ADMISSIBILITY OF EXHIBITS**

ECM reserves the right to object to the admission or use of any document at hearing if, in context, its admission or use would be objectionable on grounds of hearsay, relevance, materiality, prejudice, or any other cognizable objection under Rule § 3.43 of

the Commission's Rules of Practice for Adjudicative Proceedings. Subject to those reserved objections, ECM responds as follows:

REQUEST FOR ADMISSION NO. 3

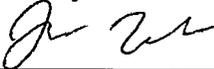
"Exhibit CX-00003 attached hereto is authentic, genuine, and a true and correct copy of promotional materials that ECM made available on the ECM Website from at least August 2010 until October 2012. Exhibit CX-00003 is admissible into evidence in this matter under Rule 3.43(b).

SUPPLEMENTAL RESPONSE NO. 3:

Answer: Admitted in part, denied in part. ECM objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous, particularly with respect to the terms "promotional materials" and "made available." ECM admits that CX-00003 is admissible into evidence as a true and correct copy of web material that ECM made available on its Website from at least August 2010 until October 2012; ECM denies, however, that CX00003 is "promotional."

DATED this 19th day of December 2013

Respectfully submitted,

/s/ 

Jonathan W. Emord
EMORD & ASSOCIATES, P.C.
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Clifton, VA 20124
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CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I hereby certify that on December 19, 2013, I caused a true and correct copy of the paper original of the foregoing **RESPONDENT'S SUPPLEMENTAL ANSWERS TO COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS** to be filed and served as follows:

One hard copy via UPS and one electronic copy via email to the **Office of the Secretary:**

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, D.C. 20580
Email: secretary@ftc.gov

One electronic courtesy copy via email to the **Office of the Administrative Law Judge:**

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, D.C. 20580

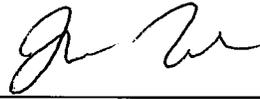
One electronic copy to **Counsel for Complainant:**

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I further certify that I retain a paper copy of the signed original of the foregoing document that is available for review by the parties and adjudicator consistent with the Commission's Rules.

/s/ 

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VERIFICATION

I, Robert Sinclair, declare as follows:

I have read to the foregoing document entitled **Respondent's Supplemental Answers to Complaint Counsel's First Request for Admissions** and know its contents.

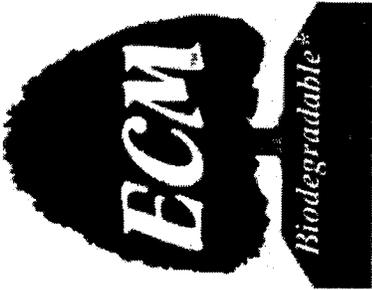
I am the President of ECM BioFilms, Inc., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe that the matters stated herein are true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the United States of America and the State of Ohio.

Executed on December 19, 2013,

A handwritten signature in black ink, appearing to read 'R. Sinclair', is written over a horizontal line. The signature is stylized and cursive.

Robert Sinclair



CERTIFICATE

of the Biodegradability* of Plastic Products Made by
[redacted]
which Incorporate the ECM MasterBatch Pellet Technology

This is to certify that numerous plastic samples, submitted by ECM Bio Films, Inc., have been tested by independent laboratories in accordance with standard test methods approved by ASTM, ISO and other such standardization bodies to determine the rate and extent of biodegradation of plastic materials.

A Degradable Plastic is defined (ASTM D883-12) as a plastic that is designed to undergo a significant change in its chemical structure under specific environmental conditions resulting in a loss of some properties that may vary as measured by standard test methods appropriate to the plastic and the application in a period of time that determines its classification. A Bio degradable Plastic is defined as a degradable plastic in which the degradation results from the action of naturally occurring microorganisms such as bacteria, fungi and algae.

The biodegradation of the submitted plastic samples were tested using ASTM D5209-91, "Standard Test Method for Determining the Aerobic Biodegradation of Plastic Materials in the Presence of Municipal Sewage Sludge", ASTM D5338-98, "Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials under Controlled Composting Conditions", which is equivalent to CEN prEN WI 261085, and the ISO 14855 method, "Evaluation of the Ultimate Aerobic Biodegradability and Disintegration of Plastics under Controlled Composting Conditions", ASTM D5511, "Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials Under High-Solids Anaerobic Digestion Conditions." The results of these tests and the related biodegradation and ecological impact experiments in various environments are contained in the Ecological Assessment of ECM Plastic report dated February 16, 1999, which certifies that plastic products manufactured with ECM additives can be marketed as biodegradable* and safe for the environment.

This Certificate and the Ecological Assessment of ECM Plastic report, along with Scanning Electron Microscope and other studies that have been conducted since the publication of the Ecological Assessment, all of which use a one percent loading rate for the ECM MasterBatch Pellets rather than the higher additive levels used earlier, have been presented to [redacted] and may be used by it to validate its claims to the biodegradability and environmental safety of plastic products that it manufactures that are made consistent with the manufacturing guidelines for uses of ECM MasterBatch Pellets presented to it by ECM Bio Films, Inc.

Dated: January 26, 2013

Certified by: _____

Robert Sinclair, President
ECM BioFilms, Inc.

* Plastic products manufactured with ECM BioFilms' additives will biodegrade in any biologically-active environment (including most landfills) in some period greater than a year.



ECM

TM

Biodegradable