

Statement of Commissioner Joshua D. Wright

Federal Trade Commission v. Springtech 77376, LLC, et al. (“Cedarcide Industries”)

FTC Matter No. X120042

July 16, 2013

In September 2012, the Federal Trade Commission (“FTC”) filed a complaint in federal district court alleging that Springtech 77376, LLC, Cedarcide Industries, Inc., Chemical Free Solutions LLC, Cedar Oil Technologies Corp., and Dave Glassel (“Cedarcide Defendants”) made false and unsubstantiated claims about the ability of its product Best Yet! to stop and prevent head lice and bed bug infestations. In settling this matter, the Cedarcide Defendants have agreed to a stipulated final order, which, in part, prohibits them from making any representation that a product is effective in the treatment of head lice infestations unless the representation is non-misleading and such product “is subject to a final OTC drug monograph promulgated by the Food and Drug Administration (FDA) for such use, and conforms to the conditions of such use;” “remains covered by a tentative final OTC drug monograph for such use and adopts the conditions of such use;” or “is the subject of a new drug application for such use approved by FDA, and conforms to the conditions of such use.” These types of prohibitions are commonly referred to as “FDA pre-approval provisions.”

As a general matter, I believe that FDA pre-approval provisions should play a very limited role in FTC orders and that the conditions under which they are appropriate are fairly narrow. Due to a combination of unique circumstances in the instant case, I voted in favor of this settlement.