

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
Envioplastics International,

Respondent.

Docket No. 9358

PARTIES' FINAL STIPULATIONS OF LAW, FACTS, AND AUTHENTICITY

Pursuant to the Scheduling Order Respondent ECM BioFilms, Inc. ("ECM") and Complaint Counsel jointly filed their final stipulations of law, facts, and authenticity.

STIPULATIONS OF DEFINITIONS

1. "ECM Additive" means the product, including "MasterBatch Pellets" that ECM manufactures and sells to plastic manufacturers and distributors.
2. "ECM Plastic" means plastics and/or plastic products that contain an ECM additive.
3. "BPI" means the Biodegradable Products Institute.
4. "PE" means Polyethylene, a thermoplastic polymer.
5. "PET" means Polyethylene terephthalate, a thermoplastic polymer resin of the polyester family.
6. "PP" means Polypropylene, a thermoplastic polymer.
7. "PS" means Polystyrene, a thermoplastic polymer.

8. “Polyolefin” is a term for petrochemical-based plastics including, e.g., PE, LDPE, LLDPE, HDPE, and PP.
9. “Thermoplastic” refers to a plastic polymer that becomes pliable or moldable above a specific temperature but returns to a solid state after cooling.
10. “Thermoset” refers to a plastic polymer (or resin) that are initially pliable or moldable, but irreversibly cure upon cooling.

STIPULATIONS OF FACT

1. The most common types of conventional plastic are high-molecular weight polyethylene (PE), commonly used to manufacture plastic bags, packaging material, and bottles; and polyurethane (PUR), commonly used in medical and industrial applications such as adhesives and paint. Also common is polypropylene (PP), used for disposable cups, clothing, storage containers, and DVD covers; and polystyrene (PS), which is used most commonly for disposable cutlery and cups, foam packing peanuts, insulation, and fast food containers.
2. Americans generate about 32 million tons of plastic waste every year, more than half of which ends up in landfills.
3. Landfills continue to be the dominant method for managing discarded waste (MSW) in the United States.
4. Due to their recalcitrant nature, plastics pose a growing disposal and environmental pollution problem.
5. In response to consumer demand, various materials have been introduced to improve the biodegradability of plastics. These include conventional plastics amended with additives meant to enhance biodegradability (e.g., photodegradable,

- oxodegradable, and biodegradable additives), bio-based plastics, and natural fiber composites.
6. ECM has distributed brochures aimed at “green business” promising that its technology yields “biodegradable plastic products” that are “priced competitively with, and have the same mechanical characteristics as, traditional non-degradable products.”
 7. ECM claims to have a “revolutionary additive technology” that “renders. . . plastic products biodegradable”
 8. ECM’s additive is biodegradable.
 9. A company called Microtec Research, Inc. owns the ECM additive technology, and ECM licenses the technology from Microtec.
 10. ECM’s letters have certified the biodegradability of plastics made with ECM additive.
 11. ECM claims that plastics treated with its additive will biodegrade in a landfill.
 12. After the Green Guides were issued, ECM removed many of its nine-month-to-five-years claims and landfill claims, replacing them with a “biodegradable” disclaimer stating that “Plastic products produced with our additives will biodegrade in biologically-active environments (including most landfills) in some period greater than a year.”
 13. ECM issued a “Certificate of Biodegradability of Plastic Products” to its customers.
 14. ECM’s “Certificate of Biodegradability” claims to “certify that numerous plastic samples, submitted by ECM Biofilms, Inc., have been tested by independent

- laboratories in accordance with standard test methods approved by ASTM, ISO and other such standardization bodies”
15. ECM’s Certificate of Biodegradability states that the tests “certifies [sic] that plastic products manufactured with ECM additives can be marketed as biodegradable” and the certificate itself can be “used by [customer] to validate its claims to the biodegradability” of ECM Plastic. CCX-1 and CCX-14.
 16. ECM often provided the “McLaren/Hart” or “ChemRisk” assessment to its customers.
 17. Robert Sinclair is the President of ECM.
 18. Mr. Sinclair is a lawyer by training.
 19. Mr. Poje advised customers on plastics extrusion (the mechanics of adjusting the manufacturing process to incorporate the ECM additive).
 20. Kenneth C. Sullivan has held the position of “Chief Financial Officer” for ECM from 2009 until the present.
 21. Thomas M. Nealis has held the position of “Director of Sales” for ECM from 2009 until the present.
 22. Dr. McCarthy has performed work for individuals or entities associated with biodegradable plastics.
 23. Steven Mojo is the executive director of the BPI.
 24. Dr. McCarthy is employed by UMass-Lowell.
 25. Dr. Ramani Narayan is employed by Michigan State University.
 26. Complaint Counsel provided Dr. McCarthy with the definition of biodegradation contained in Footnote 1 of Dr. McCarthy’s Expert Report.

27. Dr. McCarthy has performed BPI certifications.

STIPULATION OF AUTHENTICITY

1. The parties agree to stipulate to the authenticity of all proposed exhibits to the extent that the exhibits were disclosed to the opposing party before July 25, 2014.¹ ECM, however, reserves the right to object to Complaint Counsel's exhibits as detailed in ECM's document entitled "Respondent's Objections to Complaint Counsel's Final Proposed Exhibits," served on July 18, 2014.

DATED: July 28, 2014

Respectfully submitted,

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¹ The parties exchanged final exhibit lists on July 28, 2014 and have had not sufficient time to determine whether they intend to contest the authenticity of any of those exhibits appearing for the first time on the July 28 lists.

² Electronically signed by counsel for ECM with Complaint Counsel's express permission.

STATEMENT CONCERNING MEET AND CONFER

Pursuant to the Third Revised Scheduling Order, the undersigned counsel certifies that the parties have conferred in a good faith effort to address stipulations of law, fact, and authenticity, and they have agreed to those stipulations listed above.

DATED: July 28, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2014, I caused a true and correct copy of the paper original of the foregoing document to be served as follows:

One electronic copy to the **Office of the Secretary** through the e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-113
Washington, DC 20580
Email: secretary@ftc.gov

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

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

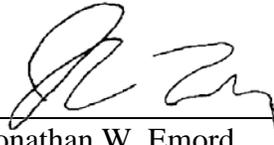
One electronic copy to **Counsel for Complainant**:

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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.



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