

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney**

In the Matter of

**NICE-PAK PRODUCTS, INC.,
a corporation, d/b/a NICE-PAK**

DOCKET NO. C-4556

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“consent agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nice-Pak Products, Inc. is a New York corporation with its principal office or place of business at Two Nice-Pak Park, Orangeburg, NY 10962-1376.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. “Covered Product” shall mean all wipes, including but not limited to Kirkland Signature Moist Flushable Wipes, and any moist toilet tissue or cloth.
3. Unless otherwise specified, “respondent” shall mean Nice-Pak Products, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any Covered Product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, that the Covered Product:

- A. is safe for sewer systems;
- B. is safe for septic systems;
- C. breaks apart shortly after flushing;
- D. will not clog household plumbing systems;
- E. will not clog household septic systems;
- F. is safe for plumbing;
- G. is safe to flush;
- H. dissolves or disperses when interacting with water; or
- I. is flushable,

unless the representation is non-misleading, and, at the time the representation is made, Respondent possesses and relies upon competent and reliable evidence, which, when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that, when considered in light of the entire body of relevant and reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the relevant fields to substantiate that the representation is true. For the purposes of this Part, “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. For the purposes of this Part, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally

accepted in the profession to yield accurate and reliable results. Specifically, any tests, analyses, research, studies, or other evidence purporting to substantiate any of the above representations must at least:

A. demonstrate that the Covered Product disperses in a sufficiently short amount of time after flushing to avoid clogging, or other operational problems in, household and municipal sewage lines, septic systems, and other standard wastewater equipment; and

B. substantially replicate the physical conditions of the environment in which the Covered Product is claimed, directly or indirectly, expressly or by implication, to be properly disposed of; or, if no specific environment is claimed, then in all environments in which the product will likely be disposed of.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any moist toilet tissue or cloth, in or affecting commerce, shall not make any representation, other than the representations covered by Part I of this Order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the benefits, performance, or efficacy of such product or service, unless the representation is non-misleading, and, at the time the representation is made, Respondent possesses and relies upon competent and reliable evidence, which, when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that, when considered in light of the entire body of relevant and reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the relevant fields to substantiate that the representation is true. For the purposes of this Part, “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. For the purposes of this Part, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of the Covered Product, or any other product or service in or affecting commerce, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part, “means and instrumentalities” means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of such product or service.

IV.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc. and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements, labeling, packaging and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this order obtained pursuant to Part V.

V.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc. and its successors and assigns shall, for five (5) years after entry of this order, deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq. Nice-Pak Products, Inc. and its successors and assigns shall deliver this order to such persons within thirty (30) days after the date of service of this order, and to future such persons within thirty (30) days after such person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc. and its successors and assigns shall send as soon as practicable, but in no event later than thirty (30) days after entry of this order, by first-class mail, postage prepaid and return receipt requested, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to all of its trade customers, wholesalers, and retailers for or to whom it has manufactured, labeled, packaged, advertised, promoted, offered for sale, sold, or distributed any Covered Product that was advertised, promoted, offered for sale, sold, or distributed, with any of the representations, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, enumerated in Part I A through I of this Order. The notice required by this paragraph shall include a copy of this order, but shall not include any other document or enclosures and shall be sent to the principal place of business of each entity.

VII.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Nice-Pak Products, Inc. and its successors and assigns learn less than thirty (30) days prior to the date such action is to take place, it shall notify the Commission as soon as is practicable after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “In the Matter of Nice-Pak Products, Inc., Docket No. C-4556, FTC File Number 132 3272.”

VIII.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “In the Matter of Nice-Pak Products, Inc., Docket No. C-4556, File No. 132 3272.”

IX.

This order will terminate on October 30, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: October 30, 2015

ATTACHMENT A

[ON NICE-PAK PRODUCTS, INC. LETTERHEAD]

[insert addressee name] [insert addressee address]

Dear [name of retailer]:

You have purchased Nice-Pak Products, Inc. (“Nice-Pak”) moist wipes for resale under your private label. In a recent enforcement action, the Federal Trade Commission (FTC) alleged that Nice-Pak made misleading representations in its advertising and marketing of “flushable” moist wipes made of non-elemental chlorine bleached wood pulp, bicomponent fibers, and EP907 repulpable binder. Among other things, the FTC alleged that Nice-Pak lacked adequate substantiation for the claim that this product is safe for household plumbing, household septic systems, and public sewer systems.

Nice-Pak resolved this matter with the FTC by a settlement and has agreed to send this notification to you.

Nice-Pak requests that you immediately stop using all packaging, advertising, and marketing materials previously provided to you by Nice-Pak about these wipes. Also, please ensure such claims are removed from your website and do not appear in any other advertising or marketing.

For further information about this matter, go to www.ftc.gov and search for “Nice-Pak.”

Very truly yours,

Robert P. Julius, CEO
Nice-Pak Products, Inc.