

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Moonlight Slumber, LLC, File No. 1623128

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Moonlight Slumber, LLC (“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 the deceptive environmental and health claims respondent made regarding its baby mattresses. According to the FTC complaint, respondent made unsubstantiated representations that its mattresses are organic, natural, or plant-based and that its mattresses will not emit any substance, including volatile organic compounds, or off gas; claimed that testing proved that its mattresses do not emit volatile organic compounds; and represented that its mattresses have been certified by Green Safety Shield, yet failed to disclose that it has a material connection to the Green Safety Shield seal. Consumers likely interpret such seals as a claim that an independent third party certified the product. The complaint alleges that all of these claims are deceptive in violation of Section 5(a) of the FTC Act.

The proposed consent order contains five provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits misleading representations regarding whether any mattress, blanket, pillow, pad, foam-containing product, or sleep-related product is organic, natural, or plant-based; regarding the emissions from such product; and regarding the general environmental and health benefits of such product. The order requires respondent to possess competent and reliable evidence, including scientific evidence when appropriate, to substantiate these representations.

Part II prohibits misleading representations regarding emissions-free and VOC-free claims. The order requires competent and reliable scientific evidence to substantiate that a product does not emit more than a trace level of emissions of the substance about which the claim is made. The order defines “emission” to include all emissions (not just VOCs that cause smog). This definition reflects the Commission’s Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. Consistent with the Green Guides, the order defines “trace level of emissions” for claims for a substance to mean that (1) emissions of the substance do not result in inhalation concentrations of that substance higher than background levels in the typical residential home; (2) emissions of the substance do not cause material harm that consumers typically associate with that substance, including harm to the environment or human health; and (3) the substance has not been added intentionally to the covered product.

Part III prohibits respondent from misrepresenting the results of any tests or studies, or from misrepresenting that any product benefit is scientifically or clinically proven. Parts IV and

V prohibit respondent from misrepresenting certifications or failing to adequately disclose a material connection to a party making a representation, e.g., an endorser.

Parts VI through X are reporting and compliance provisions. Part VI mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VII requires that respondent submit compliance reports to the FTC within ninety (90) days of the order's issuance and submit additional reports when certain events occur. Part VIII requires that respondent create and retain certain records for five (5) years. Part IX provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part X is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.