UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Secretary

August 28, 2018

Mr. Cliff Olsen
Commonwealth of Pennsylvania

Re: *In the Matter of Nectar Brand LLC, also d/b/a Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC, File No. 182-3038, Docket No. C-4656*

Thank you for commenting on the Federal Trade Commission's proposed consent agreement in the above-referenced proceeding. The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you request that the Commission: (1) require Respondent Nectar Brand LLC to admit it violated Section 5 of the FTC Act; (2) require Respondent to disclose foreign country of origin on its products; (3) require Respondent to report changes in name or corporate structure to the Commission; (4) require Respondent to provide notification to consumers of the above-referenced proceeding; and (5) fine or collect consumer redress from Respondent.

Pursuant to agency regulations, consent agreements "may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint." 16 CFR § 2.32. Consistent with these regulations, the provisional agreement with Respondent included this language.

Section 5 of the FTC Act requires companies to possess substantiation for their marketing claims, and the Commission's Enforcement Policy Statement on U.S.-Origin Claims provides specific guidance to marketers on how to substantiate those claims.[1] In particular, the Policy Statement provides that when a marketer makes an unqualified U.S.-origin claim, the marketer should – at the time the representation is made – possess and rely upon a reasonable basis establishing that the product is "all or virtually all" made in the United States. The Policy Statement further provides that where a product is not "all or virtually all" made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content.

Part I of the proposed Decision and Order incorporates this guidance, prohibiting

[1] *See* 15 U.S.C. § 45(a) *and Federal Trade Commission, Issuance of Enforcement Policy Statement on "Made in USA" and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63766 (December 2, 1997), *available at* https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims.

Respondent from making U.S.-origin claims for its products unless either: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial. Part II prohibits respondent from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and respondent has a reasonable basis substantiating the representation.

Both the FTC and the U.S. Customs Service have responsibilities related to the use of country-of-origin claims. While the FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices, foreign-origin markings on products (e.g., "Made in Japan") are regulated primarily by the U.S. Customs Service under the Tariff Act of 1930. *See* 62 Fed. Reg. 63756, 63767. Accordingly, to avoid conflicts and confusion, the Commission has never required companies to disclose foreign country of origin in advertising for most products.

Part III of the proposed Decision and Order contains compliance monitoring provisions to aid the Commission in tracking Respondent and monitoring compliance, including through changes in corporate structure. Although III.B. does not specify that name changes must be reported, it requires Respondent to report changes in the "structure of any Respondent or any entity that Respondent has any ownership interest in or controls . . . that may affect compliance obligations arising under this Order." In this case, which involves a California LLC, a name change would be a change triggering III.B. Thus, this provision imposes the reporting requirements you request.

Per the terms of the Consent Agreement, consumers have been notified of this matter through publication of the draft Complaint and Decision and Order on the Commission's website. Additionally, the Commission has disseminated information about this matter through notices in the Federal Register, blog posts, and social media posts.

The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation. Our primary goal in cases such as this one is to stop deceptive advertising by putting the Respondent under order. If, in the future, Respondent violates its order, the Federal Trade Commission could pursue civil penalties.

Therefore, after considering your comment, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaint. At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification.

The final Decision and Order and other relevant materials are available on the Commission's website at http://www.ftc.gov. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission, Commissioner Chopra dissenting.

Donald S. Clark
Secretary

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Mr. Brian Stewart
State of California

Re: *In the Matter of Nectar Brand LLC, also d/b/a Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC, File No. 182-3038, Docket No. C-4656*

Thank you for commenting on the Federal Trade Commission's proposed consent agreement in the above-referenced proceeding. The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you request that the Commission: (1) require Respondent Nectar Brand LLC to provide notification to consumers of the above-referenced proceeding; and (2) fine or collect consumer redress from Respondent. You do not propose revisions to the draft Complaint or Decision and Order.

Section 5 of the FTC Act requires companies to possess substantiation for their marketing claims, and the Commission's Enforcement Policy Statement on U.S.-Origin Claims provides specific guidance to marketers on how to substantiate those claims.[2] In particular, the Policy Statement provides that when a marketer makes an unqualified U.S.-origin claim, the marketer should – at the time the representation is made – possess and rely upon a reasonable basis establishing that the product is "all or virtually all" made in the United States. The Policy Statement further provides that where a product is not "all or virtually all" made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content.

Part I of the proposed Decision and Order incorporates this guidance, prohibiting Respondent from making U.S.-origin claims for its products unless either: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially

[2] *See* 15 U.S.C. § 45(a) *and Federal Trade Commission, Issuance of Enforcement Policy Statement on "Made in USA" and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63766 (December 2, 1997), *available at* https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims.

transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial. Part II prohibits respondent from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and respondent has a reasonable basis substantiating the representation.

Per the terms of the Consent Agreement, consumers have been notified of this matter through publication of the draft Complaint and Decision and Order on the Commission's website. Additionally, the Commission has disseminated information about this matter through notices in the Federal Register, blog posts, and social media posts.

The FTC Act does not allow the agency to obtain fines or a litigated judgment for consumer redress in administrative litigation. Our primary goal in cases such as this one is to stop deceptive advertising by putting the Respondent under order. If, in the future, Respondent violates its order, the Federal Trade Commission could pursue civil penalties.

Therefore, after considering your comment, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaint. At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. The final Decision and Order and other relevant materials are available on the Commission's website at http://www.ftc.gov. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission, Commissioner Chopra dissenting.

Donald S. Clark
Secretary

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August 28, 2018

Mr. Michael Weymouth
State of Utah

Mr. Joe Alexander
State of California

Mr. Larry Evans
State of Texas

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In your comments, you express concern about Respondent's conduct. You do not propose any revisions to the draft Complaint or Decision and Order. Therefore, after considering your comments, the Commission has determined that the relief set forth in the draft Decision and Order is appropriate and sufficient to remedy the violations alleged in the complaint.

At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. The final Decision and Order and other relevant materials are available on the Commission's website at http://www.ftc.gov. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comments.

By direction of the Commission, Commissioner Chopra dissenting.

Donald S. Clark
Secretary