



Office of Commissioner  
Rohit Chopra

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

## STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of Resident Home LLC*  
*Commission File No. 2023179*  
October 8, 2021

Wow, that was fast. Soon after the Federal Trade Commission “punished” Nectar Sleep through a no-money, no-fault order, the company and its affiliates clearly realized the FTC wasn’t serious about Made in USA fraud, so here we are again.

FTC orders are not suggestions, but many bad actors view them as such.<sup>1</sup> And when companies do not adhere to agency orders, it is often a sign of more serious problems.<sup>2</sup> Violations of FTC orders are punishable with civil penalties and a broad range of other relief.

The Commission is proposing to settle the matter by ordering Resident Home, Nectar Sleep’s new parent company, to pay \$753,300. The Commission’s complaint also charges Resident’s CEO, Ran Reske, with serious wrongdoing. Reske signed a report, under penalty of perjury, stating that Resident Home had removed all covered Made in USA claims from its subsidiaries’ websites and that Resident had never made Made in USA claims about its DreamCloud mattress. This was false.

The proposed settlement binds Nectar Sleep, as well as its new parent company, ensuring that any corporate musical chairs will not allow the company to dodge the FTC’s order. The proposed order also requires the companies to provide notice to consumers who purchased a mattress while the false claims appeared.

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<sup>1</sup> This follows a slew of other repeat offenders when it comes to Made in USA requirements, a clear demonstration of the need for the policy shift the FTC is now making. *See* Rohit Chopra, Commissioner, Fed. Trade Comm’n., Statement of Commissioner Rohit Chopra Regarding the Notice of Proposed Rulemaking on Made in USA (June 22, 2020),

[https://www.ftc.gov/system/files/documents/public\\_statements/1577107/p074204musachoprastatementrev.pdf](https://www.ftc.gov/system/files/documents/public_statements/1577107/p074204musachoprastatementrev.pdf).

*See e.g., In the Matter of Williams-Sonoma, Inc.*, No. C-4724 (July 2020),

<https://www.ftc.gov/system/files/documents/cases/2023025c4724williamssonomaorder.pdf>. The Commission opened an investigation but, after some behavior alterations by Williams-Sonoma, the 2018 investigation was closed, only to be renewed in 2020 when Williams-Sonoma was at it again. *See also U.S. v. iSpring Water Systems, LLC, et al.*, No. 1:16-cv-1620-AT (N.D. Ga. 2019). After making false claims that its water filtration systems were made in the United States and entering into an administrative order with the FTC in 2017, iSpring went back to making false claims only a year later, triggering the violation of the 2017 order.

<sup>2</sup> Rohit Chopra, Comm’r, Fed. Trade Comm’n. Repeat Offenders Memo (May 14, 2018),

[https://www.ftc.gov/system/files/documents/public\\_statements/1378225/chopra\\_-\\_repeat\\_offenders\\_memo\\_5-14-18.pdf](https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_-_repeat_offenders_memo_5-14-18.pdf).

Commissioner Slaughter has rightfully noted that the Commission must use all of its tools to protect the marketplace and make victims whole. This case is no exception. The settlement is reasonable and squarely within the Commission’s legal authority.

## **Disguised Opposition**

My dissenting colleagues purport that this proposed action – which was agreed to by Resident Home and Reske – is not authorized by statute. Their arguments fail on policy and legal grounds.

Commissioners Phillips and Wilson have consistently supported no-money, no-fault settlements, even in cases of egregious Made in USA fraud.<sup>3</sup> I understand that, as a matter of policy, they do not support serious consequences for Made in USA fraud and have expressed support for the longstanding permissive policy of the past.<sup>4</sup> However, their dissenting statement disguises this *policy* opposition as an argument about the Commission’s *legal* authority. There are several pieces of evidence to suggest that Commissioners Phillips and Wilson’s resistance is based on policy grounds, not on legal grounds.

First, Commissioners Phillips and Wilson argue they must have express statutory authorization to accept monetary remedies in settlements. However, less than two months after the Supreme Court ruled that the FTC cannot obtain monetary relief in certain federal court actions, both Commissioners Phillips and Wilson voted for an \$18 million order to settle a complaint brought under Section 13(b) of the FTC Act – the exact authority the Supreme Court explicitly ruled against the FTC on.<sup>5</sup> This not the only example where Commissioners Phillips and Wilson have agreed to settle complaints with remedies that are not specifically enumerated by statute.

To further disguise the nature of their opposition, Commissioners Phillips and Wilson assert that the Commission is accepting monetary remedies in an administrative settlement not permitted by Section 19 of the Federal Trade Commission Act. In reality, Section 19 of the FTC Act expressly authorizes the payment of redress and damages. Consequential damages in Made in USA fraud can be considerable, particularly when it comes to harms to law-abiding businesses whose sales were siphoned. In settlements, parties can save time and resources by making the best estimates – adjusted for risk – on the right resolution. It would have been costly to specifically identify each harmed consumer and business, but it is clear the proposed monetary relief is reasonable, given our legal authority.

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<sup>3</sup> See Press Release, Fed Trade Comm’n, FTC Approves Final Consents Settling Charges that Hockey Puck Seller, Companies Selling Recreational and Outdoor Equipment Made False ‘Made in USA’ Claims (Apr. 17, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-approves-final-consents-settling-charges-hockey-puck-seller>; *In the Matter of Sandpiper Gear of California, Inc. et al.*, No. 182-3095, <https://www.ftc.gov/enforcement/cases-proceedings/182-3095/sandpiper-california-inc-et-al-matter>; *In the Matter of Underground Sports d/b/a Patriot Puck, et al.*, No. 182-3113 (Apr. 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3113/underground-sports-inc-doing-business-patriot-puck-et-al>.

<sup>4</sup> *Id.*

<sup>5</sup> See Press Release, Fed Trade Comm’n, LendingClub Agrees to Pay \$18 Million to Settle FTC Charges (July 14, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/lendingclub-agrees-pay-18-million-settle-ftc-charges>. Given the alternative paths the Commission could have pursued to address the conduct at hand, I believe the settlement was appropriate even in spite of the Supreme Court’s ruling. Indeed, the Commission’s proposed stipulated judgment was entered by the court.

In addition, Commissioners Phillips and Wilson imply that to obtain the proposed remedies, the Commission must file multiple complaints in our administrative tribunal and in federal court. However, Commissioner Phillips and Wilson know that the Commission does not regularly prosecute the same conduct in multiple fora. Commissioners need not concurrently charge an entity for the same consumer protection violation of law in its administrative tribunal and in federal court, even when it may be authorized, like in civil penalty actions under Section 5(l).

The facts and evidence clearly show that DreamCloud violated an administrative order, triggering penalties and a broad range of relief under Section 5(l) of the FTC Act. Even if Section 19 of the FTC Act did not authorize damages, it is perfectly appropriate for the Commission to settle all of these claims at once, rather than pursue an additional action for civil penalties.

It is obvious that today's proposed action is legally sound. If Commissioners Phillips and Wilson are voting against the proposed settlement because of their preference for no-consequences settlements in Made in USA fraud matters, then they should be upfront with the public and state so plainly.

## **Conclusion**

The FTC has a troubling history of strong-arming small and independent business owners – including church organists<sup>6</sup> and skating teachers<sup>7</sup> – into settlements, while allowing those who repeatedly break the law to escape unscathed,<sup>8</sup> often with the help of high-priced FTC alumni.

In this matter, the Commission is proposing a settlement to hold accountable a repeat offender represented by a sophisticated law firm. I am pleased that the agency's abusive and inappropriate double standard is starting to fade away.

Finally, for decades, there was a bipartisan consensus among FTC Commissioners that Made in USA fraud should not be penalized. In 1994, Congress granted the FTC strong tools to combat Made in USA fraud, but Commissioners essentially ignored them. Fortunately, that era is also over.

Effective August 13, 2021, individuals and companies engaging in Made in USA fraud, including first-time offenders, will be subject to stricter sanctions under the FTC's Made in USA Labeling Rule. I hope my colleagues will fully support enforcement actions to hold bad actors accountable under this rule. The families and honest businesses – long ignored by past Commissioners – are counting on us to live up to the law.

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<sup>6</sup> *In the Matter of American Guild of Organists*, Fed. Trade Comm'n, <https://www.ftc.gov/enforcement/cases-proceedings/151-0159/american-guild-organists>.

<sup>7</sup> *In the Matter of Professional Skaters Association, Inc.*, Fed. Trade Comm'n, <https://www.ftc.gov/enforcement/cases-proceedings/131-0168/professional-skaters-association-inc-matter>.

<sup>8</sup> See e.g. Devin Coldewey, *9 reasons the Facebook FTC settlement is a joke*, TECHCRUNCH (July 24, 2019), <https://techcrunch.com/2019/07/24/9-reasons-the-facebook-ftc-settlement-is-a-joke/>.