

A. Respondent's Website (Exhibit 1):

i. Combi-Pack Product Page:

“Made with environmentally friendly biodegradable materials” (Ex. 1, at 1).

ii. Biodegradability Information Page:



“FLYTEes are completely biodegradable!” (Id., at 3).

“The CHAMP FLYTee is from a specially formulated sustainable bio-plastic that enables the material to maintain durability and performance, while still breaking down into CO₂ and water when it is done being used. Our plastic has a market proven bio-agent additive created by ECM Biofilms, Inc. ECM’s technology is a process which enables the microorganisms in the environment to metabolize the molecular structure of plastic products into humus that is beneficial to the environment.” (Id.).

iii. FLYTEes Sell Sheet:

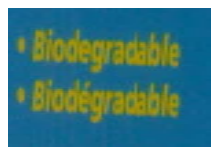
“The CHAMP FLYTee is made from a specially formulated sustainable bio-plastic that enables the material to maintain durability and performance, while still breaking down into CO₂ and water when it is done being used. Our plastic has a market proven bio-agent additive created by ECM Biofilms, Inc. ECM’s technology is a process which enables the microorganisms in the environment to metabolize the molecular structure of plastic products into humus that is beneficial to the environment.” (Id., at 4).

“Material tested with ECM has been tested and proved as biodegradable and safe for the environment by using the following: ASTM D5209 . . . ASTM 5511 . . . ISO 14855 / ASTM D5338.” (Id.).

iv. ECM Certificate of Biodegradability of Plastic Products:

“This is to certify that numerous plastic samples, submitted by ECM BioFilms, Inc., have been tested by independent laboratories in accordance with standard test methods The results of these tests and the related biodegradation and ecological impact experiments are contained in the Ecological Assessment of ECM Plastic report dated February 16, 1999, which certifies that plastic products manufactured with ECM additives can be marketed as biodegradable . . . This Certificate and the Ecological Assessment of ECM Plastic report, along with Scanning Electron Microscope and other studies that have been conducted since the publication of the Ecological Assessment . . . may be used by [the certificate holder] to validate ts [sic] claims to the biodegradability and environmental safety of plastic products that it manufactures” (Id., at 5).

B. Respondent’s Product Packaging (Exhibit 2):



(Ex. 2, at 1).

6. Approximately 92 percent of total municipal solid waste in the United States is disposed of either in landfills, incinerators, or recycling facilities. These customary disposal methods do not present conditions that would allow FLYTees to completely break down and decompose into elements found in nature within a reasonably short period of time.

7. Consumers likely interpret unqualified degradable claims to mean that the entire product or package will completely decompose into elements found in nature within a reasonably short period of time after customary disposal.

8. The Ecological Assessment of ECM Plastic, American Society for Testing and Materials (“ASTM”) International D5511, *Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials under High Solids Anaerobic Digestion Conditions* (“ASTM D5511”), and other scientific tests relied on by respondent do not assure complete decomposition of FLYTees in a reasonably short period of time or in

respondent's stated timeframes, e.g., nine months to five years, and do not replicate, i.e., simulate, the physical conditions of either landfills, where most trash is disposed, or other disposal facilities stated in the representations.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

FALSE OR MISLEADING REPRESENTATIONS

9. Through the means described in Paragraphs 2, 4, and 5, respondent has represented, expressly or by implication, that:
- A. FLYTees are biodegradable, i.e., will completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
 - B. FLYTees are biodegradable as a result of an additive from ECM Biofilms, Inc.; and
 - C. FLYTees have been shown to be biodegradable under various scientific tests including, but not limited to, ASTM D5511.
10. In truth and in fact:
- A. FLYTees will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
 - B. FLYTees will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal as a result of respondent's use of an additive from ECM Biofilms, Inc.;
 - C. FLYTees have not been shown to completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal under various scientific tests, including, but not limited to, ASTM D5511.
11. Therefore, the representations set forth in Paragraph 9 were, and are, false or misleading.

UNSUBSTANTIATED REPRESENTATIONS

12. Through the means described in Paragraphs 2, 4, and 5, in numerous instances respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9, at the time the representations were made.

13. In truth and in fact, at the time respondent made the representations referred to in

Paragraph 9, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 12 is false or misleading.

14. Respondent's practices, as alleged in this complaint, therefore, constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

IN WITNESS WHEREOF, the Federal Trade Commission has issued this complaint against respondent and has caused it to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this _____ day of _____, 2013.

By the Commission.

Donald S. Clark
Secretary

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