

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Tested Green Certification, File No. 1023064

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Order from Nonprofit Management LLC and Jeremy Ryan Claeys, also doing business as Tested Green (“respondents”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising, marketing, and sale of environmental certifications. From approximately February 2009 to April 2010, respondents marketed the Tested Green certification using their website, www.testedgreen.com, as well as mass e-mails linking to their website. The marketing claimed that Tested Green was the “nation’s leading certification program with over 45,000 certifications in the United States.” However, respondents never tested any of the companies to which they issued certifications, and certified anyone willing to pay a designated fee of either \$189.95 for a “Rapid” certification, or \$549.95 for a “Pro” certification. Immediately upon certifying companies, respondents provided them with HTML text for the Tested Green logo and a “certification verification page” that they could, in turn, use to advertise their Tested Green certified status. Respondents also claimed that Tested Green was endorsed by the National Green Business Association (“NGBA”) and the National Association of Government Contractors (“NAGC”), two organizations which they own and operate.

The Commission alleges that the Tested Green certification constituted an express or implied representation that the products, services, programs, or entities bearing the certification had been independently and objectively evaluated based on their environmental attributes or benefits, when, in fact, they had not. Additionally, by furnishing businesses with the certification and the tools to advertise it, respondents provided such businesses with the means and instrumentalities for the commission of deceptive acts and practices, and accordingly, themselves committed a deceptive act in violation of Section 5 of the FTC Act.

The Commission also alleges that by stating that the NGBA and the NAGC endorsed Tested Green, respondents represented expressly or impliedly that they were independent from these organizations, when, in fact, they own and operate NGBA and NAGC. Therefore, respondents’ statement of endorsement by NGBA and NAGC was false and misleading, in violation of Section 5. Similarly, in light of respondents’ express and implied representation that these organizations were independent, respondents’ failure to disclose their relationship to NGBA and NAGC was deceptive, in violation of Section 5.

Part I of the proposed order prohibits respondents from misrepresenting: (1) the fact that, or degree to which, they have, or a third party has, evaluated a product, package, service, practice, or program based on its environmental benefits or attributes; (2) that respondents have,

or a third party has, the appropriate expertise to evaluate the environmental benefits or attributes of a product, package, service, practice, or program; (3) the number of certifications issued by respondents; and (4) that a product, package, certification, service, practice, or program is endorsed by an independent person or organization.

Part II of the proposed order bars respondents, in connection with the labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any product, package, certification, service, practice, or program, from providing others with the means and instrumentalities to make, expressly or impliedly, any false or misleading statement.

Part III of the proposed order bars respondents from making any representation, expressly or by implication, about any user or endorser of a product, package, certification, service, practice, or program, unless they clearly and prominently disclose a material connection with such user or endorser, where one exists.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires respondents to retain documents relating to their compliance with the order. Part V requires dissemination of the order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in respondent Nonprofit Management's corporate status. Part VII mandates that respondent Claeys notify the FTC of any changes in his business affiliations or employment. Part VIII mandates that respondents submit a report to the Commission detailing their compliance with the order. Part IX provides that the order expires after twenty (20) years, with certain exceptions.

The purpose of this 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.