

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Essentia Natural Memory Foam Company, Inc., File No. 1223130

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Essentia Natural Memory Foam Company, Inc., a corporation (“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 respondent’s marketing and sale of memory foam mattresses. According to the FTC’s complaint, respondent represented that its mattresses do not contain volatile organic compounds (“VOCs”), are chemical-free, have no VOC off-gassing, lack the odors commonly associated with memory foam, and are made with 100% natural materials. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Moreover, the complaint alleges that respondent claims that tests show that the memory foam used in respondent’s mattresses is free of VOCs and Formaldehyde. The complaint alleges that tests do not support these claims. Thus, the complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act. The Commission does not typically challenge subjective claims, such as smell.¹ However, a consumer acting reasonably under the circumstances is likely to interpret representations that a memory foam mattress lacks the common smell associated with memory foam to mean that the mattress is free of VOCs.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of VOC-free mattresses. It prohibits respondent from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs based on the Green Guides’ guidance on making free-of claims.² It also prohibits respondent from making chemical-free claims.

Part II addresses VOC claims, odor-free claims and comparative odor claims, environmental benefit or attribute claims, certain health claims made about mattresses, and natural claims. It prohibits such representations unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

¹ See FTC, FTC POLICY STATEMENT ON DECEPTION, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984).

² See Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62, 122, 62,123 (Oct. 11, 2012).

Part III addresses claims that testing supports respondents' advertising claims for its mattresses. It prohibits any misrepresentations about the existence, contents, validity, results, conclusion, or interpretations of any test, study, or research.

Parts IV through VII require Essentia to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.