



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

**JOINT STATEMENT OF CHAIR LINA KHAN, COMMISSIONER ROHIT CHOPRA,  
AND COMMISSIONER REBECCA KELLY SLAUGHTER**

*In the Matter of Resident Home LLC*  
*Commission File No. 202 3179*

October 8, 2021

The parties named in this matter are no strangers to the Commission. In 2018, the FTC finalized a settlement with Nectar Brand LLC (also doing business as DreamCloud, LLC, and DreamCloud Brand LLC) (“Nectar”) related to false “Assembled in USA” claims about the company’s wholly imported mattresses. Shortly after that settlement, CEO Ran Reske and Nectar’s other officers reorganized the company and its subsidiaries under a new ultimate parent entity, Resident Home LLC (“Resident”).

Despite the reorganization and being under active compliance monitoring as part of the 2018 Nectar order, old habits die hard. Misleading made in USA (“MUSA”) claims continued to appear on the website of DreamCloud Brand LLC in 2019 and 2020, contrary to Reske’s statements made under penalty of perjury as part of required compliance reports.

Today’s action sends an unambiguous message about the importance of complying with prior Commission orders. In addition to injunctive provisions, the proposed settlement contains monetary relief of \$753,300 and requires Resident to notify consumers of the FTC’s action. Together with the Commission’s recent MUSA rule<sup>1</sup>, these remedies signal to businesses that MUSA abuses—which harm both consumers and honest competitors—will not be tolerated by the FTC.

Our dissenting colleagues suggest that the proposed settlement is not authorized by statute. This is incorrect. The settlement is squarely within the Commission’s statutory authority.

The dissent contends that the monetary relief in this settlement goes beyond what is permitted by Section 19 of the FTC Act. In fact, Section 19 expressly authorizes payment of redress and damages. The dissent attempts to sidestep this clear statutory authority by narrowly equating “damages” with restoration of money to particular consumers. However, such an interpretation runs contrary to the standard legal meaning of the term.<sup>2</sup> Furthermore, MUSA fraud can result in

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<sup>1</sup> See Press Release, Fed Trade Comm’n, *FTC Issues Rule to Deter Rampant Made in USA Fraud* (July 1, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-issues-rule-deter-rampant-made-usa-fraud>.

<sup>2</sup> See Rohit Chopra and Samuel Levine, *The Case for Resurrecting the FTC Act’s Penalty Offense Authority*, U. PA. L. REV. (forthcoming), footnote 37, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3721256](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256) (“Black’s Law Dictionary defines consequential damages as ‘[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act.’ DAMAGES, Black’s Law Dictionary (11th ed. 2019). We have been unable to identify a Section 19 matter where the FTC pursued damages, which is traditionally understood to be a

significant consequential damages, both to consumers and, especially, to honest businesses that lose out on sales. Against this backdrop, the proposed monetary relief, far from being a penalty of the sort prohibited by Section 19, is reasonable and well within the Commission’s legal authority.

The dissent also presents a highly restrictive reading of the types of relief “explicitly authorized” by Section 19. But despite admonishing the Commission “that the words of a statute matter”, the dissent misses the statute’s language expressly stating that the relief available is not limited to the types explicitly enumerated (“Such relief may include, but shall not be limited to...”). Thus, even if the dissent were not mistaken about what is covered under “damages”, the relief obtained here still would not be foreclosed by the statutory language.

Finally, even if the dissent were not incorrect about the extent of the relief the Commission could obtain under Section 19 at trial, it would still be wrong about the lawfulness of the relief obtained in this *settlement*. Supreme Court precedent makes clear that federal courts may approve settlements that include relief beyond what could have been awarded at trial.<sup>3</sup>

We agree with our dissenting colleagues that Congress should act swiftly to restore our Section 13(b) authority, and like them we have directly urged Congress to do so.<sup>4</sup> But, as we have also consistently emphasized, the FTC needs to use all its tools to protect consumers and competition

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legal remedy rather than an equitable remedy. Unlike equitable relief, damages can conceivably capture a broad range of harms, including indirect consequences of deception. As the FTC faces threats to its authority to seek equitable relief, the agency should consider pursuing this alternative form of relief in more cases.”).

<sup>3</sup> *Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986) (“a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial”).

<sup>4</sup> See Press Release, Fed Trade Comm’n, *FTC Asks Congress to Pass Legislation Reviving the Agency’s Authority to Return Money to Consumers Harmed by Law Violations and Keep Illegal Conduct from Reoccurring* (Apr. 27, 2021), <https://www.ftc.gov/news-events/press-releases/2021/04/ftc-asks-congress-pass-legislation-reviving-agencys-authority>. See also Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, *Prepared Oral Statement of FTC Commissioner Noah Joshua Phillips*, Fed. Trade Comm’n (Apr. 20, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1589176/formatted\\_prepared\\_statement\\_0420\\_senate\\_hearing\\_42021\\_final.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589176/formatted_prepared_statement_0420_senate_hearing_42021_final.pdf); Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, Oral Statement of Commissioner Christine S. Wilson, Fed. Trade Comm’n (Apr. 20, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1589180/opening\\_statement\\_final\\_for\\_postingrevd.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf); Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, *Opening Statement of Acting Chairwoman Rebecca Kelly Slaughter*, Fed. Trade Comm’n (Apr. 20, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1589184/opening\\_statement\\_april\\_20\\_senate\\_oversight\\_hearing\\_420\\_final.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589184/opening_statement_april_20_senate_oversight_hearing_420_final.pdf); Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, *Prepared Opening Statement of Commissioner Rohit Chopra*, Fed. Trade Comm’n (Apr. 20, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1589172/final\\_chopra\\_opening\\_statement\\_for\\_senate\\_commerce\\_committee\\_20210420.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589172/final_chopra_opening_statement_for_senate_commerce_committee_20210420.pdf).

within the bounds of our existing authority.<sup>5</sup> While Congress works to deliver a Section 13(b) fix, Section 19 and other extant statutory tools<sup>6</sup> will be crucial in allowing the FTC to obtain monetary redress in consumer protection cases.

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<sup>5</sup> See, e.g., *Joint Statement of Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter Concurring in Part, Dissenting in Part, In the Matter of Flo Health, Inc.*, Fed. Trade Comm'n (Jan. 13, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1586018/20210112\\_final\\_joint\\_rcrks\\_statement\\_on\\_flo.pdf](https://www.ftc.gov/system/files/documents/public_statements/1586018/20210112_final_joint_rcrks_statement_on_flo.pdf); Remarks of Commissioner Rebecca Kelly Slaughter, *FTC Data Privacy Enforcement: A Time of Change*, Cybersecurity and Data Privacy Conference, New York University School of Law (Oct. 16, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1581786/slaughter\\_-\\_remarks\\_on\\_ftc\\_data\\_privacy\\_enforcement\\_-\\_a\\_time\\_of\\_change.pdf](https://www.ftc.gov/system/files/documents/public_statements/1581786/slaughter_-_remarks_on_ftc_data_privacy_enforcement_-_a_time_of_change.pdf).

<sup>6</sup> For instance, violators of administrative orders are subject to penalties and various forms of relief under Section 5(l) of the FTC Act. See *Statement of Rohit Chopra In the Matter of Resident Home LLC Commission File No. 2023179*, Oct. 8, 2021.