

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of the Secretary

December 15, 2009

Steven A. Mojo
Executive Director
Biodegradable Products Institute
331 West 57th Street, Suite 415
New York, NY 10019

Re: *In the Matter of Dyna-E International, Inc. and George Wheeler
FTC Docket No. 9336*

Dear Mr. Mojo:

Thank you for filing a comment on behalf of the Biodegradable Products Institute regarding the proposed consent order accepted by the Federal Trade Commission in the above-referenced matter. The Commission placed BPI's comment on the public record pursuant to Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, and subsequently gave the comment serious consideration. BPI suggests that the Commission modify the proposed order to address respondents' laboratory report and notify businesses that regardless of laboratory test results, unqualified biodegradable claims on "all products and packaging" will be misleading "where disposal is primarily in landfills or incinerators."

Commission consent orders typically contain no findings analyzing respondents' purported substantiation. Moreover, the complaint in this matter and in other recent biodegradability cases already states that respondents lacked a reasonable basis to support their claims, and explains why:

In truth and in fact, [respondents' products] will not completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time after customary disposal because a substantial majority of total municipal solid waste is disposed of by methods that do not present conditions that would allow for [such products] to completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time.

See, e.g., *In the Matter of Kmart Corp.*, Docket No. C-4263, compl. para. 7; *In the Matter of Tender Corp.*, Docket No. C-4261, compl. para. 7; *Dyna-E* compl. para. 8. Consequently, it is not necessary to address respondents' laboratory report in the order.

As you know, the Commission is reviewing its Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260, including the section on degradable claims. While we have not completed this review, Commission staff has found no evidence (e.g., testing protocols, public comments, or articles) persuasively arguing that products destined for landfills, incinerators, or recycling centers will totally decompose in a short period of time consistent with consumer expectations of unqualified degradable claims. Thus, it appears that unqualified degradable claims are likely to be deceptive for items so disposed. The Commission may include guidance to this effect in any future announcement relating to the Green Guides review.

After considering BPI's comment, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. A copy of the final Decision and Order is enclosed for your information. Relevant materials also are available from the Commission's website at <http://www.ftc.gov>.

It helps the Commission's analysis to hear from a variety of sources in its work, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary