

Complaint

IN THE MATTER OF

RELIEF MART, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4412; File No. 122 3128**Complaint, September 19, 2013 – Decision, September 19, 2013*

This consent order addresses false and misleading statements relating to memory foam mattresses. The respondent, Relief-Mart, manufactured a memory foam mattresses under the brand name “Biogreen,” which it claimed were free of volatile organic compounds (VOCs) and had no chemical off-gassing or odor. Relief-Mart further advertised that such mattresses were less toxic than other types of mattresses and offered both health and environmental benefits to consumers. The complaint alleges that Relief Mart’s claims were unsubstantiated and that its representations violated Section 5 of the FTC Act. The consent order bars Relief-Mart from making zero-VOC claims unless the VOC emission level is zero micrograms per meter cubed or unless the company possesses and relies upon competent and reliable scientific evidence that their mattresses contain no more than a trace level of VOCs, as prescribed in the Green Guides. The consent order further requires Relief-Mart to keep copies of all advertisements and materials relating to its mattresses and to file periodic compliance reports with the Commission.

Participants

For the *Commission*: Thomas Goodhue and Robin Moore.

For the *Respondent*: Jeffrey R. Richter, Firestone & Richter.

COMPLAINT

The Federal Trade Commission, having reason to believe that Relief-Mart, Inc. (“Respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a California corporation with its principal office or place of business at 755 Lakefield Rd., Ste. H, Westlake Village, CA 91361. Respondent does business under the names Relief-Mart and Tempflow.

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2. Respondent manufactures, advertises, offers for sale, sells, and distributes “memory foam” mattresses, which are marketed as mattresses that conform to the sleeper’s body shape and weight. Respondent distributes these mattresses through its website, www.tempflow.com.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused the dissemination of promotional materials for its memory foam mattresses, including, but not limited to, print advertisements and website advertisements in the attached exhibits.

5. In many instances, including but not limited to the promotional materials shown in Exhibits 1 through 3, Respondent has prominently represented that:

- a. Respondent’s memory foam mattresses do not contain volatile organic compounds (“VOCs”). Exhibits 1-3.
- b. Respondent’s memory foam mattresses have “no VOC off-gassing.” Exhibit 2.
- c. Respondent’s memory foam mattresses lack the common smell typically associated with memory foam. Exhibit 1.

6. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5 at the time the representations were made.

COUNT I (Unsubstantiated Representations)

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

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8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5 at the time the representations were made. Therefore, the representations set forth in Paragraph 7 are false or misleading.

THEREFORE, the Federal Trade Commission, this nineteenth day of September 2013, has issued this complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by the respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and

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having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a California corporation with its principal office or place of business at 755 Lakefield Rd., Ste. H, Westlake Village, CA 91361.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “Respondent” shall mean Relief-Mart, Inc., also doing business as Relief-Mart and Tempflow, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Competent and reliable scientific evidence” shall mean tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.

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4. “Covered product” shall mean any mattress or component part.
5. “Trace” level of VOCs shall mean:
 - A. VOCs have not been intentionally added to the product;
 - B. The presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs, including, but not limited to, harm to the environment or human health; and
 - C. The presence of VOCs at that level does not result in concentrations higher than would be found at background levels in the ambient air.
6. “Volatile Organic Compound” (“VOC”) shall mean any compound of carbon that participates in atmospheric photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. § 51.100(s).

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that the covered product is VOC-free or free of harmful VOCs, unless the VOC emission level is zero micrograms per meter cubed ($\mu\text{g}/\text{m}^3$), or Respondent possesses and relies upon competent and reliable scientific evidence that the covered product contains no more than a trace level of VOCs.

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II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

- A. The VOC level of such product;
- B. The fact that such product is odorless, or the odor or smell of any such product in comparison to another mattress(es) or its component part(s);
- C. Any other environmental benefit or environmental attribute of such product; or
- D. Any other health benefit or health attribute related to the VOC or chemical content of such product or exposure to such product;

unless the representation is true, not misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and

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- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required

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by this Part shall be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "Relief-Mart, Inc., File No. 122 3128, Docket No. C-4412."

VI.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VII.

This order will terminate on September 19, 2033, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Analysis to Aid Public Comment

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Relief-Mart, 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”), have no VOC off-gassing, and lack the odors commonly associated with memory foam. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. 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,

Analysis to Aid Public Comment

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

Parts III through VI require Relief-Mart 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 VII 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.

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).

Complaint

IN THE MATTER OF

SOLERA HOLDINGS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT*Docket No. C-4415; File No. 121 0165**Complaint, October 22, 2013 – Decision, October 22, 2013*

The consent order addresses the consummated acquisition of Actual Systems of America, Inc. (“Actual Systems”) by Solera Holdings, Inc. (“Solera”). On May 2012, Solera acquired all of the stock of Actual Systems for nearly \$9 million. The complaint alleges that Solera, through its wholly-owned subsidiary Hollander, Inc., and Actual Systems both provide yard management systems for the automotive recycling industry, and the acquisition combined two of the only three meaningful providers of such services in the United States and Canada. The consent order remedies the anticompetitive effects of the acquisition by requiring Solera to divest assets related to Actual Systems’ to a Commission approved acquirer, ASA Holdings.

Participants

For the *Commission*: Scott Reiter, Eric Rohlck, and Cecilia Waldeck.

For the *Respondent*: Evan Cohen and Aimee Goldstein, Simpson Thacher & Bartlett LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Solera Holdings, Inc. (“Solera”), acquired Actual Systems of America, Inc. (“Actual Systems”), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows: