

Complaint

IN THE MATTER OF

CARNIE CAP, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4421; File No. 122 3290**Complaint, December 11, 2013 – Decision, December 11, 2013*

The consent order addresses respondent Carnie Cap, Inc.’s marketing, sale, and distribution of plastic rebar cap covers that prevent accidental impalement at construction sites. Carnie Cap represented that its plastic rebar cap covers are completely biodegradable and would completely break down and decompose into elements found in nature within a reasonably short time. Carnie Cap further represented that its plastic products are biodegradable in a landfill and are biodegradable within a certain timeframe as a result of Carnie Cap’s use of Eco-One, a plastic additive. The complaint alleges that all of these claims were false and misleading, in violation of the FTC Act, and that respondent did not possess any substantiation for its claims. The order bars respondent from representing any of its products or packaging are biodegradable unless (1) the entire item will completely decompose into elements found in nature within one year after disposal; or (2) respondent clearly and prominently states the time to complete decomposition or explains the extent to which the item will decompose. The order further requires respondent to implement scientific protocols that replicates the physical conditions found in a landfill or existing using the method or facility stated in respondent’s representations regarding its product’s biodegradability. Additionally, the order requires respondent to submit an initial compliance report to the Commission and make subsequent reports available to the Commission.

Participants

For the *Commission*: *Korin Felix, Elisa Jillson and Katherine Johnson.*

For the *Respondent*: *Not represented by counsel.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Carnie Cap, 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:

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1. Respondent Carnie Cap, Inc., is an Illinois corporation with its registered place of business at 1100 13th Street, Moline, IL 61265.

2. Respondent advertises, offers for sale, sells and distributes rebar impalement protection systems, including the “Carnie Cap System” (“Carnie Caps”) to the public throughout the United States. Respondent advertises these goods through the Internet site www.carniecap.com, and offers for sale, sells, and distributes these goods through various distributors located throughout the United States. Respondent advertises that Carnie Caps are biodegradable because of an additive known as Eco-One.

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. To induce consumers to purchase Carnie Caps, respondent disseminates, has disseminated, or has caused to be disseminated advertisements and promotional materials, including, but not limited to, those attached in Exhibits 1-5.

5. In its advertising and promotional materials, including, but not limited to, those shown in Exhibits 1-5, Respondent has made the following statements and depictions:

A. Respondent’s Website (Exhibit 1):

Home Page and Product Information Biodegradability Facts Page:

“Carnie Caps are now 100% Biodegradable

Most of us agree that our planets resources are worth saving. We at Carnie Cap have refined our product to ensure that once disposed of in landfill, they will cause the minimum impact to the environment by fully biodegrading over time to help ensure that we pass on a cleaner planet to future generations.” (Ex. 1, at 1).

B. Respondent’s Print Materials:

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i. Carnie Cap Biodegradability Flyer (Exhibit 2):



(Ex. 2, at 1).

ii. Eco-One Product Brochure (Exhibit 3):



100% BIODEGRADABLE

(Ex. 3, at 1).

“Eco-One® is an organic additive that renders products manufactured from plastic resins biodegradable in landfills and composting environments. Biodegradation facilitated by Eco-One® has been confirmed using ASTM D5511 which validates methane off-gassing, a critical output of biodegradation in landfills.” (Id.).

iii. Eco-One Frequently Asked Questions (Exhibit 4):

How long does it take these products to biodegrade in landfills?

This will depend on the amount of Eco-One® in the product, the conditions of the landfill, and the thickness and composition of the product. The average landfill is a very good environment for biodegradation because it is warm, moist, and full of soil micro-organisms and food waste that cause the micro-organisms to eat the plastic. We believe complete biodegradation will take place on average between 9 months to 5 years. (Ex. 4, at 2).

iv. Eco-One Technical Overview Page (Exhibit 5):

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(Ex. 5, at 1).

6. Approximately 92 percent of total municipal solid waste in the United States is disposed of either in landfills, incinerators, or recycling facilities. These disposal methods do not present conditions that would allow respondent's Carnie Caps to completely break down and decompose into elements found in nature within a reasonably short period of time.

7. Consumers likely interpret unqualified degradable claims to mean that the entire product or package will completely decompose into elements found in nature within a reasonably short period of time after customary disposal.

8. American Society for Testing and Materials ("ASTM") International D5511, *Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials under High Solids Anaerobic Digestion Conditions* ("ASTM D5511"), and other scientific tests relied on by respondent do not assure complete decomposition of Carnie Caps in a reasonably short period of time or in respondent's stated timeframes, e.g., nine months to five years, and do not replicate, i.e., simulate, the physical conditions of either landfills, where most trash is disposed, or other disposal facilities stated in the representations.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

FALSE OR MISLEADING REPRESENTATIONS

9. Through the means described in Paragraphs 2, 4, and 5, respondent has represented, expressly or by implication, that:

- A. Carnie Caps are biodegradable, i.e., will completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;

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- B. Carnie Caps are biodegradable in a landfill;
- C. Carnie Caps are biodegradable in a stated qualified timeframe;
- D. Carnie Caps are biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe as a result of an additive known as Eco-One; and
- E. Carnie Caps have been shown to be biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe under various scientific tests including, but not limited to, ASTM D5511.

10. In truth and in fact:

- A. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
- B. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after disposal in a landfill;
- C. Carnie Caps will not completely break down and decompose into elements found in nature within respondent's stated qualified timeframes after customary disposal;
- D. Carnie Caps will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal, after disposal in a landfill, or within respondent's stated qualified timeframe, as a result of respondent's use of an additive known as Eco-One; and
- E. Carnie Caps have not been shown to completely break down and decompose into elements found in nature

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within a reasonably short period of time after customary disposal, after disposal in a landfill, or within respondent's stated qualified timeframe, under various scientific tests, including, but not limited to, ASTM D5511.

11. Therefore, the representations set forth in Paragraph 9 were, and are, false or misleading.

UNSUBSTANTIATED REPRESENTATIONS

12. Through the means described in Paragraphs 2, 4, and 5, in numerous instances respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9, at the time the representations were made.

13. In truth and in fact, at the time respondent made the representations referred to in Paragraph 9, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 12 is false or misleading.

14. Respondent's practices, as alleged in this complaint, therefore constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

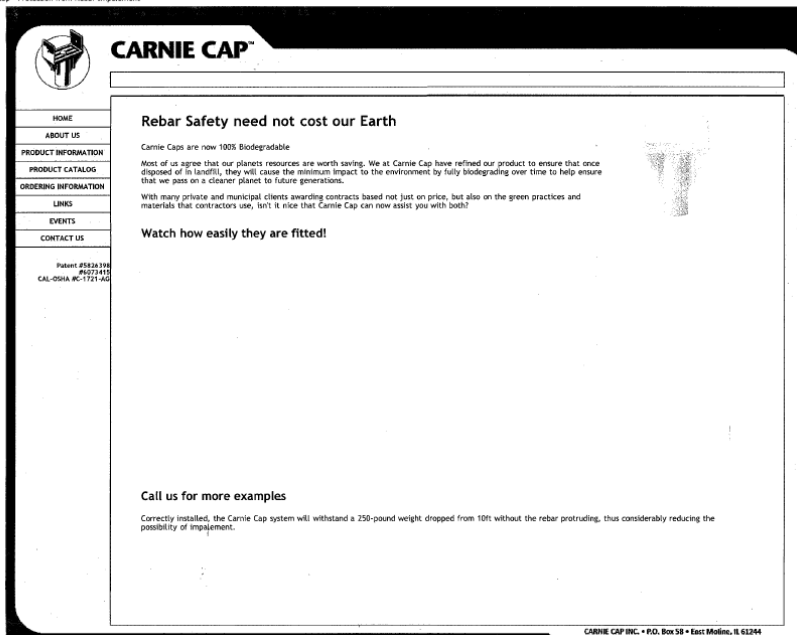
IN WITNESS WHEREOF, the Federal Trade Commission has issued this complaint against respondent and has caused it to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this eleventh day of December, 2013.

By the Commission.

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EXHIBIT 1

Carnie Cap - Protection from Rebar Impalement



CARNIE CAP

- HOME
- ABOUT US
- PRODUCT INFORMATION
- PRODUCT CATALOG
- ORDERING INFORMATION
- LINKS
- EVENTS
- CONTACT US

Patent #5262196
#0275415
CAL-0904-#07121-40

Rebar Safety need not cost our Earth

Carnie Caps are now 100% Biodegradable

Most of us agree that our planet's resources are worth saving. We at Carnie Cap have refined our product to ensure that once disposed of in landfill, they will cause the minimum impact to the environment by fully biodegrading over time to help ensure that we pass on a cleaner planet to future generations.

With many private and municipal clients awarding contracts based not just on price, but also on the green practices and materials that contractors use, isn't it nice that Carnie Cap can now assist you with both?

Watch how easily they are fitted!

Call us for more examples

Correctly installed, the Carnie Cap system will withstand a 250-pound weight dropped from 10ft without the rebar protruding, thus considerably reducing the possibility of impalement.

CARNIE CAP INC. • P.O. Box 58 • East Moline, IL 61234

<http://www.carniecap.com/> [0/10/2012 9:14:32 AM]

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EXHIBIT 2

NO MORE CAPPING EVERY REBAR!
Guard against impalement and remain OSHA compliant
with the one & only Carnie Cap™ system.



**BIO
DEGRADABLE**

**The Cutting EDGE
in Impalement
Protection**

CAL-OSHA APPROVAL #C-1721-AG • National OSHA Compliant

CARNIE CAP™ is the most effective way to cap exposed rebar and the danger it can create at your job site - worker impalement. When subject to impact, the weight is distributed over the entire protective system. Works with horizontal, vertical and incline applications and is easily assembled by your crew using 2x4 or 2x6 lumber. Weighted by the lumber, these caps rarely fall off or become part of the back fill. Fits rebar sizes 3-9 and 5-19.

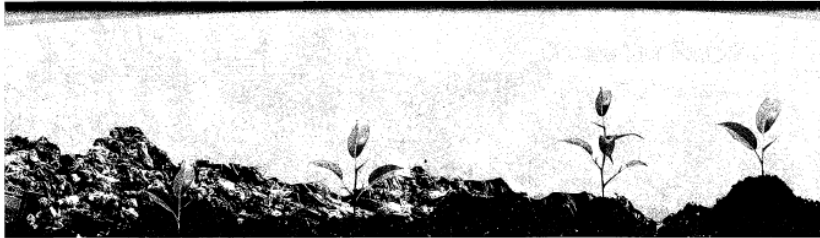
Patent #5826398 & #6073415
Visit our website: www.carniecap.com
Phone: 888-743-7725 • FAX: 888-308-3836

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EXHIBIT 3



Product Overview



A world without plastic – hard to imagine.

Most companies that make or use plastic products share our environmental concerns about the production and disposal of plastic. Everyone is looking for a solution that maintains the benefits of traditional plastics and yet reduces their company's environmental footprint in a practical and cost-effective way. **We have your solution.**



Eco-One® is an organic additive that renders products manufactured from plastic resins biodegradable in landfills and composting environments. Biodegradation facilitated by Eco-One® has been confirmed using ASTM D5511 which validates methane off-gassing, a critical output of biodegradation in landfills.

A proprietary blend of organic compounds, Eco-One® is melt-compounded into a masterbatch carrier resin and then pelletized.

Finally, there is a cost-effective, easy-to-use solution for brand owners to provide consumers truly biodegradable plastic packaging.



100% BIODEGRADABLE



100% ORGANIC & NON-STARCH BASED



100% RECYCLABLE



ASTM TESTED & VALIDATED



RENEWABLE ENERGY SOURCE
Methane Off-Gassing for Alternative Energy Use



COMPLIANT
with Food Additive Provisions in the Federal Food, Drug, and Cosmetic Act

Complaint

EXHIBIT 3

Change your footprint, not your process.

It is easy to use and will run under existing processing conditions. The addition of Eco-One® does not change the manufacturing process. Approximately 1% Eco-One® is added into the plastic production process in the same manner as a color concentrate.

Your product, just better.



SAME PROPERTIES

Eco-One® becomes part of the polymer matrix. There is no effect to the chemical or physical properties of the plastic. Plastic products have the same tensile strength and identical performance, requiring limited shelf-life testing.



PERFORMANCE UNCHANGED

Products will perform just as well in their intended applications and usage conditions. Attributes last until the product is discarded into an active microbial environment.



BIODEGRADATION

Through a series of chemical and biological processes in a microbe-rich environment, Eco-One® ultimately breaks down the plastic into inert humus (makes soil richer), methane (can be converted to energy), and carbon dioxide.

Formed in January 2010, EcoLogic(SM) owns, manufactures and markets Eco-One® brand of additives for plastic products worldwide.

Our goal is to drive value for our customers by providing solutions to meet increasing government, industry, and consumer demands for environmental sustainability and biodegradability.

eco one®

Let us help you build a greener future.

For more information contact:

Sachin Shah at 630.869.0492 | sshah@ecologic-llc.com or

Galen Killam at 920.558.4903 | gkillam@ecologic-llc.com

Visit us at www.ecologic-llc.com

Proud members of National Recycling Association, Flexible Packaging Association and Project Network Members of EPA's Methane-to-Markets Program.

Corporate Headquarters: One Lincoln Centre 18W140 Butterfield Road, STE 1180, Oakbrook Terrace, IL 60181

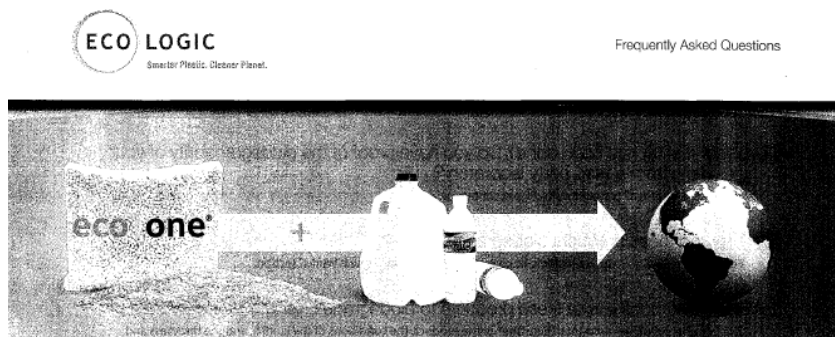
www.ecologic-llc.com 630.838.2480



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EXHIBIT 4

**1** What does ECOLOGICSM do?

EcoLogic owns, manufactures and markets Eco-One[®] brand of additives for plastic products worldwide. Eco-One[®] is an organic additive which renders traditional plastic biodegradable in landfills and composting environments.

2 Are these products the same as starch or sugar based plastics (examples: PLA, PHA, PHB, etc.)?

No. Eco-One[®] based plastics are not similar to corn or sugar based plastics in their properties, how they function or how they biodegrade.

3 Is the plastic with Eco-One[®] the same as oxo-biodegradable plastic?

No. Oxo-biodegradable plastics require oxygen and UV light or heat to biodegrade and thus will not biodegrade in landfills. Products using Eco-One[®] do not require either UV light or oxygen to biodegrade and will biodegrade at any depth in landfills.

4 Are these products recyclable?

Yes. Products using our Eco-One[®] additive are 100% recyclable. There is no change in intrinsic viscosity of the plastic after adding Eco-One[®].

5 Is your organic additive FDA compliant?

Yes. Our additive is FDA compliant for contact with food in polystyrene (PS), polyolefin (all polyethylenes and polypropylenes) and polyethylene terephthalate (PET) applications. It has 3rd party verification by Keller and Heckman LLP.

6 Does Eco-One[®] and/or products made with Eco-One[®] have a limited shelf life?

No. Unlike both PLA and Oxo products, Eco-One[®] has a very long shelf life and products made with Eco-One[®] have the same shelf life as they would have had without Eco-One[®].

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EXHIBIT 4

- 7.** Does Eco-One® have any special storage requirements?
No. Unlike Oxo or PLA, Eco-One® does not have special storage requirements.
- 8.** What testing has been done? Do you have proof of the biodegradability of your products from a third party laboratory?
Yes. We can furnish all testing results. Please contact us.
- 9.** How do these products biodegrade?
For details, please go to www.ecologic-llc.com and check-out our "How It Works" section.
- 10.** How long does it take these products to biodegrade in landfills?
This will depend on the amount of Eco-One® in the product, the conditions of the landfill, and the thickness and composition of the product. The average landfill is a very good environment for biodegradation because it is warm, moist, and full of soil micro-organisms and food waste that cause the micro-organisms to eat the plastic. We believe complete biodegradation will take place on average between 9 months to 5 years.
- 11.** Are any of the ingredients in the additive harmful to people or to the environment?
No. Our additive is 100% organic and is in compliance with FDA standards for contact with food.
- 12.** Will active microbes in food (meat, cheese, etc.) or lawn care products start the biodegradation process in normal storage conditions such as a warehouse or store shelf?
No. Eco-One® attracts oleophilic bacteria (oil eating bacteria) that are present in landfills. The active microbes in food or dairy products or lawn care products are not oleophilic and not the "super" colony of microbes you find in landfills, composting sites, or waste water sludge plants.

Let us help you build a greener future.

For more information contact:

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Galen Killam at 920.558.4903 | gkillam@ecologic-llc.com

Visit us at www.ecologic-llc.com

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www.ecologic-llc.com 830.558.0460



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EXHIBIT 5



Technical Overview



The Mechanism of Biodegradation using Eco-One®

Plastics (or polymers) are made of long molecular chains of organic molecules called monomers. Polymers do not exist naturally and most are designed to be incredibly stable – as a result they do not easily biodegrade and will last in the environment for centuries and possibly forever. They are air-tight and water-tight.

Eco-One® is an organic additive that causes plastic to biodegrade through a series of chemical and biological processes when disposed of in a microbe-rich environment such as a landfill or composting site. It allows the plastic to be consumed (as a food and energy source) by the microbes.

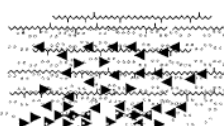
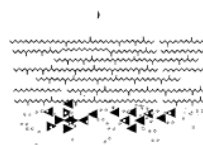
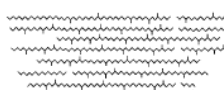
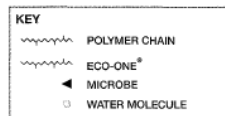
1. FORMATION OF BIOFILM

Eco-One®, acting like a surface-active agent, renders the hydrophobic base resin much more hydrophilic in the presence of microbes. This facilitates a rapid formation of a moisture-borne and microbe-rich biofilm on the surface of the plastic.

Enzymes secreted by microbes activate the hygroscopic properties of Eco-One®, This allows moisture to be retained thus facilitating an intimate adhesion of the biofilm to the plastic.

2. EXPANSION OF THE POLYMER MATRIX

Aggressive accumulation of water expands the plastic matrix and gives the microbes access to the entire polymer matrix. The most likely points of attack on hydrocarbon polymers are at or near the chain ends.



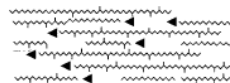
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EXHIBIT 5

3. INITIAL BREAKDOWN OF POLYMER CHAINS

The microbes break down the larger "synthetic" polymer chains into simpler "organic" monomers thus allowing for the consumption of the entire polymer matrix. In the process, they secrete certain signaling molecules that other microbes can detect. This signaling process, called quorum sensing, is an invitation to others to come join the feast.

Volatile organic fatty acids, hydrogen, and carbon dioxide are formed in the initial stages.

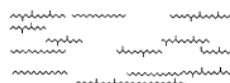


4. BREAKDOWN CONTINUES

Different types of microbes join the feast. Each one uses different elements of the polymer and/or various by-products of the intermediate biological reactions as a food source, breaking down the complex polymer chains.

Certain enzymes (from microbes) begin reducing the complex polymer branching while others look for bulkier chains similar to fatty acids.

A syntrophic environment containing diverse species of microbes is established to complete the complex chemical steps of biodegradation. Throughout this process, microbes continue to multiply through quorum sensing.



5. FINAL STAGES OF BREAKDOWN

The molecular weight reduction has occurred on chains of all lengths in the original plastic material matrix. During the biodegradation process the molecular weight of the plastic material is reduced and the molecular weight distribution is broadened.

As individual polymer chains completely biodegrade, biomass (humus), and biogases (methane and carbon dioxide) are left behind. The carbon dioxide produced in the intermediate steps is being consumed in each subsequent step; therefore, not much is left at the end. The methane can then be captured for energy use.



Let us help you build a greener future.

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Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), a statement that respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, an admission by the respondent of facts necessary to establish jurisdiction for purposes of this action , 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 has 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 having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

- 1 Respondent Carnie Cap, Inc. is an Illinois corporation with its registered place of business at 1100 13th Street, Moline, Illinois 61265.
2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

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ORDER**DEFINITIONS**

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

- 1 “Clearly and Prominently” means as follows:
 - A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 - B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

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- C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
- 2 “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
- 3 “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- 4 “Competent and reliable scientific evidence” means 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. Specifically:
- A. For unqualified biodegradability claims, any scientific technical protocol (or combination of protocols) substantiating such claims must assure complete decomposition within one year and replicate, i.e., simulate, the physical conditions found in landfills, where most trash is disposed.
- B. For qualified biodegradability claims, any scientific technical protocol (or combination of protocols) substantiating such claims must both:
- i. assure the entire product will (1) completely decompose into elements found in nature in the stated timeframe or, if not qualified by time, within one year; or (2) decompose into

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elements found in nature at the rate and to the extent stated in the representation; and

- ii. replicate, i.e., simulate, the physical conditions found in the type of disposal facility or method stated in the representation or, if not qualified by disposal facility or method, the conditions found in landfills, where most trash is disposed.

For example, results from ASTM (American Society for Testing and Materials) International D5511-12, Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials under High Solids Anaerobic Digestion Conditions, or any prior version thereof, are not competent and reliable scientific evidence supporting unqualified claims, or claims of outcomes beyond the parameters and results of the actual test performed.

- 5 “Customary disposal” means any disposal method whereby respondent’s products ultimately will be disposed of in a landfill, in an incinerator, or in a recycling facility.
- 6 “Degradable” includes biodegradable, oxo-biodegradable, oxo-degradable, or photodegradable, or any variation thereof.
- 7 “Landfill” means a municipal solid waste landfill that receives household waste. “Landfill” does not include landfills that are operated as bioreactors or those that are actively managed to enhance decomposition.
- 8 Unless otherwise specified, “respondent” means Carnie Cap, Inc., a corporation, and its successors and assigns.

I.

IT IS ORDERED that respondent, and its officers, agents, representatives, and employees, directly or through any

Decision and Order

corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, package, or service, in or affecting commerce, shall not represent, in any manner, directly or indirectly, expressly or by implication:

- A. That any product or package is degradable, unless:
 - i. the entire item will completely decompose into elements found in nature within one year after customary disposal; or
 - ii. the representation is clearly and prominently and in close proximity qualified by:
 - a. Either (1) the time to complete decomposition into elements found in nature; or (2) the rate and extent of decomposition into elements found in nature, provided that such qualification must disclose that the stated rate and extent of decomposition does not mean that the product or package will continue to decompose; and
 - b. If the product will not decompose in a customary disposal facility or by a customary method of disposal, both (1) the type of non-customary disposal facility or method and (2) the availability of such disposal facility or method to consumers where the product or package is marketed or sold

and such 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.

- B. That any such product, package, or service offers any environmental benefit, unless the representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be

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competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent 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 Commission for inspection and copying:

- A. All advertisements, labeling, packaging and promotional materials containing the representations specified in Part I;
- B. All materials that were relied upon in disseminating the representations specified in Part I;
- 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; and
- D. All acknowledgments of receipt of this order, obtained pursuant to Part III.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service

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of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent 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 entity; 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 business or 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 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, Mail Stop M-8102B, Washington, DC 20580. The subject line must begin: "Carnie Cap, Inc., File No. 1223290."

V.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this order file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all notices required 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

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Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop 8102-B, Washington, DC 20580. The subject line must begin: “Carnie Cap, Inc., File No. 1223290.”

VI.

This order will terminate on December 11, 2033, or twenty (20) years from the most recent date that the United States or the 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.

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 to Aid Public Comment

**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 Carnie Cap, 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, sale, and distribution of purportedly biodegradable plastic rebar cap covers that prevent accidental impalement at construction sites. According to the FTC complaint, respondent represented that its plastic products are completely biodegradable (i.e., will completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal). Respondent further represented that its plastic products are biodegradable in a landfill; are biodegradable in a stated qualified timeframe; and are biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe as a result of respondent’s use of Eco-One, a plastic additive manufactured by EcoLogic Solutions, LLC.

The complaint alleges that each of these degradable claims is false and misleading. In addition, the complaint alleges that, although respondent represented (expressly or implicitly) that it could substantiate its degradable claims, respondent did not in fact possess or rely upon a reasonable basis to substantiate these representations of biodegradability. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains a provision designed to prevent respondent from engaging in similar acts and practices in

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the future. Part I prohibits respondent from making any representation that a product or package is degradable, unless one of two conditions is met. The first condition is that the entire item will completely decompose into elements found in nature within one year after customary disposal. The second condition is that the representation will be clearly and prominently and in close proximity qualified by either the time to complete decomposition or the rate and extent of decomposition (although this qualification must disclose that the stated rate and extent of decomposition does not mean that the item will continue to decompose). In addition, if the product will not decompose in (or by) a customary disposal facility/method, the representation must be qualified regarding the type of disposal, and the availability of such disposal facility or method to consumers where the item is marketed and sold.

Part I also requires that, at the time of any such representation, respondent must possess and rely upon competent and reliable scientific evidence from a scientific technical protocol (or protocols) that does two things. First, the protocol must assure that the entire product will either completely decompose in one year or the stated timeframe, or that it will decompose at the rate and to the extent stated in the representation. Second, such protocol must replicate (i.e., simulate) the physical conditions found in a landfill or the disposal facility or method stated in the representation. Part I further prohibits respondent from marketing any products, packages, or services as offering any environmental benefit, unless the representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Parts II through V are reporting and compliance provisions. Part II requires respondent to keep (and make available to the Commission on request): copies of advertisements, labeling, packaging and promotional materials containing the representations identified in Part I; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, specified in Part I; and all acknowledgments of receipt of the order. Part III requires

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dissemination of the order now and in the future to subsidiaries, principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part IV requires notification to the FTC of changes in corporate status. Part V mandates that respondent submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the 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.

Complaint

IN THE MATTER OF

**CLEAR CHOICE HOUSEWARES, INC. D/B/A
FARBERWARE® ECOFRESH**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4420; File No. 122 3288**Complaint, December 11, 2013 – Decision, December 11, 2013*

This consent order addresses allegations that Clear Choice Housewares, Inc., doing business as Farberware EcoFresh, made false and misleading claims concerning the biodegradability of its reusable plastic food storage containers. According to the complaint, respondent represented that its plastic products were completely biodegradable and would completely break down and decompose into elements found in nature within a reasonably short time period after customary disposal. The complaint alleges that each of its degradable claims were false and misleading and that respondent did not possess any substantiation for its claims. The order bars respondent from representing any of its products or packaging are biodegradable unless (1) the entire item will completely decompose into elements found in nature within one year after disposal; or (2) respondent clearly and prominently states the time to complete decomposition or explains the extent to which the item will decompose. The order further requires respondent to implement scientific protocols that replicates the physical conditions found in a landfill or existing using the method or facility stated in respondent's representations regarding its product's biodegradability. Additionally, the order requires respondent to submit an initial compliance report to the Commission and make subsequent reports available to the Commission.

Participants

For the *Commission*: *Korin Felix, Elisa Jillson, and Katherine Johnson.*

For the *Respondent*: *Not represented by counsel.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Clear Choice Housewares, Inc., also d/b/a FARBERWARE® EcoFresh ("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: