

Complaint

IN THE MATTER OF

AMERICAN PLASTIC MANUFACTURING, INC.]CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4453; File No. 122 3291
Complaint, April 24, 2014 – Decision, April 24, 2014

This consent order addresses American Plastic Manufacturing's marketing, sale, and distribution of purportedly biodegradable plastic shopping bags to the public. The complaint alleges that respondent represented that its plastic products are completely biodegradable in a landfill, or in a stated qualified timeframe as a result of respondent's use of a plastic additive manufactured by ECM Biofilms, Inc. The complaint further 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. The consent order prohibits respondent from making any representation that a product or package is degradable, unless the entire item will completely decompose into elements found in nature within one year after customary disposal, and the representation must be clear and prominent and in close proximity qualified by either the time to complete decomposition or the rate and extent of decomposition. The order 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.

Participants

For the *Commission*: Katherine Johnson.

For the *Respondent*: Mark Leen, Inslee Best Doezie & Ryder,
P.S.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Plastic Manufacturing, 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:

Complaint

1. Respondent American Plastic Manufacturing, Inc., is a Washington corporation with its principal office or place of business at 526 South Monroe Street, Seattle, WA 98108.

2. Respondent advertises, offers for sale, sells, and distributes plastic bags, including “APM Biodegradable Bags,” to the public throughout the United States. Respondent advertises these goods on its website, www.apmbags.com. Respondent also offers for sale, sells, and distributes these goods through various distributors throughout the United States. Respondent advertises that APM Biodegradable Bags are biodegradable because of an additive from ECM Biofilms, Inc.

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 its APM Biodegradable Bags, respondent disseminates, has disseminated, or has caused to be disseminated advertisements and promotional materials, including, but not limited to, the attached Exhibits 1-2.

5. In its advertising and promotional materials, including, but not limited to, those shown in Exhibits 1-2, respondent has made the following statements and depictions:

a. Respondent’s Website (Exhibit 1):

1. Homepage:

**Biodegradable
bags**

We are now offering
biodegradable bags
in both high and low
density plastic!



(Ex. 1, at 1).

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2. Biodegradable Bags Page:

“Environmental issues are important to everyone. We are doing our part by offering 100% Biodegradable bags!” (*Id.*, at 3).

“Our biodegradable bags break down completely when in contact with other decomposing materials; in compost bins, landfills, or just buried in the ground. These bags can also be recycled along with regular plastic bags.” (*Id.*).

“Our biodegradable bags are made using traditional resins combined with an additive from ECM Biofilms that allows the plastic to completely biodegrade within a few years.” (*Id.*).

“When we make biodegradable bags, we also offer our stock ‘This Bag is Biodegradable’ logo. This logo helps inform consumers about how to dispose of the bag. Two versions of this logo are available for use. Choose the one that works best for you.



Option A – Tells consumers that the bag will biodegrade but does not relay information about recycling.



Option B - Tells consumers that the bag is biodegradable and is also recyclable.”

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(Ex. 1, at 3).

“**Biodegradable** bags will break down completely when in contact with decomposing organic waste – even in a landfill where practically nothing degrades.” (*Id.*, at 4).

3. Reusable and Biodegradable Page:

“**Reusable, Recyclable, and Biodegradable bags**” (*Id.*, at 5).



“Constucted [sic] of heavy-duty low density film, with soft-loop handles, our new reusable bag is also 100% recyclable and completely biodegradable.” (*Id.*).

“American Plastics new reusable and biodegradable bag is made thick, so it will stand up to many trips to the store, formulated to be recyclable with other plastic bags, and if it does end up in a landfill or even as litter, it is 100% biodegradable.” (*Id.*).

“**Biodegradable Bags**

American Plastic is now producing bags that are 100% biodegradable and recyclable!” (Ex. 1, at 1, 3, 5-6).

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4. Going Green Page:

“Biodegradable is a popular word these days. Everyone is concerned about the environment. But it’s also a word that is easily misunderstood. . . .

Simply defined, biodegradable means that an item will break down into natural organic matter.” (*Id.*, at 6).

“American Plastic Mfg.’s biodegradable bags are made with an additive from ECM-Biofilms that allows plastic to break down when in contact with other decomposing organic matter. . . . These bags have all the properties of normal plastic bags, can be reused and recycled with other plastic bags, and if littered or landfilled, will biodegrade safely.” (*Id.*).

b. Respondent’s LineCard (Exhibit 2):

[“American Plastic is Going Green – Biodegradable bags now available!](#)

Environmental issues are important to everyone. We are doing our part by offering 100% Biodegradable bags; printed with our custom ‘This Bag is Biodegradable’ logo.

Using an additive from ECM Biofilms (ecmbiofilms.com), our biodegradable bags break down completely when in contact with other decomposing materials; in compost bins, landfills, or just buried in the ground.” (Ex. 2, at 1).

BIODEGRADABLE LOGO OPTIONS

American Plastic has created a custom biodegradable logo for use on our biodegradable bags. Choose the one that works best for your clients.

The “100% Biodegradable and Recyclable” logo

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provides information about how end users can dispose of the bags.



(*Id.*).

“**Biodegradable bags** will break down completely when in contact with decomposing organic waste – even in a landfill where practically nothing degrades.”
(*Id.*).

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 APM Biodegradable Bags 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. The Ecological Assessment of ECM Plastic, 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 APM Biodegradable Bags 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.

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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. APM Biodegradable Bags 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;
- b. APM Biodegradable Bags are biodegradable in a landfill;
- c. APM Biodegradable Bags are biodegradable in a stated qualified timeframe; and
- d. APM Biodegradable Bags are biodegradable, biodegradable in a landfill, or biodegradable in a stated qualified timeframe as a result of an additive from ECM Biofilms, Inc.

10. In truth and in fact:

- a. APM Biodegradable Bags will not completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
- b. APM Biodegradable Bags 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. APM Biodegradable Bags will not completely break down and decompose into elements found in nature within respondent's stated qualified timeframes after customary disposal; and

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- d. APM Biodegradable Bags 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 timeframes as a result of respondent's use of an additive from ECM Biofilms, Inc.

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 twenty-fourth day of April, 2014.

By the Commission.

Complaint

Exhibit 1

About American Plastic Manufacturing | American Plastic Manufacturing

		
Biodegradable Contact Home		Going Green
Main Menu Products Color Options Like Cards Biodegradable Bags Reusable & Biodegradable Going Green Stock Bags Contact Us Get a Quote Art Specifications Home Mailing List	About American Plastic Manufacturing 6 Color Printing now available! Our new printing press is capable of printing up to six spot colors. Print six colors on one side, or 3 colors on both sides, or 5 on the front and 1 on the back. Any combination that adds up to six. Contact us for details American Plastic Manufacturing has been producing quality plastic bags for Trade Shows, Retailers, Food Packaging and many others since 1992 in our Seattle plant. Delivery is available to anywhere in the U.S. or Canada. Fast Delivery Our specialty is producing and delivering custom printed bags in 2 to 3 weeks from approval of artwork. Biodegradable bags We are now offering biodegradable bags in both high and low density plastic!  More information. How to order our bags American Plastic Manufacturing sells exclusively through distributors. To find a distributor in your area, please visit our Contact page and let us know what you are looking for. If you are a distributor and would like to receive a competitive quote quickly, visit our Contact page for email and phone numbers. Minimum order for custom printing is 3,000 bags.	
		
		
		
	Plastic Bag Myths Many popular beliefs about the environmental impact of plastic bags are exaggerated or just plain wrong. Learn the facts.	
	Biodegradable Bags American Plastic is now producing bags that are 100% biodegradable and recyclable! More info.	
	Reduce, Reuse, Recycle The best solution for reducing waste involves reducing one, reusing when possible, and recycling. Check's source ideas.	

Source: <http://www.americanplastic.com> (10/16/2003 11:39:50 AM)

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Biodegradable Bags | American Plastic Manufacturing

AMERICAN PLASTIC MANUFACTURING

Maker of custom printed plastic bags

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Going Green

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Biodegradable

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Biodegradable Bags

Environmental issues are important to everyone. We are doing our part by offering 100% Biodegradable bags!

Our biodegradable bags break down completely when in contact with other decomposing materials in compost bins, landfills, or just buried in the ground. These bags can also be recycled along with regular plastic bags.

Unlike starch based compostable bags and oxo-biodegradable bags, these bags won't degrade in the presence of oxygen, heat, or sunlight, so they can also be reused until no longer serviceable. Any bag we make can be produced as biodegradable.

Our biodegradable bags are made using traditional resins combined with an additive from ECA Biofilms that allows the plastic to completely biodegrade within a few years. For more information about the technology used to make our biodegradable bags, visit www.ecmbiofilms.com.

"This Bag is Biodegradable" logos

When we make biodegradable bags, we also offer our stock "This Bag is Biodegradable" logo. This logo helps inform consumers about how to dispose of the bag. Two versions of this logo are available for use. Choose the one that works best for you.

Option A - Tells consumers that the bag will biodegrade but does not relay information about recycling.

100% Biodegradable and Recyclable

Option B - Tells consumers that the bag is biodegradable and is also recyclable.

Plastic Bag Myths

Many popular beliefs about the environmental impact of plastic bags are exaggerated or just plain wrong.

[Learn the facts...](#)

Biodegradable Bags

American Plastic is now producing bags that are 100% biodegradable and recyclable!

[More info...](#)

Reduce, Reuse, Recycle

The best solutions for reducing waste involve reducing use, reusing when possible, and recycling.

[Here's some ideas...](#)

RECYCLED and RECYCLABLE

American Plastic can also provide bags made using post-industrial recycled plastic - much of which comes from our own scrap. All of our bags can be recycled. Recycle logos can be added to your bags at no additional cost.

Biodegradable or Compostable?

These words are interchanged a lot these days, but their meanings are completely different.

Complaint

Biodegradable Bags | American Plastic Manufacturing

Compostable bags are starch based Polylactic Acid (PLA) from corn and other crops. PLA decomposes in conditions found at municipal composting facilities, but not in compost bins, landfills or when littered. Compostable plastic also cannot be recycled.

Biodegradable bags will break down completely when in contact with decomposing organic waste - even in a landfill where practically nothing degrades. They can also be recycled along with other plastic bags.

What about paper bags?

When comparing plastic and paper, plastic always comes out on top.

Here are a few facts:

- Paper bags require 4-5 times more energy to produce, transport and recycle, than plastic.
- Paper bags are responsible for 70% more air pollution and 50 times more water pollution than plastic.
- Plastic bags generate 80% less solid waste than paper.
- Recycling plastic requires 91% less energy than paper.
- The manufacture of paper bags uses 40% more energy than plastic bags.

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Eco-friendly bags from all perspectives! | American Plastic Manufacturing

AMERICAN PLASTIC MANUFACTURING

Maker of custom printed plastic bags

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Eco-friendly bags from all perspectives!

Reusable, Recyclable, and Biodegradable bags

New from American Plastic

Constructed of heavy-duty low density film, with soft-loop handles, our new reusable bag is also 100% recyclable and completely biodegradable.

Reusable bags are gaining popularity across the nation. Most are imports made from recycled polypropylene. Unfortunately, when these bags reach the end of their usable life, they can't be easily recycled, and just end up in the landfill.

American Plastic's new reusable and biodegradable bag is made thick, so it will stand up to many trips to the store, formulated to be recyclable with other plastic bags, and if it does end up in a landfill or even as litter, it is 100% biodegradable.

Available in any of our standard film colors. In widths from 10" to 26" and heights from 12" to 22", with bottom gussets up to 6".

Use your custom art, or our stock design shown above (2 color front, 1 color back)

Made in the USA.

Sizes (measurement excludes handle)

- Width: 10" to 26"
- Height: 12" to 22"
- Bottom Gussets: 0" to 6"
- Film Thickness: 2.5 to 3.5 mil
- [Print Area Information](#)

[Request a Quote](#)

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Plastic Bag Myths

Many popular beliefs about the environmental impact of plastic bags are exaggerated or just plain wrong.

[Learn the facts...](#)

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[More info...](#)

Reduce, Reuse, Recycle

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[Here's some info...](#)

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It's not easy being green... | American Plastic Manufacturing

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Maker of custom printed plastic bags

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It's not easy being green...

Biodegradable is a popular word these days. Everyone is concerned about the environment. But it's also a word that is easily misunderstood. Biodegradable bags come in several forms, but there are big differences between them... and it's very possible that none may be the right choice for your client.

Before deciding on biodegradable bags, understanding the environmental concerns is essential. Especially in areas where laws exist concerning plastic bags.

Simply defined, biodegradable means that an item will break down into natural organic matter. How this happens is where things get complicated. Different types of biodegradable plastic have different triggers to start the breakdown: exposure to oxygen, high heat, mechanical stress, UV, presence of other decomposing material, etc.

Compostable bags, made of PLA, a starch based polymer, are made using corn or other food crops. These require very specific high-heat aerobic conditions found in municipal composting facilities to break down. These have to be sent to a composting facility to break down, and can't be recycled.

Oxo-biodegradable plastic breaks down when exposed to sunlight and heat. These will disintegrate if left outside, or littered, and can be recycled.

American Plastic Mfg.'s biodegradable bags are made with an additive from ECM-Biofilms that allows plastic to break down when in contact with other decomposing organic matter. For most applications, we feel this is the **best biodegradable option**. These bags have all the properties of normal plastic bags, can be reused and recycled with other plastic bags, and if littered or landfilled, will biodegrade safely.

The downside of biodegradable plastics

There are no easy answers when it comes to the environment. Biodegradable plastics aren't always the best solution. Consumers may be confused about the proper disposal method for the particular item, as the terms can be confusing. They may also be prone to careless disposal, assuming that biodegradable bags pose no environmental harm if littered, which isn't true. Biodegradable bags also, just like organic matter, produce methane when breaking down, which can contribute to global warming.

A misconception about landfills

Much has been written about how plastics last forever in landfills. But contrary to popular belief, landfills are engineered specifically to prevent their contents from degrading. When items degrade organically, harmful gasses and toxic chemicals are produced. Landfills are lined to protect the surrounding environment, covered to protect the contents from weather, and eventually buried. All in an effort to keep the contents from breaking down. **Plastic bags remain inert in landfills**, making them one of the safest things, environmentally, that landfills contain. However, recycling bags is the best method of disposal.

The other costs of packaging

To assess the **environmental impact** of a product, many factors must be considered. The fuel used and pollution created when producing and transporting raw material, and the energy used

Plastic Bag Myths

Many popular beliefs about the environmental impact of plastic bags are exaggerated or just plain wrong.

[Learn the facts...](#)

Biodegradable Bags

American Plastic is now producing bags that are 100% biodegradable and recyclable!

[More info...](#)

Reduce, Reuse, Recycle

The best solutions for reducing waste involve reducing use, reusing when possible, and recycling.

[Here's some ideas...](#)

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It's not easy being green... | American Plastic Manufacturing

and waste created to produce the product and transport to the market. Among disposable bags, polyethylene bags are the cleanest and most energy efficient product available. Bag for bag, plastic bags use far less fuel and produce far less pollution than paper. Recycling plastic also requires far less energy and resources than recycled paper.

So... what's the recommendation?

Plastic bag recycling is becoming more and more commonplace. With rising concerns about oil consumption and pollution, polyethylene bags are actually **the best environmental option**.

Polyethylene is made from refining waste that would be burned off if not converted. Plastic bags are **100% recyclable**, can be **reused many times**, are **transported cheaply** and efficiently due to their light weight, create **very little pollution** in production, and if sent to a landfill remain inert and take up very little space. Only when littered do plastic bags pose a risk to the environment, and littering is a problem best solved through public education.

What about reusable bags?

The public perception is that reusable bags are a great solution. But when considering all the costs, **the bottom line is unclear**. Growing and processing cotton for fabric bags consumes vast amounts of water, and have higher transportation costs. Low price reusable bags are made mainly from polypropylene, which most recycling centers don't process, are produced mainly in China, and shipped across the world to get to America.

When considering environmental issues it's important to think about ALL the resources going into a product.

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Exhibit 2

***American Plastic is Going Green - Biodegradable bags now available!***

Environmental issues are important to everyone. We are doing our part by offering 100% Biodegradable bags, printed with our custom "This Bag is Biodegradable" logo. Using an additive from ECM Biofilms (ecmbiofilms.com), our biodegradable bags break down completely when in contact with other decomposing materials; in compost bins, landfills, or just buried in the ground. These bags can also be **recycled** along with regular plastic bags. Unlike starch based compostable bags, these bags won't degrade in the presence of oxygen, heat, or sunlight, so they can also be **reused** until no longer serviceable. Any bag we make can be produced as biodegradable.

RECYCLED and RECYCLABLE

American Plastic can also provide bags made using post-industrial recycled plastic – much of which comes from our own scrap. All of our bags can be recycled. Recycle logos can be added to your bags at no additional cost.

BIODEGRADABLE LOGO OPTIONS

American Plastic has created a custom biodegradable logo for use on our biodegradable bags. Choose the one that works best for your clients.

The "100% Biodegradable and Recyclable" logo provides information about how end users can dispose of the bags.



100% Biodegradable and Recyclable

More Information**Biodegradable or Compostable?**

These words are interchanged a lot these days, but their meanings are completely different.

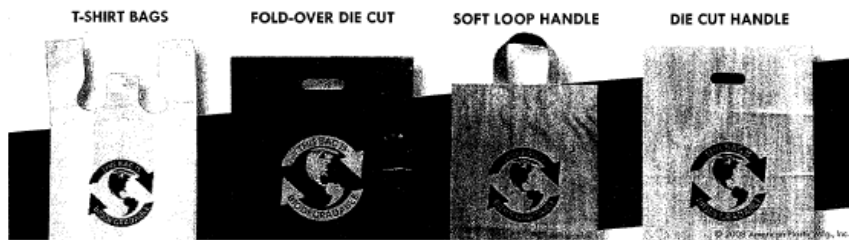
Compostable bags are starch based Polylactic Acid (PLA) from corn and other crops. PLA decomposes in conditions found at municipal composting facilities, but not in compost bins, landfills or when littered. Compostable plastic also cannot be recycled.

Biodegradable bags will break down completely when in contact with decomposing organic waste - even in a landfill where practically nothing degrades. They can also be recycled along with other plastic bags.

Environmental Impact**What about paper bags?**

When comparing plastic and paper, plastic always wins. Here are a few facts.

- Paper bags require 4-5 times more energy to produce, transport and recycle, than plastic.
- Paper bags are responsible for 70% more air pollution and 50 times more water pollution than plastic.
- Plastic bags generate 80% less solid waste than paper.
- Recycling plastic requires 91% less energy than paper.
- The manufacture of paper bags uses 40% more energy than plastic bags.

All of our most popular bag styles are available in biodegradable plastic!

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;

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 Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Plastic Manufacturing, Inc. is a Washington corporation with its principal office or place of business at 526 South Monroe Street, Seattle, Washington 98108.
2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

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

- A. “Clearly and Prominently” means as follows:
1. 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;
 2. 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

Decision and Order

3. 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.
- B. “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.
- C. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “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:
1. 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.
 2. For qualified biodegradability claims, any scientific technical protocol (or combination of protocols) substantiating such claims must both:
 - a. 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

Decision and Order

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

- b. 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.

- E. “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.
- F. “Degradable” includes biodegradable, oxo-biodegradable, oxo-degradable, or photodegradable, or any variation thereof.
- G. “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.
- H. Unless otherwise specified, “respondent” means American Plastic Manufacturing, Inc., a corporation, and its successors and assigns.

Decision and Order

I.

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

1. the entire item will completely decompose into elements found in nature within one year after customary disposal; or
2. 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.

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- 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 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

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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 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: “American Plastic Manufacturing, Inc., File No. 122 3291.”

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

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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 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop 8102-B, Washington, DC 20580. The subject line must begin: “American Plastic Manufacturing, Inc., File No. 122 3291.”

VI.

This order will terminate on April 24, 2034, 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 American Plastic Manufacturing, 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 shopping bags to the public. 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 a plastic additive manufactured by ECM Biofilms, Inc.

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 the future. Part I prohibits respondent from making any

Analysis to Aid Public Comment

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 dissemination of the order now and in the future to subsidiaries,

Analysis to Aid Public Comment

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

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4423; File No. 131 0163

Complaint, December 20, 2013 – Decision, April 29, 2014

This consent order addresses the \$1.4 billion acquisition by Service Corporation International (“SCI”) of certain assets of Stewart Enterprises, Inc. The complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial competitor from 29 funeral services markets, and 30 cemetery services markets. The consent order requires SCI and Stewart to divest 53 funeral homes in 29 local funeral services markets and 38 cemeteries in 30 local cemetery markets to acquirers who receive the approval of the Commission.

Participants

For the *Commission*: Lucas Ballet, Maggie DiMoscato, Jill M. Frumin, Jennifer Lee, Sean Pugh, Stephanie Reynolds, and Goldie Walker.

For the *Respondents*: Wayne Dale Collins and Jessica Delbaum, Shearman & Sterling LLP; and Amanda Wait, Hunton & Williams LLP; and Mark A. Cunningham, Jones Walker LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Service Corporation International (“SCI”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Stewart Enterprises, Inc. (“Stewart”), a corporation subject to the jurisdiction of the Commission, in violation of