

Complaint

IN THE MATTER OF

NICE-PAK PRODUCTS, INC.

D/B/A

NICE-PAKCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT.*Docket C-4556; File No. 132 3272**Complaint, October 13, 2015 – Decision, October 30, 2015*

The consent order addresses Nice-Pak Products, Inc. Nice-Pak Products, Inc. is a manufacturer of “flushable” moist toilet tissue made from non-elemental chlorine bleached wood pulp, bicomponent fibers and EP907 repulpable binder. It advertised the flushable moist toilet tissue as being safe for sewer and septic systems, and breaking apart shortly after flushing. The Commission’s complaint alleges that Nice-Pak did not have adequate substantiation for the claims made about their product’s effectiveness, because its substantiation did not accurately reflect the real-world conditions that their product encounters. The complaint further alleges that Nice-Pak provided retailers, such as Costco, CVS, Target, and BJ’s, that sold the Nice-Pak flushable moist toilet tissue under their private labels with the inadequate substantiation and the retailers then repeated the unsubstantiated claims. Nice-Pak has benefited a great deal from their misinterpretation while consumers have continued to suffer from backed up drains in their homes. The proposed order prohibits Nice-Pak from making claims about any moist toilet tissue unless the company has competent and reliable evidence to support them.

Participants

For the *Commission*: Laura Fremont and Sylvia Kundig.

For the *Respondent*: Trenton H. Norris, Arnold & Porter.

COMPLAINT

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

1. Respondent Nice-Pak Products, Inc. (“Nice-Pak”), also doing business as Nice-Pak, is a New York corporation with its

Complaint

principal office or place of business at Two Nice-Pak Park, Orangeburg, NY 10962-1376.

2. Respondent Nice-Pak has packaged, labeled, advertised, offered for sale, sold, or distributed moist toilet tissue, a personal hygiene product, throughout the United States. This moist toilet tissue is composed of non-woven fabric, specifically non-elemental chlorine bleached wood pulp, bicomponent fibers, and EP907 repulpable binder (the “Nice-Pak wipe”). Because of their composition, non-woven fabrics do not break down in water in a reasonably short amount of time. As a result, products made from them can clog household plumbing systems, household septic systems, public sewer systems, and sewage treatment plant systems after being flushed.

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.

Respondent’s Business Activities

4. Respondent disseminated to trade customers materials purporting to substantiate certain claims for its Nice-Pak Wipes. These materials concerned tests which did not accurately reflect real-world conditions Nice-Pak Wipes would encounter after being flushed (i.e., conditions that exist in household toilets, plumbing, or septic systems, or in public sewer systems or public wastewater treatment facilities). Moreover, alone or in concert with others, Respondent developed unsubstantiated flushability claims for use by its trade customers based on this purported substantiation. Through these means, Respondent provided trade customers with the means and instrumentalities to deceive consumers by disseminating these unsubstantiated flushability claims in marketing Respondent’s Nice-Pak Wipes under private labels, such as Costco’s Kirkland Signature Moist Flushable Wipes, CVS’s Flushable Cleansing Wipes, Target’s Up & Up Flushable Moist Wipes, and BJ’s Family & Toddler Moist Wipes.

5. Alone or in concert with others, Respondent has disseminated or has caused to be disseminated advertisements, packaging, labeling, and purported substantiation materials for its Nice-Pak Wipes, including but not necessarily limited to the

Complaint

attached Exhibit A. This material contains the following statements and depictions:

a. Exhibit A, product label:

“Kirkland Signature moist flushable wipes”

“Safe for Sewer & Septic”

“Kirkland Signature Moist Flushable Wipes are ... safe for sewer and septic systems because they begin to break down after flushing.”

The label also contains the following depiction, which includes the statement, “BREAKS APART after flushing”:



Count I

Unsubstantiated Performance Claims

6. In connection with the advertising, labeling, packaging, promotion, offering for sale, sale, or distribution of the Nice-Pak Wipes, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. The Nice-Pak Wipes are safe for sewer systems;
- b. The Nice-Pak Wipes are safe for septic systems;
- c. The Nice-Pak Wipes break apart shortly after flushing;
and

Complaint

- d. The Nice-Pak Wipes are safe to flush; that is, they are safe for household plumbing systems, household septic systems, and public sewer systems.

7. The representations set forth in Paragraph 6 were not substantiated at the time the representations were made.

Count II

Means and Instrumentalities

8. Respondent has provided to its trade customers advertising, labeling, packaging, or purported substantiation materials referred to in Paragraphs 4 and 5 which contain, among other things, unsubstantiated representations, as described in Paragraph 6, above.

9. By providing its trade customers with these advertising, labeling, packaging, or purported substantiation materials, Respondent has provided its trade customers the means and instrumentalities for the commission of deceptive acts and practices.

Violations of Section 5

10. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirtieth day of October, 2015, has issued this Complaint against Respondent.

By the Commission.

Decision and Order

Exhibit A**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 of a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

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

Decision and Order

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from 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 Nice-Pak Products, Inc. is a New York corporation with its principal office or place of business at Two Nice-Pak Park, Orangeburg, NY 10962-1376.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- B. “Covered Product” shall mean all wipes, including but not limited to Kirkland Signature Moist Flushable Wipes, and any moist toilet tissue or cloth.
- C. Unless otherwise specified, “respondent” shall mean Nice-Pak Products, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.

Decision and Order

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any Covered Product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, that the Covered Product:

- A. is safe for sewer systems;
- B. is safe for septic systems;
- C. breaks apart shortly after flushing;
- D. will not clog household plumbing systems;
- E. will not clog household septic systems;
- F. is safe for plumbing;
- G. is safe to flush;
- H. dissolves or disperses when interacting with water; or
- I. is flushable,

unless the representation is non-misleading, and, at the time the representation is made, Respondent possesses and relies upon competent and reliable evidence, which, when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that, when considered in light of the entire body of relevant and reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the relevant fields to substantiate that the representation is true. For the purposes of this Part, “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally

Decision and Order

accepted in the profession to yield accurate and reliable results. For the purposes of this Part, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. Specifically, any tests, analyses, research, studies, or other evidence purporting to substantiate any of the above representations must at least:

1. demonstrate that the Covered Product disperses in a sufficiently short amount of time after flushing to avoid clogging, or other operational problems in, household and municipal sewage lines, septic systems, and other standard wastewater equipment; and
2. substantially replicate the physical conditions of the environment in which the Covered Product is claimed, directly or indirectly, expressly or by implication, to be properly disposed of; or, if no specific environment is claimed, then in all environments in which the product will likely be disposed of.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any moist toilet tissue or cloth, in or affecting commerce, shall not make any representation, other than the representations covered by Part I of this Order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the benefits, performance, or efficacy of such product or service, unless the representation is non-misleading, and, at the time the representation is made, Respondent possesses and relies upon competent and reliable evidence, which, when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that, when considered in light of the entire body of relevant and

Decision and Order

reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the relevant fields to substantiate that the representation is true. For the purposes of this Part, “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. For the purposes of this Part, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of the Covered Product, or any other product or service in or affecting commerce, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part, “means and instrumentalities” means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of such product or service.

IV.

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

- A. All advertisements, labeling, packaging and promotional materials containing the representation;

Decision and Order

- B. All materials that were relied upon in disseminating the representation;
- 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 V.

V.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc. and its successors and assigns shall, for five (5) years after entry of this order, 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, and 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. Nice-Pak Products, Inc. and its successors and assigns shall deliver this order to such persons within thirty (30) days after the date of service of this order, and to future such persons within thirty (30) days after such person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc. and its successors and assigns shall send as soon as practicable, but in no event later than thirty (30) days after entry of this order, by first-class mail, postage prepaid and return receipt requested, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to all of its trade customers, wholesalers, and retailers for or to whom it has manufactured, labeled, packaged, advertised, promoted, offered for sale, sold, or distributed any Covered Product that was advertised, promoted,

Decision and Order

offered for sale, sold, or distributed, with any of the representations, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, enumerated in Part I A through I of this Order. The notice required by this paragraph shall include a copy of this order, but shall not include any other document or enclosures and shall be sent to the principal place of business of each entity.

VII.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which Nice-Pak Products, Inc. and its successors and assigns learn less than thirty (30) days prior to the date such action is to take place, it 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, Washington, DC 20580. The subject line must begin: “In the Matter of Nice-Pak Products, Inc., Docket No. C-4556, FTC File Number 132 3272.”

VIII.

IT IS FURTHER ORDERED that Nice-Pak Products, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the

Decision and Order

manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they 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 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "In the Matter of Nice-Pak Products, Inc., Docket No. C-4556, File No. 132 3272."

IX.

This order will terminate on October 30, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

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

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.

Decision and Order

ATTACHMENT A**[ON NICE-PAK PRODUCTS, INC. LETTERHEAD]**

[insert addressee name] [insert addressee address]

Dear [name of retailer]:

You have purchased Nice-Pak Products, Inc. (“Nice-Pak”) moist wipes for resale under your private label. In a recent enforcement action, the Federal Trade Commission (FTC) alleged that Nice-Pak made misleading representations in its advertising and marketing of “flushable” moist wipes made of non-elemental chlorine bleached wood pulp, bicomponent fibers, and EP907 repulpable binder. Among other things, the FTC alleged that Nice-Pak lacked adequate substantiation for the claim that this product is safe for household plumbing, household septic systems, and public sewer systems.

Nice-Pak resolved this matter with the FTC by a settlement and has agreed to send this notification to you.

Nice-Pak requests that you immediately stop using all packaging, advertising, and marketing materials previously provided to you by Nice-Pak about these wipes. Also, please ensure such claims are removed from your website and do not appear in any other advertising or marketing.

For further information about this matter, go to www.ftc.gov and search for “Nice-Pak.”

Very truly yours,

Robert P. Julius, CEO

Nice-Pak Products, Inc.

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 consent order from Nice-Pak Products, Inc. (“Nice-Pak”).

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 and take appropriate action or make final the agreement’s proposed order.

Nice-Pak is a manufacturer of “flushable” moist toilet tissue made from non-elemental chlorine bleached wood pulp, bicomponent fibers and EP907 repulpable binder. It advertised the flushable moist toilet tissue as being safe for sewer and septic systems, and breaking apart shortly after flushing. The Commission’s complaint, however, alleges that Nice-Pak did not have adequate substantiation for the claims, because its substantiation did not accurately reflect the real-world conditions that the moist toilet tissue encounters after flushing. In addition, the complaint alleges that Nice-Pak provided retailers, such as Costco, CVS, Target, and BJ’s, that sold the Nice-Pak flushable moist toilet tissue under their private labels with the inadequate substantiation and the retailers then repeated the unsubstantiated claims.

The proposed consent order contains provisions designed to prevent Nice-Pak from engaging in similar acts or practices in the future.

Part I of the order prohibits Nice-Pak from misrepresenting that any wipe is safe to flush unless Nice-Pak’s substantiation demonstrates that the wipe will disperse in a sufficiently short amount of time after flushing to avoid clogging or other operational problems in household and municipal sewage lines, septic systems and other standard wastewater equipment, and that those tests substantially replicate the physical conditions of the environment the wipe will be disposed in.

Analysis to Aid Public Comment

Part II of the proposed order prohibits Nice-Pak from making any representation about moist toilet tissue unless the representation is non-misleading, and, at the time it is made, Nice-Pak possesses and relies upon competent and reliable evidence that substantiates the representation.

Part III of the proposed order prohibits Nice-Pak from providing the means and instrumentalities to others to make the representations that Nice-Pak would be prohibited from making by Parts I and II of the proposed order.

Part IV of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts V, VII and VIII of the proposed order require Nice-Pak to: deliver a copy of the order to certain personnel having managerial responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part VI of the proposed order requires Nice-Pak to provide notice of the order to its private label customers.

Part IX of the proposed order provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**STERIS CORPORATION
AND
SYNERGY HEALTH PLC**

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

Docket No. 9365; File No. 151 0032

Complaint, May 28, 2015 – Decision, October 30, 2015

This case addresses the \$1.9 billion acquisition by STERIS Corporation of certain assets of Synergy Health plc. The complaint alleges that the acquisition, if consummated, will violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for contract radiation sterilization services in North America. The Order dismisses the Complaint.

Participants

For the *Commission*: Jordan Andrew, Michael Barnett, Peter Colwell, Meghan Iorianni, Lynda Lao, Steven Lavender, Jacqueline Mendel, Joseph Neeiy, Chrsiine Perez, Noah Pinegar, Amy Posner, Jonaihan Ripa, Mark Silvia, and Christine Tasso.

For the *Respondents*: Damian Didden and Nelson Fitts, Wachtell, Lipton, Rosen & Katz; Ryan Thomas, Jones Day; Steven Levitsky and Paolo Morante, DLA Piper LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (the “Commission”), having reason to believe that Respondents Steris Corporation (“Steris”) and Synergy Health plc (“Synergy”) (collectively “Respondents”) have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section