

Complaint

IN THE MATTER OF

BEYOND COASTAL

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4585; File No. 162 3001

Complaint, July 6, 2016 – Decision, July 6, 2016

This consent order addresses Beyond Coastal's advertising for its sunscreen product. The complaint alleges that the respondent violated Sections 5(a) and 12 of the Federal Trade Commission Act by representing that its sunscreen product is "all natural" even though the sunscreen product is not "all natural" because it contains the synthetic ingredients Dimethicone and Caprylyl Glycol. The consent order prohibits any representation regarding whether any product is all natural or 100% natural; the extent to which such product contains any natural or synthetic ingredient or component; the ingredients or composition of such product; or the environmental or health benefits of such product, unless the representation is non-misleading.

Participants

For the *Commission*: Robert M. Frisby, Gregory Madden, and John Andrew Singer.

For the *Respondent*: Sterling McMurrin, President, pro se.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beyond Coastal, a limited liability company, 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 Beyond Coastal is a Utah limited liability company with its principal office or place of business at 2424 South 2570 West, Salt Lake City, Utah 84119.
2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to consumers, including Natural Sunscreen SPF 30. This sunscreen product is a "drug" within the

Complaint

meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

4. Respondent advertises Natural Sunscreen SPF 30 on the Internet. This product retails for \$6.99.

5. Respondent has disseminated or has caused to be disseminated advertisements for Natural Sunscreen SPF 30, including but not necessarily limited to the attached Exhibit A.

- a. Beyond Coastal’s “Natural Sunscreen SPF 30” webpage states the product is a:

100% natural sunscreen

Exhibit A, Internet webpage www.beyondcoastal.com/category/natural-formulas/natural-sunscreen-spf-30 (September 2015).

Count I
False Claim

6. In connection with the advertising, labeling, promotion, offering for sale, or sale of Natural Sunscreen SPF 30, Respondent has represented, directly or indirectly, expressly or by implication, that the product is a “100% natural” sunscreen.

7. In fact, Sunscreen SPF 30 is not “100% natural” because it contains or contained the synthetic ingredients Dimethicone and Caprylyl Glycol. Therefore, the “100% natural” representation set forth in Paragraph 6 is false or misleading.

Violations of Sections 5(a) and 12

8. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in

Complaint

violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of July, 2016, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

[illegible]

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 Beyond Coastal is a limited liability company with its principal office or place of business at 2424 South 2570 West, Salt Lake City, Utah 84119.
2. The Commission has jurisdiction over the subject matter of this proceeding and over 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. Unless otherwise specified, “respondent” shall mean Beyond Coastal, a limited liability company, its successors and assigns, and its officers, members, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product must not make any representation, expressly or by implication, including through the use of a product name, trademark, or trade name, about:

- A. whether such product is all natural or 100% natural;
- B. the extent to which such product contains any natural or synthetic ingredient or component;
- C. the ingredients or composition of such product; or
- D. the environmental or health benefits of such product,

unless the representation is non-misleading, including that, at the time such representation is made, the 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 is sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the

Decision and Order

entire body of relevant and reliable evidence, to substantiate that the representation is true. For the purposes of this Provision:

1. “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; and
2. “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.

II.

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

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

Decision and Order

III.

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

IV.

IT IS FURTHER ORDERED that respondent Beyond Coastal, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor 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 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, Washington, DC 20580. The subject line must begin: In re Beyond Coastal, Docket No. C-4585.

Decision and Order

V.

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

VI.

This order shall terminate on July 6, 2036, 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.

Analysis to Aid Public Comment

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

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order as to Beyond Coastal (hereafter “respondent”).

The proposed consent order (“order”) has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent’s advertising for its sunscreen product. The Commission’s complaint alleges that the respondent violated Sections 5(a) and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 52, by falsely representing that its sunscreen product is “all natural.” It also alleges that the sunscreen product is not “all natural” because it contains the synthetic ingredients Dimethicone and Caprylyl Glycol.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. It also includes provisions to assist the Commission in monitoring and enforcing compliance with the order.

Part I prohibits any representation regarding whether any product is all natural or 100% natural; the extent to which such product contains any natural or synthetic ingredient or component; the ingredients or composition of such product; or the environmental or health benefits of such product, unless the representation is non-misleading. The respondent must have competent and reliable evidence, sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. When appropriate, based on the expertise of professionals in the relevant area, the substantiation must be competent and reliable scientific evidence. “Competent and reliable evidence” means tests,

Analysis to Aid Public Comment

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. “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.

Parts II through V require the respondent to: (1) keep records of advertisements and substantiation relevant to representations covered by Part I; (2) deliver a copy of the order to principals, officers, directors, and managers, and to employees, agents, and representatives having responsibilities with respect to the subject matter of the order; (3) notify the Commission of changes in corporate structure that might affect compliance obligations; and (4) file compliance reports with the Commission.

Part VI provides that, with exceptions, the order will terminate in twenty years.

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

Complaint

IN THE MATTER OF

**CABELL HUNTINGTON HOSPITAL, INC.;
PALLOTTINE HEALTH SERVICES, INC.;
AND
ST. MARY’S MEDICAL CENTER, INC.**COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9366; File No. 141 0218
Complaint, November 5, 2015 – Decision, July 6, 2016*

This case addresses the acquisition by Cabell Huntington Hospital, Inc. of St. Mary’s Medical Center, Inc. The complaint alleges that the transaction violates Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the markets for general acute care inpatient hospital services and outpatient surgical services in Huntington, West Virginia. The order dismisses the Complaint because the West Virginia Health Care Authority issued its written decision approving the Cooperative Agreement.

Participants

For the *Commission*: Elizabeth Arens, Jeanine Balbach, Lucas Ballet, Stephanie R. Cummings, Melissa Davenport, , Svetlana Gans, Elisa Kantor, Michael Perry, Marc Schneider, Sam Sheinberg, and Michelle Yost Hale.

For the *Respondents*: Ken Field, Jones Day and Jeff Brennan, McDermott Will & Emery LLP; David Simon, and H. Holden Brooks, Foley & Lardner LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Cabell Huntington Hospital, Inc. (“Cabell”), Pallottine Health Services, Inc. (“PHS”), and St. Mary’s Medical Center, Inc. (“St. Mary’s”), having executed an agreement pursuant to which Cabell will become the sole