

Complaint

IN THE MATTER OF

**RESIDENT HOME LLC,
AND
RAN RESKE**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket No. C-4647; File No. 202 3179
Complaint, June 21, 2022 – Decision, June 21, 2022*

This consent order addresses Resident Home LLC’s advertising of DreamCloud mattresses as of U.S. origin. The complaint alleges that, although Respondents represented that DreamCloud mattresses were “proudly made with 100% USA-made premium quality materials,” in numerous instances, DreamCloud mattresses are wholly imported or incorporate significant imported materials and, in all instances, DreamCloud mattresses are finished overseas. The consent order prohibits Respondents from making U.S.-origin claims for their products unless either: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product’s principal assembly takes place in the United States, and United States assembly operations are substantial. The order also imposes a judgment of \$753,300.

Participants

For the *Commission*: Julia Solomon Ensor.

For the *Respondents*: Tyler Newby, Fenwick & West LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Resident Home LLC, a limited liability company also d/b/a Nectar Sleep, DreamCloud Sleep, Awara Sleep, Level Sleep, Bundle Living, 1771 Living, Cloverlane, Wovenly Rugs, Sleep Authority, and Home Well Designed; and Ran Reske, individually and as an officer of Resident Home LLC, (collectively, “Respondents”) have 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 Resident Home LLC (“Resident”) is a Delaware limited liability company with its principal office or principal place of business at 340 South Lemon Avenue #9599, Walnut, CA 91789.

2. Resident advertises, labels, offers for sale, and distributes home products to consumers, including, but not limited to, bed-in-a-box-type mattresses sold under a variety of brand names including Nectar Sleep, DreamCloud Sleep, Awara Sleep, Level Sleep, and others. Although Resident maintains storefronts for Nectar Sleep and other brands, Resident primarily

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advertises products on its network of websites, including: www.nectar.sleep.com; www.dreamcloudsleep.com; www.awarasleep.com; www.levelsleep.com; www.bundleliving.com; www.1771living.com; www.cloverlane.com; www.wovenlyrugs.com; www.sleepauthority.com; www.homewell-designed.com; and www.residenthome.com.

3. Resident offers for sale, sells, and distributes its products directly to the public throughout the United States.

4. Respondent Ran Reske (“Reske”) is a Chief Executive Officer of Resident. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Resident, including the acts and practices alleged in this complaint. Since at least 2019, he has communicated with the Federal Trade Commission on Resident’s behalf regarding the acts and practices alleged in this Complaint. In August 2019, he personally signed the Report described *infra* ¶¶13-17, in which he expressly assumed liability for Nectar Brand LLC’s compliance with the 2018 Order described *infra* ¶¶ 7-12. His principal office or place of business is the same as that of Resident.

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

2018 Action and Order

6. On August 28, 2018, the Federal Trade Commission (“FTC”) issued a complaint against Resident subsidiary Nectar Brand LLC, also d/b/a Nectar Sleep, DreamCloud, LLC, and DreamCloud Brand, LLC. The complaint, attached as **Exhibit A**, alleged that, in numerous instances, Nectar Brand LLC falsely advertised its mattresses as “assembled in the United States.” These claims were false, the complaint alleged, because Nectar Brand LLC wholly imported mattresses from China, and performed no assembly operations in the United States. See Exh. A, ¶¶ 5-8.

7. Also on August 28, following a 30-day public comment period on the underlying consent agreement, the Commission entered the final Decision and Order attached as **Exhibit B** (the “Nectar Order”), resolving all matters then in dispute between the 2018 Respondent and the FTC.

8. The Nectar Order, which bound Nectar Sleep LLC and its successors and assigns (the “2018 Respondent”), includes the following provisions:

9. Section I of the Nectar Order enjoins the 2018 Respondent from representing, expressly or by implication, that a product or service is of U.S. origin unless: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States,

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the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

10. Section II of the Nectar Order enjoins the 2018 Respondent from making any representation, expressly or by implication, regarding the country of origin of any product or service unless the representation is true, not misleading, and at the time it is made, 2018 Respondent possesses and relies upon a reasonable basis for the representation.

11. Section III.A. of the Nectar Order requires the 2018 Respondent to submit a compliance report one year after entry of the Order.

12. Section V.A. of the Nectar Order requires the 2018 Respondent to submit additional compliance reports or other information requested by a representative of the Commission within 10 days of receipt of a written request.

2019 Compliance Report

13. On August 28, 2019, the 2018 Respondent submitted the required one-year compliance report (the "2019 Report").

14. The 2019 Report explains that since entry of the Nectar Order, the 2018 Respondent underwent several changes to its corporate structure: "DreamCloud, LLC formally changed its name to Nectar Brand LLC on June 19, 2018. Nectar Brand LLC and DreamCloud Brand LLC's sole member, DreamCloud Holdings LLC, formally changed its name . . . to Resident Home LLC on Monday, August 19, 2019. Resident Home LLC is the sole member of Nectar Brand LLC and DreamCloud Brand LLC . . . [and] also sells home furnishings under different brand names." 2019 Report, p.2.

15. In addition, the 2019 Report describes the 2018 Respondent's efforts to comply with each provision of the Nectar Order.

16. The 2019 Report asserts: "DreamCloud has never made US [sic] origin claims about its mattresses and does not make claims that any of the products on its site are made or assembled in the United States." *Id.* at p. 5.

17. The 2019 Report further states: "Nectar and DreamCloud have not created advertisements, marketing materials[,] or representations that their products are of a U.S. origin." *Id.* at 8.

18. Reske signed the 2019 Report in his capacity as Member of DreamCloud Holdings, LLC, Nectar Brand LLC's and DreamCloud Brand LLC's sole member, affirming under penalty of perjury that the 2019 Report was "true and correct." *Id.* at 9.

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U.S.-Origin Claims for DreamCloud Mattresses

19. Despite Reske's statements described in Paragraphs 16 and 17, over at least two periods after entry of the Nectar Order, Resident actively advertised DreamCloud mattresses as "proudly made with 100% USA-made premium quality materials" in materials comparing DreamCloud mattresses with Tempur-Pedic mattresses. See attached **Exhibit C**.

20. Between December 9, 2018 and June 26, 2020, the "proudly made with 100% USA-made premium quality materials" claim was viewable by any consumer that directly accessed <https://www.dreamcloudsleep.com/p/compare/tempurpedic/>.

21. Between December 9, 2018 and January 29, 2019, the hyperlink to this content was live on DreamCloud's homepage. On January 29, 2019, Resident removed the hyperlink from the homepage, making the page viewable only to consumers that possessed and directly accessed the URL.

22. On May 6, 2020, Resident reinstated the hyperlink to the "proudly made with 100% USA-made premium quality materials" claim on the DreamCloud homepage. This hyperlink remained live until Commission staff requested a Compliance Report pursuant to Section V.A. of the Nectar Order, demanding Resident's substantiation for the claim. Resident permanently removed the "proudly made with 100% USA-made premium quality materials" claim on June 26, 2020, after receiving our request.

23. On July 6, 2020, Resident confirmed that some DreamCloud mattresses are wholly imported. Other DreamCloud mattresses may contain some U.S. content, but undergo substantial transformation and finishing overseas.

24. Therefore, Resident's claim that DreamCloud mattresses are "proudly made with 100% USA-made premium quality materials" is false.

25. Despite knowing or consciously avoiding knowing that Resident made "proudly made with 100% USA-made premium quality materials" claims for wholly or partially imported DreamCloud mattresses, Reske nonetheless affirmed under penalty of perjury that DreamCloud "has never made US [sic] origin claims about its mattresses and does not make claims that any of the products on its site are made or assembled in the United States . . . [and has] not created advertisements, marketing materials[,] or representations that [its] products are of a U.S. origin."

26. Therefore, this action is in the public interest.

COUNT I**False or Misleading Representation**

27. In connection with the advertising, promotion, offering for sale, or sale of DreamCloud mattresses, Respondents have represented, directly or indirectly, expressly or by

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implication, that such mattresses are “proudly made with 100% USA-made premium quality materials.”

28. In fact, in numerous instances, Respondents’ DreamCloud mattresses are wholly imported or incorporate significant imported materials. In all instances, DreamCloud mattresses are finished overseas. Therefore, the representation set forth in Paragraph 27 is false or misleading.

VIOLATION OF SECTION 5

29. The acts and practices of Respondents 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 21st day of June, 2022, has issued this Complaint against Respondents.

By the Commission, Commissioners Phillips and Wilson dissenting.

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Exhibit A

1823038

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Joseph J. Simons, Chairman
Maureen K. Ohlhausen
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter

In the Matter of

**NECTAR BRAND LLC, a limited liability
company, also d/b/a NECTAR SLEEP;
DREAMCLOUD, LLC; and
DREAMCLOUD BRAND LLC.**

DOCKET NO. C-4656

COMPLAINT

The Federal Trade Commission, having reason to believe that Nectar Brand LLC, a limited liability company, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC ("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 Nectar Brand LLC, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC ("Respondent") is a California limited liability company with its principal office or place of business at 2000 University Drive, Palo Alto, California 94303.
2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to consumers, including but not limited to mattresses. Respondent advertises these products online, including, but not limited to, on its website, nectarsleep.com.
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or caused to be disseminated advertisements, packaging, and promotional materials for its products, including but not necessarily limited to the attached Exhibit A. This exhibit contains the following statement: "Designed and Assembled in the USA."

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5. In numerous instances, including, but not limited to, the promotional materials shown in Exhibit A, Respondent has represented, expressly or by implication, that its mattresses are assembled in the United States.

6. In fact, Respondent's mattresses are wholly imported from China, and Respondent performs no assembly operations in the United States.

7. Therefore, Respondent's express or implied representations that its mattresses are assembled in the United States are false.

COUNT I
(False or Unsubstantiated Representation – Assembled in USA)

8. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of its products, Respondent has represented, directly or indirectly, expressly or by implication, that its products, including, but not limited to, mattresses, are assembled in the United States.

9. In fact, certain of Respondent's products are wholly imported. Therefore, the representation set forth in Paragraph 8 is false or misleading, or was not substantiated at the time the representation was made.

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.

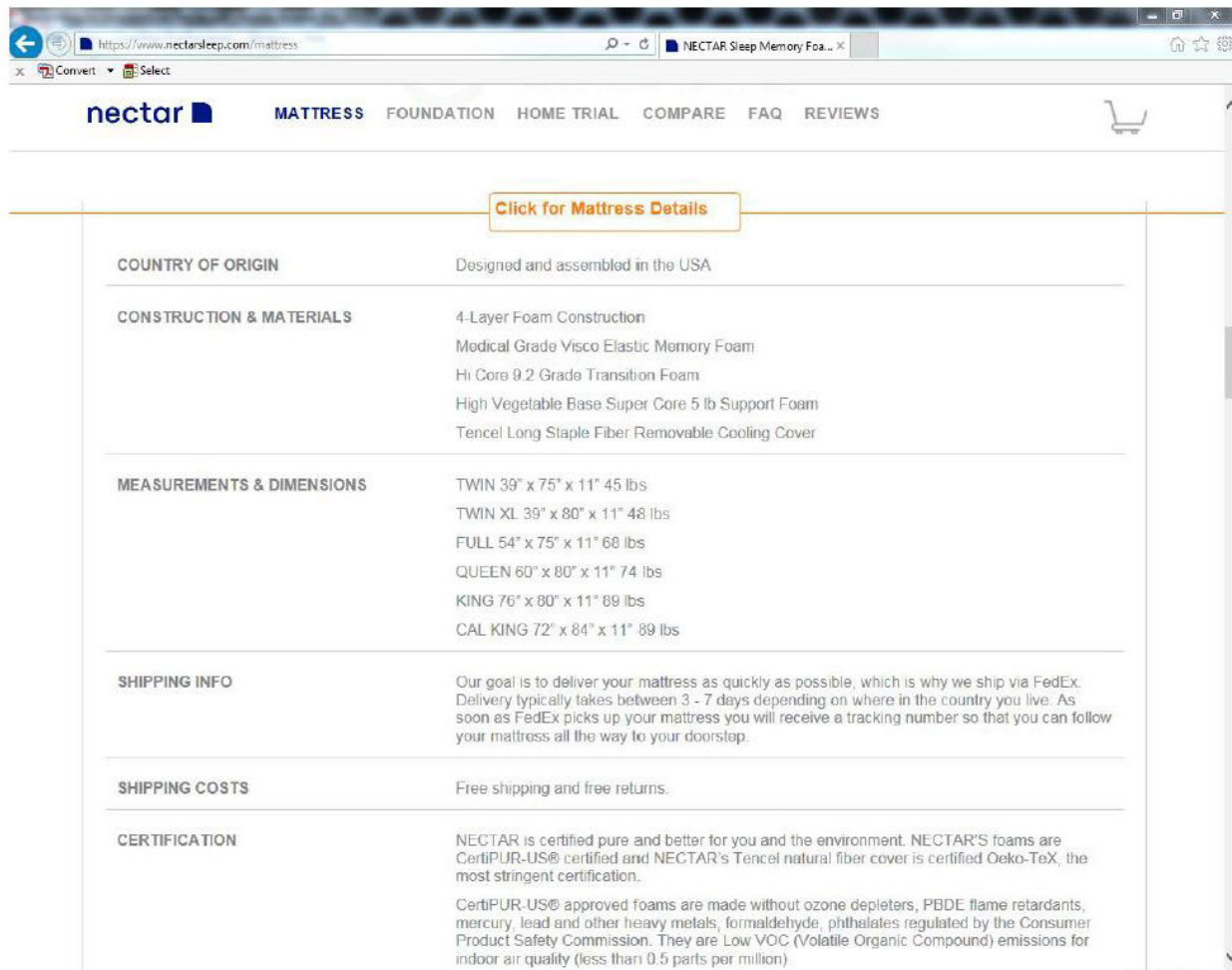
THEREFORE, the Federal Trade Commission this twenty-eighth day of August, 2018, has issued this Complaint against Respondent.

By the Commission, Commissioner Chopra dissenting.

Donald S. Clark
Secretary

SEAL:

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The screenshot shows a web browser window with the URL <https://www.nectarsleep.com/mattress>. The page features a navigation bar with links: MATTRESS, FOUNDATION, HOME TRIAL, COMPARE, FAQ, and REVIEWS. A shopping cart icon is visible in the top right. Below the navigation bar, there is a section titled "Click for Mattress Details" in an orange box. This section contains a table with the following information:

COUNTRY OF ORIGIN	Designed and assembled in the USA
CONSTRUCTION & MATERIALS	4-Layer Foam Construction Medical Grade Visco Elastic Memory Foam Hi Core 9.2 Grade Transition Foam High Vegetable Base Super Core 5 lb Support Foam Tencel Long Staple Fiber Removable Cooling Cover
MEASUREMENTS & DIMENSIONS	TWIN 39" x 75" x 11" 45 lbs TWIN XL 39" x 80" x 11" 48 lbs FULL 54" x 75" x 11" 68 lbs QUEEN 60" x 80" x 11" 74 lbs KING 76" x 80" x 11" 89 lbs CAL KING 72" x 84" x 11" 89 lbs
SHIPPING INFO	Our goal is to deliver your mattress as quickly as possible, which is why we ship via FedEx. Delivery typically takes between 3 - 7 days depending on where in the country you live. As soon as FedEx picks up your mattress you will receive a tracking number so that you can follow your mattress all the way to your doorstep.
SHIPPING COSTS	Free shipping and free returns.
CERTIFICATION	NECTAR is certified pure and better for you and the environment. NECTAR'S foams are CertiPUR-US® certified and NECTAR's Tencel natural fiber cover is certified Oeko-Tex, the most stringent certification. CertiPUR-US® approved foams are made without ozone depleters, PBDE flame retardants, mercury, lead and other heavy metals, formaldehyde, phthalates regulated by the Consumer Product Safety Commission. They are Low VOC (Volatile Organic Compound) emissions for indoor air quality (less than 0.5 parts per million).

Exhibit A
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Exhibit B

1823038

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Joseph J. Simons, Chairman
Maureen K. Ohlhausen
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter

In the Matter of

**NECTAR BRAND LLC, a limited liability
company, also d/b/a NECTAR SLEEP;
DREAMCLOUD, LLC; and
DREAMCLOUD BRAND LLC.**

DECISION AND ORDER**DOCKET NO. C-4656****DECISION**

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any 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 issues its Complaint, makes the following Findings, and issues the following Order:

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Findings

1. The Respondent is Nectar Brand LLC, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC, a California limited liability company, with its principal office or place of business at 2000 University Dr., Palo Alto, CA 94303.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. "Clear(ly) and conspicuous(ly)" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. On a product label, the disclosure must be presented on the principal display panel.
 6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

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8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.
- B. "Made in the United States" means any representation, express or implied, that a product or service, or a component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is "made," "manufactured," "built," or "produced" in the United States, or any other U.S.-origin claim.
- C. "Respondent" means Nectar Brand LLC, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand, LLC, and its successors and assigns.

Provisions

I.

PROHIBITED MISREPRESENTATIONS REGARDING U.S. ORIGIN CLAIMS

IT IS ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any mattress, mattress foundation, or any other product or service, must not make any representation, expressly or by implication, that a product or service is Made in the United States unless:

- A. The final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; or
- B. A Clear and Conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or
- C. For a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

II.

SUBSTANTIATION

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection

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with promoting or offering for sale any product or service, shall not make any representation, in any manner, expressly or by implication, regarding the country of origin of any product or service unless the representation is true, not misleading, and at the time it is made, Respondent possesses and relies upon a reasonable basis for the representation.

**III.
COMPLIANCE REPORTS AND NOTICES**

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; and (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of any Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: ____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must 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 Nectar Brand LLC.

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**IV.
RECORDKEEPING**

IT IS FURTHER ORDERED that Respondent must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- F. For 5 years from the date of the last dissemination of any representation covered by this Order:
 - 1. All materials that were relied upon in making the representation; and
 - 2. All evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls 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.

**V.
COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

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- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VI.

ORDER EFFECTIVE DATES

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on August 28, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years; and
- B. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

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 Provision 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, Commissioner Chopra dissenting.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 28, 2018

Complaint

Exhibit C

[\\$200 OFF ANY MATTRESS + 2 X FREE PILLOWS + 1 X FREE PROTECTOR](#)
[Terms & Conditions Apply](#)

[Get Offer](#)

[DREAMCLOUD](#)
[MATTRESS](#)
[BASES](#)
[BEDDING](#)
[BUNDLES](#)
[COMPARE](#)
[HOME TRIAL](#)
[FAQ](#)
[REVIEWS](#)
[STORES](#)

Dreamcloud vs. TEMPUR-pedic Mattress Reviews

[VIEW MATTRESS](#)

OVERVIEW

When you lay down on a DreamCloud mattress, you're falling into a peaceful den of bliss, that can only really be compared to what it must feel like to sleep on a cloud. 6 inch, carefully crafted layers of memory foam and foam encased coils combine to create a haven that cradles your body into better sleep. Reviewers love DreamCloud's coziness as well as the practical benefits that come part in parcel in the purchase of this bed including: a 365 night trial period, an Everlong Warranty, free shipping and returns, as well as unmatched customer support available 7 days a week. It's almost unfair to compare DreamCloud with other mattresses on the market, but it's important to know what else is available for purchase to give you a better idea of the immense value you receive with the DreamCloud. Below is a compilation of the differences between DreamCloud and TEMPUR-pedic mattresses.

Disclosure: We pay a commission to the review sites listed below when visitors click on a DreamCloud affiliate link on their site and make a purchase.



CONSTRUCTION/MATERIALS

Premium quality materials and conscientious construction set DreamCloud apart from other mattresses in the industry. With 8 unique layers of super soft, super durable memory foam and foam-encased coils, DreamCloud aims to bring you the most relaxing sleep you can possibly imagine, on the best possible material. DreamCloud is proudly made with 100% USA-made premium quality materials and our foam is also CertiPUR-US® certified, meaning that it meets the rigorous CertiPUR-US® standards for emissions, content, performance, and durability. Tempurpedic products, on the other hand, are not CertiPUR-US® certified. Something to keep in mind when considering your purchase.

Popular review site, tuck.com, says that "from the tufted cashmere cover that gives good airflow, to the gel memory foam in the uppermost comfort layer, the DreamCloud is designed to promote a cooler night's sleep. Resting below are a mix of memory foam and latex layers, meaning this bed includes better quality comfort materials than most other hybrids." On the other hand, the TEMPUR-pedic beds really range in variety of thickness, firmness, memory foam/hybrid construction, but the quality is pretty consistent across the board. Reviewer tuck.com explains that even though "the quality of components used in the line of mattresses are high, they are priced above the industry average for the memory foam category." For high quality at a low price, DreamCloud can't be beat.

Price / Affordability

The above average prices of the TEMPUR-pedic mattresses aren't just slightly above average, they tend to go well above (sometimes \$1,000+) above other similar mattresses in the industry. Though the type of TEMPUR-pedic mattress may vary in size, thickness, coolness, and type (hybrid or straight memory foam), the lowest priced Queen-sized mattress starts at \$1,999 and goes all the way up to a staggering \$7,499. At DreamCloud, we believe that it's unnecessary to pay astronomical prices for a better night of sleep. Save yourself hundreds, if not thousands, of dollars with DreamCloud. Our Queen-sized luxury hybrid mattress costs only \$999, less than even the least expensive TEMPUR-pedic mattress. Choosing DreamCloud instead just makes sense.



Exhibit C

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. Respondent Resident Home LLC, a Delaware limited liability company with its principal office or principal place of business at 340 South Lemon Avenue #9599; Walnut, CA 91789.
 - b. Respondent Ran Reske, an officer of the Proposed Corporate Respondent, Resident Home LLC. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Resident Home LLC. His principal office or place of business is the same as that of Resident Home LLC.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

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ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“triggering representation”) is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. On a product label, the disclosure must be presented on the principal display panel.
 6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

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9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. **“Made in the United States”** means any representation, express or implied, that a product or service, or a specified component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is “made,” “manufactured,” “built,” “produced,” or “crafted” in the United States or in America, or any other U.S.-origin claim.
- C. **“Respondents”** means the Corporate Respondent and the Individual Respondent, individually, collectively, or in any combination.
 1. “Corporate Respondent” means Resident Home LLC, its successors and assigns, and any joint ventures, subsidiaries, divisions, groups, and affiliates it controls, directly or indirectly.
 2. “Individual Respondent” means Ran Reske.

Provisions**I.****Prohibited Misrepresentations Regarding U.S.-Origin Claims**

IT IS ORDERED that Respondents, and Respondents’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any mattress, or any other product or service, must not make any representation, expressly or by implication, that a product is Made in the United States unless:

- A. The final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; or
- B. A Clear and Conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or
- C. For a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product’s principal assembly takes place in the United States, and United States assembly operations are substantial.

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II.**Prohibited Misleading and Unsubstantiated Country-of-Origin Representations**

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any mattress, or any other product or service, must not make any representation, expressly or by implication, regarding the country of origin of any product or service unless the representation is non-misleading, including that, at the time such representation is made, Respondents possess and rely upon a reasonable basis for the representation.

III.**Monetary Relief**

IT IS FURTHER ORDERED that:

- A. Respondents must pay to the Commission \$753,300, which Respondents stipulate their undersigned counsel holds in escrow for no purpose other than payment to the Commission.
- B. Such payment must be made within 8 days of the effective date of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

IV.**Additional Monetary Provisions**

IT IS FURTHER ORDERED that:

- A. Respondents relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

Decision and Order

- D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondents' practices alleged in the Complaint. Any money not used is to be deposited to the U.S. Treasury. Respondents have no right to challenge any activities pursuant to this Provision.
- E. In the event of default on any obligation to make payment under this Order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for 10 days beyond the date that payment is due, the entire amount will immediately become due and payable.
- F. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.
- G. Respondents acknowledge that their Taxpayer Identification Numbers (Social Security or Employer Identification Numbers) may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

V.

Customer Information

IT IS FURTHER ORDERED that Respondents must directly or indirectly provide sufficient customer information, including sufficient identification of all resellers, to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Respondents must provide it, in the form prescribed by the Commission representative, within 14 days.

VI.

Notice to Customers

IT IS FURTHER ORDERED that Respondents must notify customers as follows:

- A. Respondents must identify all consumers who purchased DreamCloud mattresses through the www.dreamcloudsleep.com website between: (1) December 9, 2018 and January 29, 2019; or (2) May 6, 2020 and June 26, 2020 (collectively, "Affected Customers").

Decision and Order

1. Such Affected Customers, and their contact information, must be identified to the extent such information is in Respondents' possession, custody, or control;
 2. Affected Customers include those identified at any time, including after Respondents' execution of the Agreement through the eligibility period, which runs for 1 year after the issuance date of the Order.
- B. Respondents must notify all identified Affected Customers by mailing or emailing each a notice in the form shown in Attachment A. The communication containing the notification letter may contain a copy of this Order, but no other document or enclosure.
- C. Respondents must notify all Affected Customers within 30 days after the issuance date of this Order and any Affected Customers identified thereafter within 30 days of their identification.
- D. Respondents must report on their notification program under penalty of perjury:
1. Respondents must submit a report within 60 days of entry of this Order and at the conclusion of the program summarizing its compliance to date.
 2. If a representative of the Commission requests any information regarding the program, including any of the underlying customer data, Respondents must submit it within 10 days of the request.
 3. Failure to provide required notices or any requested information will be treated as a continuing failure to obey this Order.

VII.**Acknowledgments of the Order**

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. Individual Respondent, for any business that such Respondent, individually or collectively with Corporate Respondent, is the majority owner or controls directly or indirectly, and Corporate Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct

Decision and Order

related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.**Compliance Reports and Notices**

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
 - 1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
 - 2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services, whether as an employee or otherwise, and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

Decision and Order

- B. Each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services, whether as an employee or otherwise, and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must 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 Resident Home LLC, 2023179.

IX.**Recordkeeping**

IT IS FURTHER ORDERED that Respondents must create certain records and retain each such record for 5 years. Specifically, Corporate Respondent and Individual Respondent, for any business that such Respondent, individually or collectively with Corporate Respondent, is a majority owner or controls directly or indirectly, must create and retain the following records:

Decision and Order

- A. Accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all customer complaints and refund requests concerning the subject matter of this Order, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. A copy of each unique advertisement, label, or other marketing material making a representation subject to this Order; and
- F. For 5 years from the date of the last dissemination of any representation covered by this Order, all materials that were relied upon in making the representation.

X.

Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

Decision and Order

- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Respondent, pursuant to Section 604(2) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(2).

XI.**Order Effective Dates**

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 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 Provision.

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 Provision 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, Commissioners Phillips and Wilson dissenting.

Decision and Order

ATTACHMENT A: NOTICE TO CUSTOMERS

The notification email or letter must be in the following form, from an authorized Resident Home LLC address or email address, appearing on Resident Home LLC's letterhead if in letter form, and containing a Resident Home LLC signature line with the sender's full contact information:

Subject: Settlement of FTC deceptive advertising case

Dear <Name of customer>:

Our records show that you bought a mattress from www.dreamcloudsleep.com between either (1) December 9, 2018 and January 29, 2019, or (2) May 6, 2020 and June 26, 2020. During those times, our website linked to a previously-deleted webpage comparing the DreamCloud mattress to a competitor's mattress. That page described the DreamCloud mattress as "proudly made with 100% USA-made premium quality materials." We're writing to tell you that the Federal Trade Commission, the nation's consumer protection agency, has sued us for deceptive or false advertising concerning that statement. According to the FTC, our claim that DreamCloud mattresses were "proudly made with 100% USA-made premium quality materials" was misleading.

To settle the FTC's lawsuit, we agreed to contact our customers who bought a DreamCloud mattress during that time to tell them that our DreamCloud mattresses actually contain significant imported materials and, in many cases, are wholly imported.

If you have questions about this lawsuit, visit [\[get short URL\]](#). For more information about "Made in USA" advertising, visit [\[get short URL\]](#).

Sincerely,

[signature]

[Resident LLC signature block]

Statement of the Commission

STATEMENT OF THE COMMISSION

October 8, 2021

The parties named in this matter are no strangers to the Commission. In 2018, the FTC finalized a settlement with Nectar Brand LLC (also doing business as DreamCloud, LLC, and DreamCloud Brand LLC) (“Nectar”) related to false “Assembled in USA” claims about the company’s wholly imported mattresses. Shortly after that settlement, CEO Ran Reske and Nectar’s other officers reorganized the company and its subsidiaries under a new ultimate parent entity, Resident Home LLC (“Resident”).

Despite the reorganization and being under active compliance monitoring as part of the 2018 Nectar order, old habits die hard. Misleading made in USA (“MUSA”) claims continued to appear on the website of DreamCloud Brand LLC in 2019 and 2020, contrary to Reske’s statements made under penalty of perjury as part of required compliance reports.

Today’s action sends an unambiguous message about the importance of complying with prior Commission orders. In addition to injunctive provisions, the proposed settlement contains monetary relief of \$753,300 and requires Resident to notify consumers of the FTC’s action. Together with the Commission’s recent MUSA rule¹, these remedies signal to businesses that MUSA abuses—which harm both consumers and honest competitors—will not be tolerated by the FTC.

Our dissenting colleagues suggest that the proposed settlement is not authorized by statute. This is incorrect. The settlement is squarely within the Commission’s statutory authority.

The dissent contends that the monetary relief in this settlement goes beyond what is permitted by Section 19 of the FTC Act. In fact, Section 19 expressly authorizes payment of redress and damages. The dissent attempts to sidestep this clear statutory authority by narrowly equating “damages” with restoration of money to particular consumers. However, such an interpretation runs contrary to the standard legal meaning of the term.² Furthermore, MUSA fraud can result in significant consequential damages, both to consumers and, especially, to honest businesses that lose out on sales. Against this backdrop, the proposed monetary relief, far from being a penalty of the sort prohibited by Section 19, is reasonable and well within the Commission’s legal authority.

1 See Press Release, Fed Trade Comm’n, FTC Issues Rule to Deter Rampant Made in USA Fraud (July 1, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-issues-rule-deter-rampant-made-usa-fraud>.

2 See Rohit Chopra and Samuel Levine, The Case for Resurrecting the FTC Act’s Penalty Offense Authority, U. PA. L. REV. (forthcoming), footnote 37, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256 (“Black’s Law Dictionary defines consequential damages as ‘[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act.’ DAMAGES, Black’s Law Dictionary (11th ed. 2019). We have been unable to identify a Section 19 matter where the FTC pursued damages, which is traditionally understood to be a legal remedy rather than an equitable remedy. Unlike equitable relief, damages can conceivably capture a broad range of harms, including indirect consequences of deception. As the FTC faces threats to its authority to seek equitable relief, the agency should consider pursuing this alternative form of relief in more cases.”).

Statement of the Commission

The dissent also presents a highly restrictive reading of the types of relief “explicitly authorized” by Section 19. But despite admonishing the Commission “that the words of a statute matter”, the dissent misses the statute’s language expressly stating that the relief available is not limited to the types explicitly enumerated (“Such relief may include, but shall not be limited to...”). Thus, even if the dissent were not mistaken about what is covered under “damages”, the relief obtained here still would not be foreclosed by the statutory language.

Finally, even if the dissent were not incorrect about the extent of the relief the Commission could obtain under Section 19 at trial, it would still be wrong about the lawfulness of the relief obtained in this *settlement*. Supreme Court precedent makes clear that federal courts may approve settlements that include relief beyond what could have been awarded at trial.³

We agree with our dissenting colleagues that Congress should act swiftly to restore our Section 13(b) authority, and like them we have directly urged Congress to do so.⁴ But, as we have also consistently emphasized, the FTC needs to use all its tools to protect consumers and competition within the bounds of our existing authority.⁵ While Congress works to deliver a

3 *Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986) (“a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial”).

4 See Press Release, Fed Trade Comm’n, FTC Asks Congress to Pass Legislation Reviving the Agency’s Authority to Return Money to Consumers Harmed by Law Violations and Keep Illegal Conduct from Reoccurring (Apr. 27, 2021), <https://www.ftc.gov/news-events/press-releases/2021/04/ftc-asks-congress-pass-legislation-reviving-agencys-authority>. See also Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, Prepared Oral Statement of FTC Commissioner Noah Joshua Phillips, Fed. Trade Comm’n (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589176/formatted_prepared_statement_0420_senate_hearing_42021_final.pdf; Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, Oral Statement of Commissioner Christine S. Wilson, Fed. Trade Comm’n (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf; Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, Opening Statement of Acting Chairwoman Rebecca Kelly Slaughter, Fed. Trade Comm’n (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589184/opening_statement_april_20_senate_oversight_hearing_420_final.pdf; Hearing on “Strengthening the Federal Trade Commission’s Authority to Protect Consumers”: Before the U.S. Senate Committee on Commerce, Science, and Transportation, Prepared Opening Statement of Commissioner Rohit Chopra, Fed. Trade Comm’n (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589172/final_chopra_opening_statement_for_senate_commerce_committee_20210420.pdf.

5 See, e.g., Joint Statement of Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter Concurring in Part, Dissenting in Part, In the Matter of Flo Health, Inc., Fed. Trade Comm’n (Jan. 13, 2021), https://www.ftc.gov/system/files/documents/public_statements/1586018/20210112_final_joint_rcrks_statement_on_flo.pdf; Remarks of Commissioner Rebecca Kelly Slaughter, FTC Data Privacy Enforcement: A Time of Change, Cybersecurity and Data Privacy Conference, New York University School of Law (Oct. 16, 2020), https://www.ftc.gov/system/files/documents/public_statements/1581786/slaughter_-_remarks_on_ftc_data_privacy_enforcement_-_a_time_of_change.pdf.

Statement of the Commission

Section 13(b) fix, Section 19 and other extant statutory tools⁶ will be crucial in allowing the FTC to obtain monetary redress in consumer protection cases.

⁶ For instance, violators of administrative orders are subject to penalties and various forms of relief under Section 5(l) of the FTC Act. See Statement of Rohit Chopra In the Matter of Resident Home LLC Commission File No. 2023179, Oct. 7, 2021.

Concurring Statement

STATEMENT OF COMMISSIONER ROHIT CHOPRA

October 7, 2021

Wow, that was fast. Soon after the Federal Trade Commission “punished” Nectar Sleep through a no-money, no-fault order, the company and its affiliates clearly realized the FTC wasn’t serious about Made in USA fraud, so here we are again.

FTC orders are not suggestions, but many bad actors view them as such.¹ And when companies do not adhere to agency orders, it is often a sign of more serious problems.² Violations of FTC orders are punishable with civil penalties and a broad range of other relief.

The Commission is proposing to settle the matter by ordering Resident Home, Nectar Sleep’s new parent company, to pay \$753,300. The Commission’s complaint also charges Resident’s CEO, Ran Reske, with serious wrongdoing. Reske signed a report, under penalty of perjury, stating that Resident Home had removed all covered Made in USA claims from its subsidiaries’ websites and that Resident had never made Made in USA claims about its DreamCloud mattress. This was false.

The proposed settlement binds Nectar Sleep, as well as its new parent company, ensuring that any corporate musical chairs will not allow the company to dodge the FTC’s order. The proposed order also requires the companies to provide notice to consumers who purchased a mattress while the false claims appeared.

Commissioner Slaughter has rightfully noted that the Commission must use all of its tools to protect the marketplace and make victims whole. This case is no exception. The settlement is reasonable and squarely within the Commission’s legal authority.

1 This follows a slew of other repeat offenders when it comes to Made in USA requirements, a clear demonstration of the need for the policy shift the FTC is now making. See Rohit Chopra, Commissioner, Fed. Trade Comm’n., Statement of Commissioner Rohit Chopra Regarding the Notice of Proposed Rulemaking on Made in USA (June 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577107/p074204musachoprastatementrev.pdf. See e.g., In the Matter of Williams-Sonoma, Inc., No. C-4724 (July 2020), <https://www.ftc.gov/system/files/documents/cases/2023025c4724williamssonomaorder.pdf>. The Commission opened an investigation but, after some behavior alterations by Williams-Sonoma, the 2018 investigation was closed, only to be renewed in 2020 when Williams-Sonoma was at it again. See also U.S. v. iSpring Water Systems, LLC, et al., No. 1:16-cv-1620-AT (N.D. Ga. 2019). After making false claims that its water filtration systems were made in the United States and entering into an administrative order with the FTC in 2017, iSpring went back to making false claims only a year later, triggering the violation of the 2017 order.

2 Rohit Chopra, Comm’r, Fed. Trade Comm’n. Repeat Offenders Memo (May 14, 2018), https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_-_repeat_offenders_memo_5-14-18.pdf.

Concurring Statement

I. Disguised Opposition

My dissenting colleagues purport that this proposed action – which was agreed to by Resident Home and Reske – is not authorized by statute. Their arguments fail on policy and legal grounds.

Commissioners Phillips and Wilson have consistently supported no-money, no-fault settlements, even in cases of egregious Made in USA fraud.³ I understand that, as a matter of policy, they do not support serious consequences for Made in USA fraud and have expressed support for the longstanding permissive policy of the past.⁴ However, their dissenting statement disguises this *policy* opposition as an argument about the Commission's *legal* authority. There are several pieces of evidence to suggest that Commissioners Phillips and Wilson's resistance is based on policy grounds, not on legal grounds.

First, Commissioners Phillips and Wilson argue they must have express statutory authorization to accept monetary remedies in settlements. However, less than two months after the Supreme Court ruled that the FTC cannot obtain monetary relief in certain federal court actions, both Commissioners Phillips and Wilson voted for an \$18 million order to settle a complaint brought under Section 13(b) of the FTC Act – the exact authority the Supreme Court explicitly ruled against the FTC on.⁵ This not the only example where Commissioners Phillips and Wilson have agreed to settle complaints with remedies that are not specifically enumerated by statute.

To further disguise the nature of their opposition, Commissioners Phillips and Wilson assert that the Commission is accepting monetary remedies in an administrative settlement not permitted by Section 19 of the Federal Trade Commission Act. In reality, Section 19 of the FTC Act expressly authorizes the payment of redress and damages. Consequential damages in Made in USA fraud can be considerable, particularly when it comes to harms to law-abiding businesses whose sales were siphoned. In settlements, parties can save time and resources by making the best estimates – adjusted for risk – on the right resolution. It would have been costly to specifically identify each harmed consumer and business, but it is clear the proposed monetary relief is reasonable, given our legal authority.

3 See Press Release, Fed Trade Comm'n, FTC Approves Final Consents Settling Charges that Hockey Puck Seller, Companies Selling Recreational and Outdoor Equipment Made False 'Made in USA' Claims (Apr. 17, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-approves-final-consents-settling-charges-hockey-puck-seller>; In the Matter of Sandpiper Gear of California, Inc. et al., No. 182-3095, <https://www.ftc.gov/enforcement/cases-proceedings/182-3095/sandpiper-california-inc-et-al-matter>; In the Matter of Underground Sports d/b/a Patriot Puck, et al., No. 182-3113 (Apr. 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3113/underground-sports-inc-doing-business-patriot-puck-et-al>.

4 Id.

5 See Press Release, Fed Trade Comm'n, LendingClub Agrees to Pay \$18 Million to Settle FTC Charges (July 14, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/lendingclub-agrees-pay-18-million-settle-ftc-charges>. Given the alternative paths the Commission could have pursued to address the conduct at hand, I believe the settlement was appropriate even in spite of the Supreme Court's ruling. Indeed, the Commission's proposed stipulated judgment was entered by the court.

Concurring Statement

In addition, Commissioners Phillips and Wilson imply that to obtain the proposed remedies, the Commission must file multiple complaints in our administrative tribunal and in federal court.

However, Commissioner Phillips and Wilson know that the Commission does not regularly prosecute the same conduct in multiple fora. Commissioners need not concurrently charge an entity for the same consumer protection violation of law in its administrative tribunal and in federal court, even when it may be authorized, like in civil penalty actions under Section 5(l).

The facts and evidence clearly show that DreamCloud violated an administrative order, triggering penalties and a broad range of relief under Section 5(l) of the FTC Act. Even if Section 19 of the FTC Act did not authorize damages, it is perfectly appropriate for the Commission to settle all of these claims at once, rather than pursue an additional action for civil penalties.

It is obvious that today's proposed action is legally sound. If Commissioners Phillips and Wilson are voting against the proposed settlement because of their preference for no-consequences settlements in Made in USA fraud matters, then they should be upfront with the public and state so plainly.

II. Conclusion

The FTC has a troubling history of strong-arming small and independent business owners – including church organists⁶ and skating teachers⁷ – into settlements, while allowing those who repeatedly break the law to escape unscathed,⁸ often with the help of high-priced FTC alumni.

In this matter, the Commission is proposing a settlement to hold accountable a repeat offender represented by a sophisticated law firm. I am pleased that the agency's abusive and inappropriate double standard is starting to fade away.

Finally, for decades, there was a bipartisan consensus among FTC Commissioners that Made in USA fraud should not be penalized. In 1994, Congress granted the FTC strong tools to combat Made in USA fraud, but Commissioners essentially ignored them. Fortunately, that era is also over.

6 In the Matter of American Guild of Organists, Fed. Trade Comm'n, <https://www.ftc.gov/enforcement/cases-proceedings/151-0159/american-guild-organists>.

7 In the Matter of Professional Skaters Association, Inc., Fed. Trade Comm'n, <https://www.ftc.gov/enforcement/cases-proceedings/131-0168/professional-skaters-association-inc-matter>.

8 See e.g. Devin Coldewey, 9 reasons the Facebook FTC settlement is a joke, TECHCRUNCH (July 24, 2019), <https://techcrunch.com/2019/07/24/9-reasons-the-facebook-ftc-settlement-is-a-joke/>.

Dissenting Statement

Effective August 13, 2021, individuals and companies engaging in Made in USA fraud, including first-time offenders, will be subject to stricter sanctions under the FTC’s Made in USA Labeling Rule. I hope my colleagues will fully support enforcement actions to hold bad actors accountable under this rule. The families and honest businesses – long ignored by past Commissioners – are counting on us to live up to the law.

**DISSENTING STATEMENT OF COMMISSIONERS NOAH JOSHUA PHILLIPS
AND CHRISTINE S. WILSON**

October 7, 2021

That didn’t take long. Soon after the Supreme Court unanimously rebuked the Federal Trade Commission for seeking monetary remedies not permitted by Section 13(b) of the FTC Act¹—remedies that, in fairness to the agency, were blessed by appellate courts for decades²—the Commission now votes to accept monetary remedies not permitted by Section 19.

We commend staff for their diligent work on this case, and remain committed to continued Made in the U.S.A. enforcement.³ But we believe that the monetary redress in this case exceeds our authority, and so we respectfully dissent.

In 2018, the Commission entered an administrative order against Nectar Brand LLC, also d/b/a Nectar Sleep, DreamCloud LLC, and DreamCloud Brand LLC (“Nectar Order”) and its successors and assigns for making “Assembled in USA” claims for wholly-imported mattresses. Despite being under order, over at least two periods between December 2018 and June 2020, the Complaint alleges that Nectar deceptively advertised DreamCloud mattresses as “proudly made with 100% USA-made premium quality materials”.

Since entry of the Nectar Order, the 2018 Respondent underwent several changes to its corporate structure. In 2019, Resident Home LLC was created as the parent company of Nectar

1 AMG Capital Management, LLC v. FTC, 141 S. Ct. 1341 (2021).

2 See, e.g., FTC v. H.N. Singer, Inc., 668 F.2d 1107, 1112-1113 (9th Cir. 1982); FTC v. Rare Coin & Bullion Corp., 931 F.2d 1312, 1314-1315 (8th Cir. 1991); FTC v. Bronson Partners, LLC, 654 F.3d 359, 365 (2d Cir. 2011).

3 See, In the matter of Chemence, Inc., File No. X1600321 (Feb. 2021), <https://www.ftc.gov/enforcement/cases-proceedings/X160032/chemence-inc>; In the matter of Gennex Media, File No. 2023122 (Apr. 2021), <https://www.ftc.gov/enforcement/cases-proceedings/2023122/gennex-media-matter>; In the matter of Williams-Sonoma, Inc., File No. 2023025 (July 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3025/williams-sonoma-inc-matter>. Unlike Commissioners Chopra and Slaughter, we have supported every Made in U.S.A. enforcement action brought during our tenure.

Dissenting Statement

Brand LLC and DreamCloud Brand LLC. We do not have reason to believe that Resident Home LLC is a successor or assign of Nectar Brand LLC and is covered by the Nectar Order.

This state of play left the Commission with at least two choices. It could choose to pursue an order enforcement action in federal court and seek civil penalties.⁴ Alternatively, or in addition to taking action against Nectar Brand, LLC, it could choose to pursue a *de novo* administrative action and seek a new order that would cover the company, its corporate parent Resident Home LLC, and Resident Home’s CEO Ran Reske, while ensuring that any future violations would result in a civil penalty. While valid justifications support any of these approaches, the Commission ultimately determined that seeking a new, broader order would best protect consumers.

In choosing to proceed only administratively, the Commission gave up its ability to obtain civil penalties; but it can still seek redress on behalf of injured consumers pursuant to Section 19 of the FTC Act. While the process is somewhat convoluted, Section 19 permits the Commission to secure certain monetary relief, including, *inter alia*, “the refund of money” and “the payment of damages”.⁵ As the legislative history underscores, the purpose of this relief is to allow the Commission to act “to make specific consumers whole...”.⁶ Section 19 allows the Commission to obtain refunds for specific, identified injured consumers.⁷ It expressly precludes “the imposition of any exemplary or punitive damages”.⁸ Under Section 19, the FTC does not have authority to obtain disgorgement of ill-gotten gains, another (more penal⁹) form of equitable monetary relief.

Despite these clear limitations, the Commission’s proposed order includes monetary redress of \$753,300, with any remainder not used for redress to be disgorged to the Treasury. The complaint does not include details that would help the public understand how the Commission arrived at this amount, and we are not at liberty to reveal non-public information. But our view of the facts is that the figure obtained far exceeds any injury suffered by those consumers who saw the deceptive statement and purchased a DreamCloud mattress or any reasonable estimate of damages. The majority points to language in Section 19 that also authorizes redress of injury to “other persons” (besides consumers) resulting from the unlawful practices alleged.¹⁰ We have seen

4 The Commission statement and Commissioner Chopra’s separate statement assert that evidence clearly showed that DreamCloud violated an administrative order. Despite the majority’s paean to the value of vindicating Commission orders, we do not plead an order violation in the complaint. We support the FTC’s longstanding view that order obligations should reflect pleadings.

5 15 U.S.C. 57b(b).

6 S. Rept. 93-151, 93d Cong., 2d Sess., at 27-28 (May 14, 1973).

7 See *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595 (9th Cir. 1993).

8 15 U.S.C. 57b(b).

9 See *Liu v. Securities and Exchange Commission*, 140 S. Ct. 1336 (2020).

10 15 U.S.C. 57b(b) (“The court...shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or

Dissenting Statement

no evidence of such harm in this matter. No one quibbles that the amount of money here exceeds any reasonable estimate of injury. It might plausibly be consistent with a penalty or with the disgorgement of ill-gotten gains, but we have no authority to obtain such relief under Section 19.¹¹ The Commission makes clear in its statement that the purpose of the monetary relief in question is to penalize, not to make consumers whole.¹²

The Supreme Court handed down its decision in *AMG Capital Management, LLC v. FTC* in April,¹³ and made clear that the words of a statute matter. Those words trump the policy preferences of commissioners. That decision should have been a wake-up call, a reminder to the Commission that, no matter how egregious the conduct or righteous our cause, the Commission is not entitled to go beyond the bounds of what the law permits. If we continue to flout the limits of our authority, the Commission should fully expect additional rebukes from the courts.

The *AMG* decision has significantly impacted the ability of the FTC to pursue wrongdoers and remediate law violations through the imposition of monetary relief. So we reiterate our call to Congress to pass legislation to restore the ability of the FTC to seek monetary remedies under Section 13(b) of the FTC Act in appropriate circumstances. But the law says what it says, and we do not support using the cloak of a settlement to overstep the authority we have.¹⁴

deceptive act or practice, as the case may be.”); see also Joint Statement of Commissioner Slaughter, Chair Khan, and Commissioner Chopra In the Matter of Resident Home, 2, FN4 Commission File No. 202317.

11 The majority is correct that Section 19 permits “damages”. The majority, though, is not entitled to its own facts. The facts are that only a small number of consumers saw DreamCloud’s deceptive statements over a two-year period, and only a miniscule number of those consumers actually purchased mattresses. The evidence presented comes nowhere near demonstrating the extent to which deceptive MUSA claims distorted consumers’ decisions to purchase the mattresses. Although we cannot share the underlying analysis with the reader, the monetary remedy far exceeds any reasonable estimate of Section 19 damages. As the majority makes clear in the Commission statement, it is assessing a penalty under cover of Section 19.

12 In his separate statement, Commissioner Chopra also claims that we do not support consequences for Made in the U.S.A. fraud. By that logic, Commissioner Chopra’s votes against privacy enforcement in cases like Facebook and Google/YouTube show his enthusiasm for their business models and distaste for enforcement against large technology platforms. The issue here is the Commission trying to eat its Section 19 cake and have its civil penalties too. We cannot do both, however we feel about policy. See Statement of Rohit Chopra In the Matter of Resident Home LLC, Commission File No. 202317. See also, Dissenting Statement of Commissioner Rohit Chopra In re: Facebook, Inc., Commission File No. 1823109 (July 24, 2019), https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_facebook_7-24-19.pdf; Dissenting Statement of Commissioner Rohit Chopra In the Matter of Google LLC and YouTube, LLC, Commission File No. 1723083 (Sep. 4, 2019), https://www.ftc.gov/system/files/documents/public_statements/1542957/chopra_google_youtube_dissent.pdf.

13 *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

14 The majority is correct that, as a practical matter, the government has the ability to extort that to which it is not entitled under law. As we have said on other occasions, though, just because we can does not mean that we should. Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, U.S. v. iSpring Water Systems, LLC, Commission File No. C4611 (Apr. 12, 2019),

Dissenting Statement

If the goal in this case were to maximize money paid by the Respondents as punishment and to deter others from engaging in similar conduct, the Commission was free to enforce the original Nectar Order and seek civil penalties. That was the road not taken. In choosing this road, with a new and broader order, the Commission is obligated to limit monetary relief to the amount necessary to redress injury, as explicitly authorized by Section 19. Because this settlement exceeds those clearly delineated bounds, we must respectfully dissent.

Concurring Statement

JOINT STATEMENT OF CHAIR LINA M. KHAN, COMMISSIONER REBECCA KELLY SLAUGHTER, AND COMMISSIONER ALVARO M. BEDOYA**June 21, 2022**

Today, the Commission votes to enter the settlement order with Resident Home for false made in the USA claims, in violation of Section 5. A majority of Commissioners voted for this initial settlement in October and published a statement in support.¹ We now vote to enter into this final settlement.

Resident Home is the parent company of Nectar Sleep, a repeat offender already under order for false made in the USA claims.² Because Resident Home is a newly-created corporate parent of Nectar Sleep, an action for order violation directly against Resident Home would have been fraught with legal uncertainty. Instead, Commission staff pursued a *de novo* settlement against Resident Home, which now covers Resident Home and all of its subsidiaries, prohibits them from making unsubstantiated claims, and requires them to pay \$753,000 in monetary relief pursuant to a Section 19 damages theory.

Commissioners Phillips and Wilson vote against a settlement because they believe that staff could not prove that Resident Home consumers suffered \$753,000 in damages, and so the settlement illegally requires the monetary relief beyond the Commission's statutory authority. We disagree. For the reasons stated in the previous majority statement, Section 19 is the correct vehicle to require monetary relief in this matter and the quantity of monetary relief agreed on by the parties is appropriate to "redress injury."³ In any case, our dissenting colleagues dispute neither that the Commission was entitled to monetary relief (which they would have sought as civil penalties through an order enforcement action⁴) nor injunctive relief for Resident Home (which they agree can be done through an administrative action⁵).

1 Joint Statement of Chair Lina Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter In the Matter of Resident Home LLC (hereinafter "Original Joint Statement") (Oct. 8, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597282/2023179khanslaughterchopraresidenthome_statement.pdf.

2 Fed. Trade Comm'n, In the Matter of Nectar Brand LLC (Sept. 12, 2018), <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3038-nectar-brand-llc-matter>.

3 15 U.S.C. § 57b(b). See also Original Joint Statement at 2; Statement of Commissioner Rohit Chopra at 3 (Oct. 8, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597266/chopra_statement_on_resident_home.pdf.

4 Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson In the Matter of Resident Home LLC (observing that the Commission "could choose to pursue an order enforcement action in federal court and seek civil penalties"), https://www.ftc.gov/system/files/documents/public_statements/1597270/resident_home_dissenting_statement_wilson_and_phillips_final_0.pdf.

5 Id. (observing that the Commission "could choose to pursue a *de novo* administrative action and seek a new order").

Concurring Statement

We support staff's proposed resolution of this matter. In light of the dramatically changing legal landscape, including the Supreme Court's decision in *AMG*⁶ and recent appellate decisions,⁷ staff is operating under extraordinarily demanding conditions. We believe the result in this matter reflects Commission staff at its best, and we gladly vote to enter the settlement in this matter.

6 *AMG Capital Mgmt. v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (2021).

7 See, e.g., *Jarkesy v. Sec. & Exch. Comm'n.*, 34 F.4th 446 (5th Cir. 2022).

Dissenting Statement

**DISSENTING STATEMENT OF COMMISSIONER CHRISTINE S. WILSON AND
COMMISSIONER NOAH JOSHUA PHILLIPS**

June 21, 2022

Readers should refer to our prior dissent in Resident Home. <[Link](#)>

In October 2021, the Commission voted to seek comment on a proposed consent with Resident Home LLC, the parent company of Nectar Brand LLC and DreamCloud Brand LLC, and its CEO Ran Reske. The order proposed to resolve allegations that Nectar deceptively advertised DreamCloud mattresses as “proudly made with 100% USA-made premium quality materials.” The proposed order included monetary redress of \$753,300, pursuant to Section 19 of the FTC Act. The Commission votes today to enter the proposed order unchanged.

As we explained in our joint dissent in October, we believe this settlement exceeds the clearly delineated bounds of Section 19.¹ This Section permits the Commission to secure certain monetary relief, including, *inter alia*, “the refund of money” and “the payment of damages” but expressly precludes “the imposition of any exemplary or punitive damages.”² The FTC does not have authority, under Section 19, to obtain disgorgement of ill-gotten gains, another (more penal³) form of equitable monetary relief. The statement further explained that, in our view, the monetary redress in this settlement far exceeds any injury suffered by those consumers who saw the deceptive statement and purchased a DreamCloud mattress or any reasonable estimate of damages.⁴ This fact is not disputed.

The one comment received in response to this matter supports our view. We note that we support the staff’s active enforcement of deceptive Made in USA claims and the injunctive relief contained in this order. Our disagreement with the terms of this settlement relates exclusively to the monetary relief. For the reasons stated in our prior dissent, which contains a complete distillation of our views, we respectfully dissent from the entry of this final order.

1 Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, In the Matter of Resident Home LLC., No. 2023179 (Oct. 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioners-noah-joshua-phillips-christine-s-wilson-matter-resident-home-llc>.

2 15 U.S.C. 57b(b).

3 See *Liu v. Securities and Exchange Commission*, 140 S. Ct. 1936 (2020).

4 The statement in the Secretary’s letter to the effect that the amount in question represents the Commission and the defendants’ assessment of “damages” is not supported.

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 Resident Home LLC, also d/b/a Nectar Sleep, DreamCloud Sleep, Awara Sleep, Level Sleep, Bundle Living, 1771 Living, Cloverlane, Wovenly Rugs, Sleep Authority, and Home Well Designed, and Ran Reske (“Respondents”).

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 Respondents’ advertising of DreamCloud mattresses as of U.S. origin. According to the FTC’s complaint, Respondents represented that DreamCloud mattresses were “proudly made with 100% USA-made premium quality materials.” However, the complaint alleges that, in numerous instances, DreamCloud mattresses are wholly imported or incorporate significant imported materials. In all instances, DreamCloud mattresses are finished overseas. Based on the foregoing, the complaint alleges that Respondents engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future. Consistent with the FTC’s Enforcement Policy Statement on U.S.-Origin Claims, Part I prohibits Respondents from making U.S.-origin claims for their products unless either: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product’s principal assembly takes place in the United States, and United States assembly operations are substantial.

Part II prohibits Respondents from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and Respondents have a reasonable basis substantiating the representation.

Parts III through V are monetary provisions. Part III imposes a judgment of \$753,300. Part IV includes additional monetary provisions relating to collections. Part V requires Respondents to provide sufficient customer information to enable the Commission to administer consumer redress, if appropriate.

Part VI is a notice provision requiring Respondents to identify and notify certain DreamCloud mattress purchasers of the FTC’s action within 30 days after the issuance of the order, or within 30 days of the customer’s identification, if identified later. Respondents are also required to submit reports regarding their notification program

Analysis to Aid Public Comment

Parts VII through IX are reporting and compliance provisions. Part VII requires Respondents to acknowledge receipt of the order, to provide a copy of the order to certain current and future principals, officers, directors, and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order. Part VIII requires Respondents to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order. Part IX requires Respondents to maintain certain records, including records necessary to demonstrate compliance with the order. Part X requires Respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview Respondents' personnel.

Finally, Part XI is a "sunset" provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this 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

**HCA HEALTHCARE, INC.,
STEWARD HEALTH CARE SYSTEM, LLC,
AND
RALPH DE LA TORRE, M.D.**

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. 9410; File No. 221 0003
Complaint, June 2, 2022 – Decision, June 22, 2022*

This case addresses the \$850 million acquisition by HCA Healthcare, Inc. of certain assets of Steward Health Care System LLC. The complaint alleges that the transaction, 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 general acute care hospital services in the Wasatch Front region of Utah, which includes Salt Lake City. On June 16, 2022, Complaint Counsel and Respondents HCA Healthcare, Inc. (“HCA”), Steward Health Care System LLC, and Ralph de la Torre, M.D. jointly move to dismiss the complaint as moot following Respondent HCA’s withdrawal of its Hart-Scott-Rodino Notification and Report Form filed for the proposed acquisition. The order dismisses the Complaint.

Participants

For the *Commission*: Guia Dixon, Elizabeth Arens, Stephanie Cummings, Matthew Frank, Christopher Megaw, Jeanne Nichols, Anthony Saunders, Anusha Sunkara, and Jonathan Wright.

For the *Respondents*: Sara Y. Razi, Simpson Thacher & Bartlett LLP; Karen Kazmerzak, Sidley Austin 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 FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent HCA Healthcare, Inc. (“HCA”) has agreed to acquire the Utah-based assets of Respondent Steward Health Care System, LLC (“Steward”), a limited liability company controlled by Respondent Ralph de la Torre, M.D., 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 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows: