



FEDERAL TRADE COMMISSION

[File No. 202 3064]

Reef Industries, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “Reef Industries, Inc.; File No. 202 3064” on your comment, and file your comment online at <https://www.regulations.gov> by

following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office

of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade

Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nicholas Coates (415-848-5125), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “Reef Industries, Inc.; File No. 202 3064” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID-19 pandemic and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Reef Industries, Inc.; File No. 202 3064” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed 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 with Reef Industries, Inc., a corporation; Cannatera, Inc., a corporation; AndHemp, Ltd., a limited company; and Andrew M. Bouchie, John R. Cavanaugh, and Shaun Paquette, individually and as officers and/or owners of Reef Industries, Inc., Cannatera, Inc., and/or AndHemp, Ltd. (collectively, "Respondents").

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

This matter involves the respondent's advertising of cannabidiol (CBD), a cannabinoid compound found in hemp and cannabis. The complaint alleges that respondent violated Sections 5(a) and 12 of the FTC Act by disseminating false and unsubstantiated advertisements claiming that: (1) CBD products can effectively prevent, cure, treat, or mitigate multiple diseases and other health conditions; and (2) studies or

scientific research prove that CBD products effectively prevent, cure, treat, or mitigate multiple diseases and other health conditions.

The Order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The product coverage would apply to any dietary supplement, drug, or food the respondent sells, markets, promotes, or advertises.

Provision I requires randomized, double-blind, placebo-controlled clinical testing for the challenged claims or any disease treatment, mitigation, or cure claim for a Covered Product. The Order defines “Covered Product” as any dietary supplement, food, or drug including but not limited to CBD products or cannabigerol (CBG) products.

Provision II prohibits other misleading or unsubstantiated representations about the health benefits, performance, efficacy, safety, or side effects of any Covered Product or essentially equivalent product. It also covers prevention claims not specifically included in Provision I.

Provision III requires the preservation of certain records for any testing Respondents rely upon as competent and reliable scientific evidence.

Provision IV addresses Respondents’ false establishment claims and generally prohibits misrepresentations regarding the scientifically or clinically proven benefits of any product. Provision V provides a safe harbor for FDA-approved claims.

Provisions VI and VII contain monetary payment provisions.

Provisions VIII, IX, and X require the Respondents to provide customer information to the Commission and to provide notice of the order to customers, affiliates and other resellers. Provision XI requires an acknowledgement of receipt of the order. It also requires the individual Respondents to deliver a copy of the order to certain individuals in any business for which they are the majority owner or which they control directly or indirectly.

Provisions XII, XIII, and XIV provide the required reporting, recordkeeping, and compliance monitoring programs that Respondents must put in place.

Provision XV explains when the Order is final and effective.

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

By direction of the Commission.

April J. Tabor,

Acting Secretary.

Statement of Commissioner Rohit Chopra¹

Summary

- When companies lie about the effectiveness of their treatments for serious conditions, this harms patients and diverts sales away from firms that tell the truth.
- Congress gave the FTC a new authority to crack down on abuses in the opioid treatment industry, but the agency has not prioritized this issue. This should change.
- The FTC can increase its effectiveness when it comes to health claims by shifting resources away from small businesses and by deploying the unused Penalty Offense Authority.

Today, the Federal Trade Commission is taking action against several outfits regarding their outlandish – and unlawful – claims about cannabidiol (CBD). While CBD is currently the subject of considerable scientific research, there is no evidence yet that

¹ *In the Matter of EasyButter, LLC et al.*, Comm'n File No. 2023047; *In the Matter of Reef Industries, Inc. et al.*, Comm'n File No. 2023064; *In the Matter of Steves Distributing, LLC et al.*, Comm'n File No. 2023065; *In the Matter of CBD Meds, Inc. et al.*, Comm'n File No. 2023080; *In the Matter of Epichouse, LLC et al.*, Comm'n File No. 2023094; *In the Matter of Bionatrol Health, LLC et al.*, Comm'n File No. 2023114.

CBD can treat or cure cancer, Alzheimer's, or other serious diseases. Baseless claims give patients false hope, improperly increase or divert their medical spending, and undermine "a competitor's ability to compete" on honest attributes.²

I support these actions and congratulate those who made them a reality. Going forward, however, the FTC will need to refocus its efforts on health claims by targeting abuses in the substance use disorder treatment industry, shifting attention toward large businesses, and making more effective use of the FTC's Penalty Offense Authority.

First, COVID-19 and the resulting economic and social distress are fueling new concerns about substance use disorders. In particular, there are signs that the pandemic is leading to greater dependence on opioids.³ It is critical that the FTC take steps to prevent exploitation of patients seeking treatment for substance use disorders.

I am particularly concerned about abusive practices in the for-profit opioid treatment industry, and believe this should be a high priority. This industry has grown exponentially by profiting off those suffering from addiction. Many of these outfits use lead generators to steer Americans into high-cost, subpar treatment centers, and some even hire intermediaries – so-called "body brokers" – who collect kickbacks from this harmful practice.⁴

More than two years ago, Congress passed the SUPPORT for Patients and Communities Act. Among other provisions, the Act authorized the Commission to seek

² *In re Pfizer, Inc.*, 81 F.T.C. 23, 62 (1972).

³ See, e.g., Jon Kamp & Arian Campo-Flores, *The Opioid Crisis, Already Serious, Has Intensified During Coronavirus Pandemic*, WALL STREET J. (Sept. 8, 2020), <https://www.wsj.com/articles/the-opioid-crisis-already-serious-has-intensified-during-coronavirus-pandemic-11599557401>; *Issue brief: Reports of increases in opioid- and other drug-related overdose and other concerns during COVID pandemic*, AMERICAN MEDICAL ASSOCIATION (last updated on Oct. 31, 2020), <https://www.ama-assn.org/delivering-care/opioids/covid-19-may-be-worsening-opioid-crisis-states-can-take-action>.

⁴ For example, recent reporting describes the "Florida Shuffle," where treatment facilities pay brokers to recruit patients through 12-step meetings, conferences, hotlines, and online groups, leading to serious harm. See German Lopez, *She wanted addiction treatment. She ended up in the relapse capital of America*, VOX (Mar. 2, 2020), <https://www.vox.com/policy-and-politics/2020/3/2/21156327/florida-shuffle-drug-rehab-addiction-treatment-bri-jayne>. See also Letter from Commissioner Chopra to Congress on Deceptive Marketing Practices in the Opioid Addiction Treatment Industry (July 28, 2018), <https://www.ftc.gov/public-statements/2018/07/letter-commissioner-chopra-congress-deceptive-marketing-practices-opioid> (calling on the FTC to do more to tackle this problem).

civil penalties, restitution, damages, and other relief against outfits that engage in misconduct related to substance use disorder treatment.⁵ The Commission is well positioned to help shut down these abuses, ensure they are not profitable, and hold predatory actors and their enablers to account.⁶

Unfortunately, the Commission has brought zero cases under this new authority. While I have supported actions like this one that challenge baseless CBD claims, as well as previous actions charging that pain relief devices and similar products were sold deceptively,⁷ I am concerned that we have largely ignored Congressional concerns about unlawful opioid treatment practices. I urge my fellow Commissioners to change course on our enforcement priorities, especially given our limited resources.

Second, the FTC should focus more of its enforcement efforts on larger firms rather than small businesses. Today's actions focus on very small players, some of which are defunct. While I appreciate that small businesses can also harm honest competitors and families, they are often judgment-proof, making it unlikely victims will see any relief.⁸ I am confident that FTC staff can successfully challenge powerful, well-financed defendants that break the law.

Finally, the Commission should reduce the prevalence of unlawful health claims by triggering civil penalties under the FTC's Penalty Offense Authority.⁹ Under the Penalty Offense Authority, firms that engage in conduct they know has been previously condemned by the Commission can face civil penalties, in addition to the relief that we

⁵ Pub. L. No. 115-271 §§ 8021-8023 (codified in 15 U.S.C. 45d). The Act also allows the Commission to prosecute deceptive marketing of opioid treatment products. Notably, a number of respondents in this sweep are alleged to have made claims that CBD could replace OxyContin.

⁶ Given public reports regarding private equity rollups of smaller opioid treatment facilities, the Commission can also examine whether anticompetitive M&A strategies are leading to further patient harm. *See* Statement of Commissioner Rohit Chopra Regarding Private Equity Roll-ups and the Hart-Scott-Rodino Annual Report to Congress, Comm'n File No. P110014 (July 8, 2020), <https://www.ftc.gov/public-statements/2020/07/statement-commissioner-rohit-chopra-regarding-private-equity-roll-ups-hart>.

⁷ Press Release, Fed. Trade Comm'n, Marketers of Pain Relief Device Settle FTC False Advertising Complaint (Mar. 4, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/marketers-pain-relief-device-settle-ftc-false-advertising>.

⁸ In one of these matters, the respondents are paying nothing.

⁹ 15 U.S.C. 45(m)(1)(b).

typically seek.¹⁰ For example, the Commission routinely issues warning letters to businesses regarding unsubstantiated health claims. Future warning letters can be more effective if they include penalty offense notifications.

The Commission has repeatedly found that objective claims require a reasonable basis,¹¹ and apprising firms of these findings – along with a warning that noncompliance can result in penalties – makes it significantly more likely they will come into compliance voluntarily. In fact, when the Commission employed this strategy four decades ago, it reportedly resulted in a “high level of voluntary compliance achieved quickly and at a low cost.”¹² Going forward, we should pursue this strategy.

I thank everyone who made today’s actions possible, and look forward to future efforts that address emerging harms using the full range of our tools and authorities.¹³

¹⁰ See Rohit Chopra & Samuel A.A. Levine, The Case for Resurrecting the FTC Act’s Penalty Offense Authority (Oct. 29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256. Particularly given challenges to the FTC’s 13(b) authority, incorporating a penalty offense strategy can safeguard the Commission’s ability to seek strong remedies against lawbreakers.

¹¹ This requirement was first established in the Commission’s 1972 *Pfizer* decision, and it has been affirmed repeatedly. *Pfizer, Inc.*, *supra* note 2 (finding that “[f]airness to the consumer, as well as fairness to competitors” compels the conclusion that affirmative claims require a reasonable basis); *In re Thompson Medical Co.*, 104 F.T.C. 648, 813 (1984) (collecting cases), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986). Appended to *Thompson Medical* was the Commission’s Policy Statement Regarding Advertising Substantiation, which states that “a firm’s failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.” *Id.* at 839. This standard continues to govern the Commission’s approach to substantiation, as recently reaffirmed in the Commission’s final order against POM Wonderful. *In re POM Wonderful LLC et al.*, 155 F.T.C. 1, 6 (2013).

¹² Commissioner Bailey made this observation in the context of opposing industry efforts to repeal this authority, an authority she described as an “extremely effective and efficient way to enforce the law.” Testimony of Commissioner Patricia P. Bailey Before the Subcomm. on Com., Tourism and Transp. of the Comm. on Energy and Com. of the H.R. Concerning the 1982 Reauthorization of the Fed. Trade Comm’n, at 11 (Apr. 1, 1982), https://www.ftc.gov/system/files/documents/public_statements/693551/19820401_bailey_testimony_before_the_subcommittee_on_commerce_subcommittee_on_commerce_touri.pdf.

¹³ My colleague, Commissioner Christine S. Wilson, has issued a statement in this matter. I agree that the Commission should not prioritize close-call substantiation cases, especially those involving small businesses.

Concurring Statement of Commissioner Christine S. Wilson

Today the Commission announces six settlements with marketers of cannabidiol (CBD) products resolving allegations that they made false, misleading, and/or unsubstantiated express disease claims for their products. I support these cases because accurate and complete information about products contributes to the efficient functioning of the market and facilitates informed consumer decision-making. In contrast, deceptive or false claims inhibit informed decision-making and may cause economic injury to consumers.

The Commission's complaints in these matters allege that the marketers claimed their products could treat, prevent, or cure diseases or serious medical conditions, including cancer, heart disease, Alzheimer's, diabetes, and Parkinson's disease, and that scientific research or clinical studies supported these claims. In fact, according to the Commission's complaints, the proposed respondents did not conduct scientific research on the efficacy of their products to treat these diseases or conditions. In addition, the complaints allege that some of the proposed respondents claimed that their products could be taken in lieu of prescription medication. The Commission has been working with the FDA, and on its own, to combat false and unsubstantiated claims for CBD products, including through warning letters¹ and a law enforcement action.² Here, where consumers may have foregone proven measures to address serious diseases and the marketers have made virtually no effort to possess and rely on scientific evidence to support their strong,

¹ Press Release, *FTC and FDA Warn Florida Company Marketing CBD Products about Claims Related to Treating Autism, ADHD, Parkinson's, Alzheimer's, and Other Medical Conditions*, Oct. 22, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/10/ftc-fda-warn-florida-company-marketing-cbd-products-about-claims>; Press Release, *FTC Sends Warning Letters to Companies Advertising Their CBD-Infused Products as Treatments for Serious Diseases, Including Cancer, Alzheimer's, and Multiple Sclerosis*, Sept. 10, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-sends-warning-letters-companies-advertising-their-cbd-infused>; Press Release, *FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer's, Cancer, and Other Diseases*, Apr. 2, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-joins-fda-sending-warning-letters-companies-advertising>.

² Press Release, *FTC Order Stops the Marketer of "Thrive" Supplement from Making Baseless Claims It Can Treat, Prevent, or Reduce the Risks from COVID-19*, July 10, 2020, available at <https://www.ftc.gov/newsevents/press-releases/2020/07/ftc-order-stops-marketer-thrive-supplement-making-baseless-claims>.

express disease claims, as we allege in our complaint, I agree that law enforcement is appropriate.

The Commission's proposed consent orders in these matters require respondents to possess and rely on competent and reliable evidence, defined as randomized, double-blind, placebo-controlled human clinical trials to support disease and other serious health claims for these types of products in the future.³ Although I support this requirement in these cases, for these types of claims, I caution that the Commission should impose this stringent substantiation requirement sparingly. Credible science supports the use of CBD products to treat certain conditions – specifically, the FDA has approved a drug containing CBD as an active ingredient to treat rare, severe forms of epilepsy.⁴ And I understand that many research studies are currently seeking to determine whether there are other scientifically valid and safe uses of this ingredient.

I agree with my predecessors who have stated that the Commission should be careful to avoid imposing an unduly high standard of substantiation that risks denying consumers truthful, useful information, may diminish incentives to conduct research, and could chill manufacturer incentives to introduce new products to the market.⁵ And I agree with the observation of my colleague Commissioner Chopra in his statement that

³ See, e.g., Part I of Proposed Order, *In the Matter of Bionatrol Health, LLC, et al.* (Dec. 2020).

⁴ See FDA Press Release, *FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy* (June 25, 2018), available at: <https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>.

⁵ See, e.g., Statement of Commissioner Maureen K. Ohlhausen, *In the Matter of Health Discovery Corporation and FTC v. Avrom Boris Lasarow, et al.* (Feb. 2015), <https://www.ftc.gov/public-statements/2015/02/dissenting-statement-commissioner-maureen-k-ohlhausen-matter-health>; Statement of Commissioner Joshua D. Wright, *FTC v. Kevin Wright; HCG Platinum, LLC; and Right Way Nutrition, LLC* (Dec. 2014), <https://www.ftc.gov/public-statements/2014/12/statement-commissioner-joshua-d-wright-federal-trade-commission-v-kevin>; Statement of Commissioner Joshua D. Wright, *In the Matter of GeneLink, Inc., and foru International Corporation* (January 2014), <https://www.ftc.gov/public-statements/2014/01/statement-commissioner-joshua-d-wright-matter-genelink-inc-foru>; Statement of Commissioner Maureen K. Ohlhausen Dissenting in Part and Concurring in Part, *In the Matter of GeneLink, Inc. and foru International Corporation* (January 2014), <https://www.ftc.gov/public-statements/2014/01/statement-commissioner-maureen-k-ohlhausen-dissenting-part-concurring-part>; Dissenting Statement of Commissioner Maureen K. Ohlhausen, *FTC v. Springtech 77376, et al.* (July 2013), <https://www.ftc.gov/public-statements/2013/07/dissenting-statement-commissioner-maureen-k-ohlhausen>; see also J. Howard Beales, III and Timothy J. Muris, *In Defense of the Pfizer Factors*, George Mason Law & Economics Research Paper No. 12-49 (May 2012), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2087776.

“[b]aseless claims give patients false hope, improperly increase or divert their medical spending, and undermine ‘a competitor’s ability to compete’ on honest attributes.”⁶

Although I support these cases, I hope that the Commission’s actions here, which challenge wholly unsubstantiated disease claims, do not discourage research into the potential legitimate benefits of CBD and a wide array of other products. In addition, going forward, I urge the Commission to focus our scarce resources on marketers that make strong, express claims about diseases and serious health issues with little to no scientific support and engage in deceptive practices that cause substantial consumer injury.

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⁶ See Statement of Commissioner Rohit Chopra Regarding the Cannabidiol (CBD) Enforcement Actions (Dec. 17, 2020).