Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Mikey & Momo, Inc., Michael Fensterstock, and Melissa Matarese Fensterstock, Matter No. 162 3234

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to Mikey & Momo, Inc., Michael Fensterstock, and Melissa Matarese Fensterstock ("respondents").

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

This matter involves the respondents' advertising for Aromaflage and Aromaflage Wild sprays and candles. The complaint alleges that the respondents violated Section 5(a) of the FTC Act by deceptively representing that their sprays and candles effectively repelled mosquitoes, including mosquitoes that carry Zika virus and other diseases, worked as well as products containing 25% DEET, were effective for 2.5 hours, and that their efficacy was scientifically proven. The complaint also alleges that the respondents violated Section 5(a) by disseminating 5-star reviews by purported ordinary consumers and by deceptively failing to disclose that certain endorsers had material connections with the respondents and their products, namely that several were close relatives and, in one instance, one of the respondents herself.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The provisions related to efficacy claims apply to any "covered product," which is defined as any product purported, designed, or intended to repel insects. The provisions related to endorsements apply to covered products as well as any food, drug, device, or cosmetic for which health-related benefit, efficacy, performance, or safety claims are made.

Part I prohibits any representation that a covered product repels insects, or about its health benefits, performance, efficacy, safety, or side effects, unless it is non-misleading and supported by competent and reliable scientific evidence. Such evidence must consist of tests or studies that (1) have been conducted and evaluated in an objective manner by experts in the field of insect repellency; (2) are generally accepted by such experts to yield accurate and reliable results; and (3) are human clinical testing of the covered product, when such experts would generally require such human clinical testing to substantiate that the representation is true.

Part II prohibits, in connection with the sale of a covered product, any misrepresentation about any test or study, or that the performance or benefits of such product are scientifically or clinically proven or otherwise established.

Part III, triggered when the human clinical testing requirement in Part I applies, requires the respondents to secure and preserve all underlying or supporting data and documents

generally accepted by experts in the relevant field as relevant to an assessment of the test, such as protocols, instructions, participant-specific data, statistical analyses, and contracts with the test's researchers. There is an exception for a "Reliably Reported" test, defined as a test that is published in a peer-reviewed journal and that was not conducted, controlled, or sponsored by any respondent or by any supplier of the respondents. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part IV prohibits, in connection with the sale of a covered product or any food, drug, device, or cosmetic for which health-related benefit, efficacy, performance, or safety claims are made, any misrepresentation about the status of any endorser or person providing a review of the product, including that he or she is an independent or ordinary user of the product.

Part V prohibits, in connection with the sale of a covered product or any food, drug, device, or cosmetic for which health-related benefit, efficacy, performance, or safety claims are made, any representation about any consumer or other endorser of such product without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and any respondent, or other individual or entity affiliated with the product. The order defines the terms "clearly and conspicuously" and "unexpected material connection."

Part VI requires the respondents to submit signed acknowledgments that they received the order.

Part VII requires the respondents to file compliance reports with the Commission; and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations.

Part VIII contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part IX contains other requirements related to the Commission's monitoring of the respondents' order compliance.

Part X provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

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