



OXO-BIODEGRADABLE PLASTICS ASSOCIATION

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Mr. Benjamin Theisman,
Staff Attorney,
Division of Enforcement,
Federal Trade Commission,
Washington DC 20580, USA.

By e-mail to btheisman@ftc.gov

17th December 2014

Dear Mr. Theisman,

1. Further to our telephone conversation on 3rd November, we take note of your point that the letters you had sent to suppliers, and which are referred to in the FTC press release of 21st October 2014, relate only to plastic garbage bags and dog-waste bags, and not to shopping bags or other plastic products.

LANDFILL

2. The main issue seems to be whether it is appropriate to describe as "oxo-biodegradable"¹ garbage bags or dog-waste bags, for which the customary disposal in the USA is landfill. It is not however possible to assert that every one of these items will be disposed of in landfill, and you did not do so. Nor is it possible to determine at the point of supply which of these items will go to landfill and which will not.
3. These items are currently made of conventional polymer, which can subsist in the environment on land and sea in and around the USA for decades, and every one of them therefore has the potential to pollute the environment for a long period of time if it escapes the authorised means of disposal.
4. Nobody would encourage littering, but it does happen intentionally and by accident, and the FTC cannot therefore have regard to lawful means of disposal only. We are not aware that the USA nor any of its States has any policy for dealing with this fraction of waste arisings, and in our view this is a serious omission, though not the responsibility of the FTC.
5. As explained in our letter of 4th November, oxo-biodegradable plastic has been designed to address the problem of plastic litter which escapes into the outdoor environment, and it is not intended to degrade deep in landfill where there is little or no oxygen.
6. Many consumers are aware of the undesirable long-term potential of plastic products in the environment, and wish to make an informed choice as to whether the product they are buying will safely biodegrade or whether it could remain as an environmental problem for future generations if it escapes into the outdoor environment after it has left their possession.

¹ This Association is not aware of any material which can be described as "oxo-degradable." That nomenclature describes only the first or abiotic phase of the oxo-biodegradation process, which does not stop there.

7. In our view therefore suppliers have a right and a duty to describe their product as oxo-biodegradable², provided they can prove it by competent and reliable evidence, and provided they make it clear that it is not intended to biodegrade in landfill or in compost. We would request you to confirm that this view is correct. Nobody would expect it or desire it to biodegrade in an incinerator or a recycling facility.
8. In our letter of 4th November we have referred you to a substantial body of competent and reliable scientific evidence as to degradability, biodegradability, and the absence of eco-toxicity. We have also referred you to competent and reliable Life-cycle Assessments conducted by Intertek and others.
9. It is important here to distinguish oxo-biodegradable plastic from "bio-based" plastics and from the type of plastic marketed by ECM Biofilms and their customers, against whom the FTC took action October 2013. See <http://www.biodeg.org/ENZYMATIC%20ADDITIVES%201.7.13.pdf>

ENVIRONMENTAL BENEFIT

10. The second issue is whether the description of a plastic product as "oxo-biodegradable" can properly imply an environmental benefit. As we said in our letter of 4th November, oxo-biodegradable products are designed so that they do not just fragment into particles of plastic, but convert at the end of their useful life into biodegradable materials. They do perform differently to conventional plastics in the outdoor environment, and they are beneficial to the natural environment. This is not a negligible benefit, and we think they could be fairly described as "eco-friendly." We would request you to confirm that this view is correct.

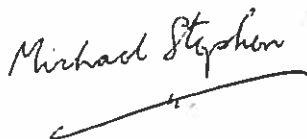
TIMESCALE

11. The third issue is timescale. It may be that consumers in the USA will interpret an unqualified description of a product as "oxo-biodegradable" to mean that the items will fully biodegrade in less than a year.
12. However, oxo-biodegradable products are designed to have a reasonable period of fitness for purpose during which they can be distributed nationally and internationally, warehoused, dispensed to consumers and used (and where appropriate re-used) by them.
13. The approximate useful life of oxo-biodegradable plastic can be controlled at manufacture and is decided by the commercial end-user. It is typically 6 months for a bread wrapper and 18 months for a lightweight shopping bag or garbage sack or dog-waste bag. These products will biodegrade much more quickly than conventional plastics but may not have fully biodegraded within one year, so OPA members are advised to qualify a description of biodegradability by stating the approximate timescale and stating that it will not necessarily be complete within a year. We would request you to confirm that this is not an unqualified claim and is not likely to mislead consumers.

QUESTIONS

14. During our telephone conversation on 3rd November you asked us to be specific, and we would therefore request specific replies to the questions asked in paras. 7, 10, and 13 above.

Yours sincerely,



MICHAEL STEPHEN
Chairman ms@biodeg.org

² Oxo-biodegradation is defined by CEN (The European Standards Organisation) as "degradation resulting from oxidative and cell-mediated phenomena, either simultaneously or successively."