UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Edith Ramirez, Chairwoman Julie Brill Maureen K. Ohlhausen Terrell McSweeny

In the Matter of Federal Trade Com missionAct, 15 U.S.C. § 45 for making deceptive claims about the biodegradability of platteated with its additiveThe Commission's Final Order enjointSCM from making an unqualified clainthat a plastic poduct is degradable unless the claim isthuful and not misleading, ECM has mpetent and reliable scientific evidence substantiated the claim, and the item will completely decompose within five years after customary disposal. The order allows qualified degradability that reater truthful and not misleadinit (i) ECM has competent and reliable scientific evidence that substantiates the claim and (ii) the claim isqualified by either the time to complete decomposition, or the rate and extent of decompositioand, if theproduct will not decompose in a customary disposal facility or by a customary disposalethod, information about the nonstomary disposal facility or method.

¹ On November 9, 2015, ECMpplied for a stay

unless "stayed, in whole or in part and subject to such conditions as may be appropriate, by the Commission" or "an appropriate court of appeals of the United States." 15 U.S.C. § 45(g)(2). Service of the Commission's Opinion and Final Orderawasmplished on October 19, 2015. Thus, absent a stay, the Final Order will become effective on Dedan 2015.

Under Commission Rule 3.56(c) an application for stay must address the following four factors: (1) the likelihood of the applicant's success on ap(2) alghether the applicant will suffer irreparable harm absent a stay; (3) the degree of injury to other parties if a stay is granted; and (4) whether the stay is in the public interest. See 16.C3.56(c); McWane, Inc2014 WL 1630460, at *1 (FTC Apr11, 2014). The required showing of the likelihood of success is "inversely proportional to the amount of irreparable injury suffered absent the stay." See, e.g., North Texas Specialty Physicians 1 F.T.C. 456, 4538 & n.2 (2006) We consider these factors below

Analysis

Addressing the first factor, ECMocuses solely on the Commission's determination ECM's unqualified claim that its additive makes plastics "biodegrada(blithout reference to time period) is false and unsubstantiateECM first arguesthat the Commission erroneously construedhis claim as implying complete biodegradation in a landfill within a reasonably short period of time (five years or less)): also contends that the CommissionFinal Order violate the First Amendment becaustebars ECM from making what ECM maintains are scientifically verifiable claims that its additive accelerates biodegradation of plastic produbied, ECM argues that the Commission violated its due process rights by failing to provide otice that an implied claim of biodegradation within five years was at issue in this Easely, ECM also ECM's claims were important to the purchasing decisions of those in ECM's commercial supply chain. Allowing marketing claims that the Commission found to be misleading, unsubstantiated, and material to purchasing decisions is not in the public int⁴rest.

On the issue of harm absent a stac M claims that will suffer two types of irreprable injury