

Wet Wipes Manufacturer Must Back Up Its Flushing Claims (And Not Consumers' Plumbing)

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On May 18, 2015, the FTC announced a settlement with Nice-Pak Products, Inc., concerning claims that its moist wipes are "flushable," "break apart after being flushed," and are "safe" for sewer and septic systems. Nice-Pak marketed and sold its flushable wipes primarily through private label brands, such as Costco's Kirkland Signature Moist Flushable Wipes, CVS's Flushable Cleansing Wipes, Target's Up & Up Flushable Moist Wipes, and BJ's Family & Toddler Moist Wipes.

The FTC [complaint](#) contends that, because of their composition, Nice-Pak's non-woven fabric wipes did not break down in water in a reasonably short amount of time. Moreover, the complaint alleges that that Nice-Pak did not have substantiation for these performance claims because its tests did not accurately reflect the real-world conditions that Nice-Pak wipes would encounter after being flushed (*i.e.*, conditions that exist in household toilets, plumbing, or septic systems, or in public sewer systems or public wastewater treatment facilities).

The FTC's [proposed consent order](#) prohibits the company from making claims about any moist toilet tissue unless the company has competent and reliable evidence to support such claims. The order does not, however, define the period of time in which a product must break down in order to be considered "flushable" or "safe." The order would require only that the substantiation: (1) demonstrate that the wipes disperse in a sufficiently short amount of time after flushing to avoid clogging or other operational problems in household and municipal sewage lines, septic systems, and other standard wastewater equipment; and (2) substantially replicate the physical conditions of the environment where the wipes are likely to be disposed.

The FTC began investigating products claimed to be "flushable" back in 2013. The issue gained media attention shortly after the *Washington Post* ran a story on 'flushable' personal wipes clogging sewer systems around the country. In December 2013, Consumer Reports followed up with testing showing that, although toilet paper breaks apart in seconds, several brands of flushable wipes took at least 10 minutes to break into small pieces. Often times, wipes can reach a pump within just a couple of minutes.

The moral of the story is - don't just "take the plunge" when advertising your products; companies should make sure that they have "backed up" their claims with adequate substantiation that reflects real-world conditions. Companies should also track consumer complaints and media reports because those can often trigger regulatory investigations.