

January 11, 2024

Via e-mail

Samuel Levine, Director
Bureau of Consumer Protection
Federal Trade Commission
Slevine1@ftc.gov

Re: Complaint requesting action to enjoin unfair and deceptive advertising by Zilla


Dear Director Levine,

On behalf of People for the Ethical Treatment of Animals (PETA), I am writing to request that the Federal Trade Commission (FTC) investigate and enjoin Zilla, a supplier of reptile care products, for engaging in unfair and deceptive practices when advertising its Critter Cages in apparent violation of the FTC Act, 15 U.S.C. §§ 45–58.

In nature, snakes utilize significant space. As explained in detail in the attached complaint, reptile experts—backed by scientific studies—consider the ability of snakes in captivity to assume a straight-line body posture to be crucial for snakes’ physical and behavioral welfare. Notwithstanding this, Zilla represents that snakes do well in Zilla Critter Cages that may not be at least as long as the snakes’ body length—that a cage is an appropriate size until the snake reaches one-and-a-half times the enclosure’s length. Consumers consider such claims material and understand them to mean that Zilla Critter Cages are an appropriate size to promote the health and well-being of snakes who measure up to the lengths Zilla specifies (e.g., Zilla’s forty-gallon breeder Critter Cage—which measures less than thirty-seven inches in length—is appropriate for snakes measuring up to fifty-four inches).

PETA respectfully requests the FTC investigate Zilla and, as warranted, enjoin Zilla from engaging in unfair conduct and deceiving consumers regarding its Critter Cages’ appropriateness for snakes who exceed the length of these enclosures. Thank you for your consideration.

Sincerely,



Regina Lazarus
Counsel, Regulatory Affairs

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PETA FOUNDATION IS AN OPERATING
NAME OF THE FOUNDATION TO
SUPPORT ANIMAL PROTECTION.

ENTITIES:

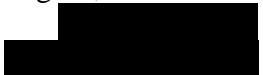
- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,
Petitioner,
v.
Zilla
Respondent.

COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF

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I. INTRODUCTION

Pursuant to Federal Trade Commission (FTC) regulations, 16 C.F.R. §§ 2.1–2.2, People for the Ethical Treatment of Animals (PETA) requests that the FTC investigate and, as warranted, commence an enforcement action against Zilla for engaging in unfair and deceptive practices in violation of the FTC Act, 15 U.S.C. §§ 45–58. Specifically, Zilla represents that a snake will “do well” (i.e., stay healthy, non-aggressive, and happy) in a Zilla Critter Cage that may not be at least as long as the snake’s body length,¹ deceiving consumers about what size enclosure is appropriate for snakes of particular sizes. While these advertising claims—including those found in the company’s snake care sheets aimed at educating beginner snake enthusiasts—promote the sale of its own Zilla-branded Critter Cages, the representations create a risk of substantial injury to consumers who purchase these enclosures under the belief that the cages are/will be an appropriate size for their snake.

Zilla’s website describes the company’s commitment to “producing innovative products to build and maintain a *healthy* reptile habitat.”² Zilla advises consumers to “[m]ake sure to understand how large your reptile critter will grow to properly size its habitat” and then instructs consumers on what cage size is appropriate for snakes of particular sizes.³ Chief among the myths that Zilla peddles to consumers is that a snake will “do well” in an enclosure that does not extend the snake’s full body length; Zilla represents that an enclosure is an appropriate size until a snake grows one-and-a-half times the length of the snake’s enclosure.⁴ Zilla’s representations contradict what reptile experts, veterinarians, and welfare organizations have widely acknowledged for years: habitats that allow full body extension are crucial for allowing snakes to fulfill their physical and behavioral needs.⁵

Snakes require adequate space to stretch out and move around. A leading treatise on reptile husbandry recommends providing a snake an enclosure longer than the snake’s body length.⁶ The reason is that snake locomotion, other behaviors, and the ability to avoid discomfort depend on snakes’ ability to extend their entire body length fully.⁷ A 2019 study also confirmed this. In that study of sixty-five individual snakes—including king snakes, ball pythons, hognose snakes, milk snakes, and corn snakes—many assumed fully stretched-out postures within just one hour of

¹ See *FAQ*, ZILLARULES, <https://www.zillarules.com/information/faq> (last visited Jan. 3, 2024) (“What size cage does my snake need?” and “Will reptiles only grow to the size of the tank they are in?”).

² *About Zilla*, ZILLARULES, <https://www.zillarules.com/about-us> (last visited Jan. 3, 2024) (emphasis added); see *All Products*, ZILLARULES, <https://www.zillarules.com/all-products#store-overlay> (last visited Jan. 3, 2024).

³ *Glass Terrariums, Cages and Tanks*, ZILLARULES, <https://www.zillarules.com/all-products/terrariums> (last visited Jan. 3, 2024); see *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

⁴ *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

⁵ See, e.g., Clifford Warwick et al., *Spatial Considerations for Captive Snakes*, 30 J. OF VETERINARY BEHAV. 37, 47 (2019), <https://www.sciencedirect.com/science/article/pii/S1558787818302211>; Lance Jepson, *Inspecting Pet Shops*, 37 IN PRACTICE 333, 343 (2015), *Corn Snake Care*, ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.rspca.org.uk/adviceandwelfare/pets/other/cornsnake?> (last visited Jan. 3, 2024) (noting that a corn snake needs a vivarium that “matches their length, allowing them to stretch out fully. The minimum width and height must be a third of their length.”); *Think Twice: Is This Pet Right For You?* BRITISH VETERINARY ASS’N, <https://www.bva.co.uk/take-action/our-policies/exotic-pets-non-traditional-companion-animals> (last visited Jan. 3, 2024) (stating in the Exotic Pet Infographic that the ball python “[n]eeds enough space to stretch out in full”).

⁶ John V. Rossi, *General Husbandry and Management*, in *MADER’S REPTILE AND AMPHIBIAN MEDICINE AND SURGERY* 109, 118–23 (2019).

⁷ See Warwick et al., *supra* note 5, at 37.

observation.⁸ Based on these findings and their understanding of snakes’ biological adaptations, behavior, and natural environments, the researchers concluded that straight-line body postures (i.e., the ability to stretch out) are common behaviors for snakes that are essential to their welfare.⁹ When natural behaviors are dramatically constricted, as they are in inadequate enclosures, problematic captivity-stress-related behaviors (e.g., hyper-alertness and flattened body posture) and harmful health impacts (e.g., bowel constipation, urinary tract disease, musculoskeletal disorders) have been documented.¹⁰

Researchers continued to examine whether enclosure size influences the behavior and welfare of captive snakes and, in 2021, published analogous findings from a study focused specifically on corn snakes.¹¹ The researchers noted the following before recommending that “an enclosure longer (at least) than a snake’s body length [be] provided for captive snakes”:

[W]hen the snakes had more space available they chose to use it—both during phases of activity and to stretch out when resting—suggesting a clear and valued behavioural need (Dawkins, 1988) that should be met to maximise their welfare [B]ased on the preferences of the snakes and the within-enclosure behavioural observations, it appears that the provision of additional space sufficiently large to allow stretching out to their full length—especially when snakes were active—was beneficial to the behaviour and welfare of captive corn snakes, and is a requirement that cannot be satisfied in smaller enclosures.¹²

Accordingly, PETA submits this citizen’s complaint requesting that the FTC take action, pursuant to Section 5 of the FTC Act, to stop Zilla from engaging in unfair and deceptive practices that misrepresent what size enclosures snakes need to support their physical and behavioral well-being and that continue to put consumers at risk of substantial injury without any offsetting benefit to them.

II. PARTIES

A. Petitioner

Petitioner People for the Ethical Treatment of Animals, Inc. is a Virginia non-stock corporation and animal protection charity pursuant to Section 501(c)(3) of the Internal Revenue Code. PETA has dedicated itself to protecting animals from abuse, neglect, and cruelty since its founding in 1980. To further its mission, it engages in cruelty investigations, research, newsgathering, investigative reporting, and protest campaigns. PETA strives to educate consumers about animal

⁸ *Id.* at 37–48.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See generally Tatjana Hoehfurtner et al., *Does Enclosure Size Influence the Behavior & Welfare of Captive Snakes (Pantherophis guttatus)?*, 243 APPLIED ANIMAL BEHAV. SCI. 1–8 (2021), <https://www.sciencedirect.com/science/article/pii/S0168159121002227>.

¹² *Id.* at 7.

care claims encountered in the marketplace and advocates in various ways against cruelty to animals, including to those kept in the home, such as snakes.

B. Respondent

Respondent Zilla, headquartered at 5401 West Oakwood Park Drive, Franklin, WI 53132, advertises its reptile care products to consumers via its website and sells through retailers across the United States.¹³ Zilla is a brand in the Central Garden and Pet Company portfolio, a company whose pet segment net sales totaled \$1.9 billion in 2022.¹⁴ Zilla highlights its “commit[ment] to producing innovative products to build and maintain a healthy reptile habitat.”¹⁵

III. STATEMENT OF FACTS

Zilla advertises its products, including Critter Cages, to consumers via its website and connects consumers to retailers selling its products (e.g., Amazon, Petco, and independent stores across North America) through its store finder search tool.¹⁶ A 40-gallon Zilla Critter Cage, for example, can be purchased online at Petco.com for \$154.99.¹⁷ Zilla purports to produce products for “build[ing] and maintain[ing] a *healthy* reptile habitat.”¹⁸ Zilla tells consumers to “do your research about behaviors, size, and lifespans[;] [r]esearch the species you have in mind before purchasing to make sure you are prepared for its needs throughout its life;”¹⁹ and “[m]ake sure the habitat is appropriately sized for the animal.”²⁰ To facilitate this research, Zilla instructs consumers about what size cage a snake needs, making the following representations on its website:

Snakes aren’t as mobile as other reptiles, and need to feel like they are safe and hidden from predators. Putting a small snake in a large cage can be stressful. Hatchling snakes up to 24" do well in a 10 gallon Critter Cage, subadults (definition: passed the juvenile stage but not yet an adult) up to 40" do well in a 20 gallon long Critter Cage, and a 40 gallon breeder Critter Cage works for snakes up to 54". A good rule of thumb is to upgrade the snake’s tank once they are 1.5 times as long as the length of the enclosure (measuring from

¹³ *Contact Us*, ZILLARULES, <https://www.zillarules.com/contact-us> (last visited Jan. 3, 2024).

¹⁴ Central Garden & Pet Company, U.S. Sec. & Exch. Comm’n Form 10-Q 21 (June 24, 2023), <https://ir.central.com/sec-filings/all-sec-filings/content/0000887733-23-000013/0000887733-23-000013.pdf>.

¹⁵ *About Zilla*, *supra* note 2.

¹⁶ *Glass Terrariums, Cages and Tanks*, *supra* note 3 (displaying the “Find a Store” search tool); *Multi-Platinum Music Artist 24kGoldn’s Bearded Dragon “Puff” Named the First Official Rep-Resentative of Leading Reptile Care Brand, Zilla*, BUSINESS WIRE (June 14, 2023, 10:01 AM), <https://www.businesswire.com/news/home/20230614311202/en/>; e.g., *Zilla Critter Cage Enclosures 10*, AMAZON, <https://www.amazon.com/Zilla-28010-10-Gallon-Critter-20-Inch/dp/B00176GBUE> (last visited Jan. 3, 2024); *Zilla Critter Cage, 40 Gallon*, PETCO, <https://www.petco.com/shop/en/petcostore/product/zilla-critter-cage> (last visited Jan. 3, 2024); *Zilla Enclosure Critter Cage, 40 Gallon*, PET SUPPLIES PLUS, <https://www.petsuppliesplus.com/categories/reptile/basics/housing/glasswscreentop/zilla-enclosure-critter-cage/5067?sku=096316660274> (last visited Jan 3, 2024).

¹⁷ *Zilla Critter Cage, 40 Gallon*, *supra* note 16.

¹⁸ *About Zilla*, *supra* note 2 (emphasis added); *All Products*, *supra* note 2.

¹⁹ *Snake Facts*, ZILLARULES, <https://www.zillarules.com/pet-type/snakes> (last visited Jan. 3, 2024) (Should I Get a Snake as a Pet?).

²⁰ *FAQ*, *supra* note 1 (“Will reptiles only grow to the size of the tank they are in?”).

left to right). Snakes larger than 5 feet will likely need a larger custom-made enclosure.²¹

Recognizing that beginner enthusiasts may be unfamiliar with caring for snakes, Zilla posts supplementary “care sheets” for snakes it describes as “best beginner reptiles” (e.g., ball pythons, corn snakes, milk snakes, and rosy boas).²² Zilla’s ball python care sheet explains that this snake can reach fifty-four inches and adults “require a minimum of a 40BR Zilla Critter Cage.”²³ Zilla recommends the same cage size for adult corn snakes, noting that adults can reach a length of sixty-six inches.²⁴ The milk snake care sheet does not refer to the approximate size of adult milk snakes but notes that there are twenty-four subspecies and asserts that these snakes “should be housed in a 40BR Zilla Critter Cage.”²⁵ According to PetMD, “[o]n average, and species depending, [milk snakes] can grow between 20 and 60 inches (51 to 152 cm) in length, though some have grown up to seven feet in length.”²⁶ Zilla’s care sheet for rosy boas explains that these snakes reach a length of thirty-six inches and require a minimum of a 20-gallon (long) Zilla Critter Cage.²⁷

As described in Figure 1, a 10-gallon Critter Cage measures 20.25 inches in length; a 20-gallon (long) Critter Cage measures 30.25 inches in length; a 40-gallon (breeder) Critter Cage measures 36.1875 inches in length.²⁸

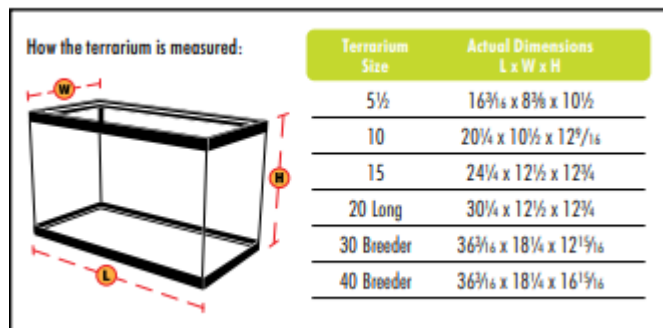


Fig. 1. Zilla Critter Cage dimensions.²⁹

Zilla’s representations falsely assure consumers that its cages will provide a snake measuring up to five feet long enough space for the snake to maintain physical and behavioral health. Many

²¹ *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

²² See *Best Beginner Reptiles*, ZILLARULES, <https://www.zillarules.com/information/best-beginner-reptiles> (last visited Jan. 3, 2024).

²³ *Ball Python*, ZILLARULES, <https://www.zillarules.com/information/care-sheets/ball-python> (last visited Jan. 3, 2024) (Housing).

²⁴ *Corn Snake*, ZILLARULES, <https://www.zillarules.com/information/care-sheets/corn-snake> (last visited Jan. 3, 2024) (Housing).

²⁵ *Milk Snake*, ZILLARULES, <https://www.zillarules.com/information/care-sheets/milk-snake> (last visited Jan. 3, 2024) (Housing).

²⁶ *Milksnake*, PETMD (Mar. 8, 2016), <https://www.petmd.com/reptile/species/milk-snake>.

²⁷ *Rosy Boa*, ZILLARULES, <https://www.zillarules.com/information/care-sheets/rosy-boa> (last visited Jan. 3, 2024, 2023) (Housing).

²⁸ *Critter Cage Enclosures*, ZILLARULES, <https://www.zillarules.com/all-products/terrariums/critter-cage> (last visited Jan. 3, 2024).

²⁹ *Zilla Rep Yourself 2023 Catalog*, ZILLARULES 4 (2023), <https://www.zillarules.com/information/product-catalog>.

consumers undoubtedly have purchased (and will continue to purchase) Zilla Critter Cages specifically because of what Zilla's representations led them to believe. The size representations provide important information to consumers—especially the beginner snake enthusiasts Zilla targets—and are, thus, material and not easily avoidable by consumers. The representations serve Zilla's interests in attracting sales while offering no countervailing consumer benefits. Therefore, Zilla's representations appear actionable under the FTC Act. Accordingly, PETA requests that the FTC take prompt action to stop Zilla from engaging in unfair and deceptive advertising, representing that an enclosure measuring less than a snake's straight-line body posture is an appropriate size to provide for the snake's well-being.

IV. LEGAL STANDARD

A. Deceptive Advertising

Section 5(a) of the FTC Act prohibits “deceptive acts or practices in or affecting commerce.”³⁰ The elements of deception include (1) an oral or written representation, omission, or practice, (2) that is likely to mislead a reasonable consumer, and (3) that is material.³¹ The FTC Act defines commerce as “commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia.”³²

The FTC Act's “ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted.”³³ Although “words and sentences may be literally and technically true [they may be] framed in such a setting as to mislead or deceive.”³⁴ Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.”³⁵

The FTC Act applies to deceptive omissions, including telling a half-truth and omitting the rest. The Act requires an advertiser “to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.”³⁶ For example, in *In re Horizon Corporation*, the FTC held that Horizon violated the FTC Act, in part, because many of Horizon's representations regarding its for-sale properties “consisted of partial truths, or literal or technical truths, framed in a setting to mislead or deceive.”³⁷ The FTC found that “[i]n several respects, Horizon's sales techniques left material issues vague. The record [t]herein reveal[ed] widespread confusion and a lack of understanding about critical elements of Horizon's property and Horizon's obligations, all conducive to Horizon's objectives.”³⁸

³⁰ 15 U.S.C. § 45(a)(1).

³¹ See *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 175 (1984) [hereinafter FTC Policy Statement on Deception].

³² 15 U.S.C. § 44.

³³ *In re Raymond Lee Org., Inc.*, 92 F.T.C. 489, 591 (1978).

³⁴ *In re Horizon Corp.*, 97 F.T.C. 464, 805 n.6 (1981) (quoting *Bockenstette v. F.T.C.*, 134 F.2d 369, 371 (10th Cir. 1943)).

³⁵ *In re MacMillan, Inc.*, 96 F.T.C. 208, 301 (1980).

³⁶ *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

³⁷ *In re Horizon Corp.*, 97 F.T.C. at 741.

³⁸ *Id.* at 741–42.

Deceptive advertising “must be judged by viewing it as a whole.”³⁹ The FTC is “required to look at the complete advertisement and formulate [its] opinions on the basis of the net general impression conveyed by them and not on isolated excerpts.”⁴⁰ The focus is the “entire mosaic . . . rather than each tile separately.”⁴¹

The FTC’s concern focuses on the “message conveyed or the implication created in the mind of the *ordinary* purchaser.”⁴² “The law is not made for experts but to protect the public,—that vast multitude . . . who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.”⁴³ An objective, reasonable standard determines whether advertising is false or misleading.⁴⁴ As long as an advertisement “reasonably can be interpreted in a misleading way [it] is deceptive, even though other, non-misleading interpretations may be equally possible.”⁴⁵

A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material.”⁴⁶ A material misrepresentation is “one which is likely to affect a consumer’s choice of or conduct regarding a product. In other words, it is information that is important to consumers.”⁴⁷ The standard is subjective.⁴⁸ “[I]f consumers prefer one product to another, the Commission [does] not determine whether that preference is objectively justified.”⁴⁹

An expressed claim is presumed material since “the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.”⁵⁰ The FTC will also infer materiality when “evidence exists that a seller intended to make an implied claim.”⁵¹

B. Unfair Practices

Section 5(a) of the FTC Act also prohibits “unfair . . . acts or practices in or affecting commerce.”⁵² An act or practice is unfair if it “causes or is likely to cause [1] substantial injury to consumers

³⁹ *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976).

⁴⁰ *Standard Oil of Cal.*, 84 F.T.C. 1401, 1471 (1974), *modified*, 96 F.T.C. 380 (1980).

⁴¹ *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2d Cir. 1963).

⁴² *In re Horizon Corp.*, 97 F.T.C. at 741 (emphasis added).

⁴³ *Aronberg v. v. FTC*, 132 F.2d 165, 167 (7th Cir. 1942); *see* FTC Policy Statement on Deception, *supra* note 31, at 177–82; *see also In re Warner-Lambert Co.*, 86 F.T.C. 1398, 1415 n.4 (1975), *aff’d*, 562 F.2d 749 (D.C. Cir. 1977) (evaluating the claim from the perspective of the “average listener”); *In re Grolier, Inc.*, 91 F.T.C. 315, 430 (1978) (considering the “net impression” made on the “general populace”).

⁴⁴ *See Ortega v. Natural Balance, Inc.*, 300 F.R.D. 422, 428–29 (C.D. Cal. 2014).

⁴⁵ *In re Telebrands Corp.*, No. 9313, 2004 WL 3155567, at *32 (F.T.C. Sept. 15, 2004).

⁴⁶ *See* FTC Policy Statement on Deception, *supra* note 31, at 175.

⁴⁷ *Id.* at 182 (footnote omitted).

⁴⁸ *See id.* at 182 n.46.

⁴⁹ *Id.*

⁵⁰ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 568 (1980).

⁵¹ FTC Policy Statement on Deception, *supra* note 31, at 182.

⁵² 15 U.S.C. § 45(a)(1).

which is [2] not reasonably avoidable by consumers themselves and [3] not outweighed by countervailing benefits to consumers or to competition.”⁵³

The substantial injury that makes a practice unfair can involve monetary or non-monetary harm.⁵⁴ The FTC measures substantiality in the aggregate,⁵⁵ meaning that a “small degree of harm to a large number of consumers may be deemed ‘substantial,’ as may a significant risk of harm to each consumer.”⁵⁶ Although the FTC does not define “substantial,” the dictionary defines the term as “large in size, value, or importance.”⁵⁷

If a particular consumer group is targeted or likely to be affected by an advertisement, the FTC will examine advertising from the perspective of a reasonable member of the targeted group.⁵⁸ If consumers do not have a “free and informed choice that would have enabled them to avoid the unfair practice,” an injury is not reasonably avoidable.⁵⁹ For example, in *International Harvester Company*, the FTC rejected the respondent’s claims that tractor operators could have avoided physical injury caused by removing fuel caps from gasoline-powered tractors by observing certain safety rules, finding that many tractor operators did not have this safety information and that the respondent was aware of this fact.⁶⁰ Additionally, “[c]onsumers cannot reasonably avoid injury from an act or practice if it interferes with their ability to effectively make decisions or to take action to avoid injury.”⁶¹

Lastly, an act is unfair when it is “injurious in its net effects—that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act.”⁶²

⁵³ 15 U.S.C. § 45(n).

⁵⁴ *Unfair, Deceptive, and Abusive Practices—Federal Trade Commission Act/Dodd-Frank Act*, FDIC Consumer Compliance Examination Manual 1.2 (June 2022), <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>; see *In re Int’l Harvester Co.*, 104 F.T.C. 949, 1073 (1984) (“[T]he Commission will not seek to ban an advertisement merely because it offends the tastes or social beliefs of some viewers.”).

⁵⁵ Letter from Harold Kim, Executive Vice President U.S. Chamber Institute for Legal Reform, to Donald S. Clark, FTC Secretary 9 (Dec. 21, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/12/ftc-2018-0098-d-0037-163376.pdf.

⁵⁶ Michael D. Scott, *The FTC, The Unfairness Doctrine, and Data Security Breach Litigation: Has the Commission Gone too Far?*, 60 ADMIN. L. REV. 127, 152 (2008); see Unfairness Policy Statement, 104 F.T.C. 949, 1064 n.55 (1984) (“An injury may be sufficiently substantial, however, if it does a small harm to a large number people, or if it raises a significant risk of concrete harm”).

⁵⁷ *Substantial*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/substantial> (last visited Jan. 3, 2024); see Letter from Harold Kim, *supra* note 55, at 9 n.42 (citing Merriam-Webster’s Collegiate Dictionary and Cambridge Dictionary).

⁵⁸ See FTC Policy Statement on Deception, *supra* note 31, at 177–78.

⁵⁹ *FTC v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1115 (S.D. Cal. 2008) (quoting *F.T.C. v. J.K. Publ’ns. Inc.*, 99 F.Supp.2d 1176, 1201–03 (C.D.Cal. 2000) (citation omitted)).

⁶⁰ *In re Int’l Harvester Co.*, 104 F.T.C. 949, 1043 (1984).

⁶¹ *Unfair, Deceptive, and Abusive Practices—Federal Trade Commission Act/Dodd-Frank Act*, *supra* note 54.

⁶² *Id.*

V. CLAIMS

A. Zilla Engages In Deceptive Practices By Making Written Representations That Are Likely To Mislead A Reasonable Consumer And Are Material.

1. Zilla Makes Written Representations That Critter Cages Measuring Less Than A Snake's Straight-Line Body Posture Are Appropriate For Accommodating A Snake's Well-Being.

Zilla boasts that its brand “offers a variety of products to meet the specific requirements of your pets,” whether the consumer is a “beginner or a reptile enthusiast.”⁶³ On its website, Zilla tells consumers that a snake will “do well” in an enclosure that does not extend the snake’s full body length.⁶⁴ Zilla defines “do well” by explaining that a cage that is too small for a snake can negatively affect the animal’s health and well-being by causing the snake to “become sick, aggressive, and very unhappy.”⁶⁵

Zilla instructs consumers to upgrade a snake’s tank once the snake is 1.5 times the length of the enclosure.⁶⁶ Specifically, Zilla claims that its 40-gallon breeder Critter Cage—which measures less than 37 inches in length—is appropriately sized for a snake who is 54 inches long and its 20-gallon breeder Critter Cage—which measures less than 31 inches in length—is appropriately sized for a snake who is 40 inches long.⁶⁷ Zilla repeats these claims with respect to specific “best beginner reptiles.” For example, Zilla maintains that its 40-gallon cage is appropriately sized for milk snakes—snakes who may average up to 60 inches in length.⁶⁸ Similarly, for ball pythons and corn snakes—snakes whom Zilla acknowledges reach around 54 inches and 66 inches, respectively, Zilla recommends its 40-gallon Critter Cage as the minimum appropriate size.

These claims, representing that Zilla Critter Cages measuring less than a snake’s straight-line body posture are appropriate for accommodating a snake’s well-being, contradict the scientific findings of reptile experts and form the basis of the deceptive practices claim.

2. Zilla Misleads Reasonable Consumers About What Size Critter Cage Is Appropriate For Accommodating A Snake's Well-Being, Constituting Deceptive Activity In Apparent Violation Of The FTC Act.

Zilla refers to snake-keeping as a “hobby”⁶⁹ and tells consumers—including new hobbyists interested in “beginner reptiles” (e.g., ball pythons, corn snakes, milk snakes, and rosy boas)⁷⁰—

⁶³ *About Zilla*, *supra* note 2; *see also Our Brands*, CENTRAL, <https://www.central.com/our-brands> (last visited Jan. 3, 2024) (describing Zilla as “Reptile products for beginners and enthusiasts”).

⁶⁴ *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

⁶⁵ *Id.* (“Will reptiles only grow to the size of the tank they are in?”).

⁶⁶ *Id.* (“What size cage does my snake need?”).

⁶⁷ *Id.* (“What size cage does my snake need?”).

⁶⁸ *Rosy Boa*, *supra* note 27; *Milksnake*, *supra* note 26.

⁶⁹ *Information*, ZILLA RULES, <https://www.zillarules.com/information> (last visited Jan. 3, 2024) (“Checkout Zilla’s picks for the best reptiles to own as a new hobbyist.”).

⁷⁰ *Id.*; *Best Beginner Reptiles*, *supra* note 22.

that keeping certain species of snakes will be easy—as easy as purchasing Zilla products.⁷¹ For example, Zilla describes ball pythons as “a docile species that doesn’t get very large, are long lived (25-30 years or more) and are very easy to keep”⁷² and explains that a corn snake’s “calm disposition, ease of care and hardiness are just a few reasons this U.S. native snake makes such an amazing pet.”⁷³ To substantiate this claim of ease, Zilla represents to consumers that its Critter Cages are appropriately sized for these snakes. Zilla knows the typical sizes of snake species, noting on its website, for example, that corn snakes are “a genuinely small snake reaching around 5.5 feet.”⁷⁴ Zilla also knows that its longest Critter Cage would be incapable of allowing a snake of this length—or even a corn snake who is two feet shorter than this typical length—to stretch out fully.

Zilla purports to be concerned about the impact of inadequate space, acknowledging that a cage that is too small can negatively affect the snake’s health and well-being,⁷⁵ yet ignores scientific literature when it represents that a snake will “do well” in a Critter Cage that measures less than the snake’s body length.⁷⁶ Based on years of research, which scientific papers have documented, reptile experts and veterinarians insist that enclosures allowing full body extension are crucial for allowing snakes to fulfill their physical and behavioral needs.⁷⁷ Inadequately sized enclosures have been associated with captive-stress-related behaviors and negative health consequences.⁷⁸ Nonetheless, Zilla advises consumers to “upgrade the snake’s tank once the snake is *1.5 times* as long as the length of the enclosure.”⁷⁹ Zilla’s representations, particularly when viewed as a whole, mislead the ordinary purchaser about the appropriate cage size required to fulfill a snake’s basic needs for maintaining its physical and behavioral welfare.

3. Zilla’s Representations Are Material Because They Influence A Consumer’s Decision to Purchase a Critter Cage.

The following representative consumer feedback from a 40-gallon Zilla Critter Cage sales listing on Petco.com underscores that consumers consider cage size an important factor in choosing a snake enclosure:

- “The glass tank itself is a good quality, and the dimensions are great for my adult corn snake.”⁸⁰
- “Excellent reptile enclosure. Needed an upgrade for our growing king snake.”⁸¹
- “Works great for us! We’ve got a happy snake who can stretch out again.”⁸²

⁷¹ See *About Zilla*, *supra* note 2 (“From terrariums to bedding, lighting to décor—Zilla provides all the necessary components for the successful keeping of reptiles and amphibians.”).

⁷² *Ball Python*, *supra* note 23 (The Rising Star).

⁷³ *Corn Snake*, *supra* note 24 (A Beautiful Native Species).

⁷⁴ *Id.* (A Beautiful Native Species).

⁷⁵ *FAQ*, *supra* note 1 (“Will reptiles only grow to the size of the tank they are in?”).

⁷⁶ *Id.* (“What size cage does my snake need?”).

⁷⁷ See *supra* Section I.

⁷⁸ Warwick et al., *supra* note 5, 37–48.

⁷⁹ *FAQ*, *supra* note 1 (emphasis added) (“What size cage does my snake need?”).

⁸⁰ *Zilla Critter Cage, 40 Gallon, Reviews*, PETCO, <https://www.petco.com/shop/en/petcostore/product/zilla-critter-cage#reviews> (last visited Jan. 3, 2024) (AbbyA review from “a year ago”).

⁸¹ *Id.* (Kerrich review from “2 years ago”).

⁸² *Id.* (Marenmcb review from “2 years ago”).

- “great size and fitment. we use this for all of our adult BP and baby BOAS.”⁸³
- “Great cage and seems to be built well. Got it for my ball python to grow into.”⁸⁴

Zilla is incentivized to teach consumers that snake enclosures only need to measure a fraction of the snake’s length to sell its own Zilla-branded Critter Cages, which range in size up to a maximum length of 36.1875 inches.⁸⁵ Fewer consumers would likely be interested in purchasing snakes, snake enclosures, or other snake-related Zilla products if consumers knew they might need enclosures that are several feet longer and considerably more expensive than those Zilla holds out as appropriate—cage lengths that Zilla does not sell—for snakes to “do well” (or, in other words, not become sick, aggressive, or very unhappy).

B. Zilla Engages In Unfair Acts By Making Representations That Cause Injury That Is Substantial, Unavoidable, And Not Outweighed By Countervailing Benefits.

1. Zilla’s Representations Are Unfair Because They Cause Substantial Injury To Consumers.

As a commercial business producing reptile products sold by retailers throughout the United States, Zilla cannot lawfully engage in practices likely to cause substantial injury. But, in addition to the harm enclosures of insufficient size pose to those snakes held captive in them, Zilla’s representations cause consumers—who are seeking what they reasonably believe to be appropriately sized snake enclosures—to suffer substantial monetary injury when the Critter Cages do not accommodate their snakes’ welfare as Zilla represents.

Retailers recognize the popularity of Zilla’s Critter Cages among consumers. For example, one retailer described the Zilla Critter Cage as a “top seller” and claimed that “[m]ore reptile and small animal fanciers choose Critter Cage, thanks to bonus features in the top frame that add strength, ease access and improve safety.”⁸⁶ Online reviews from consumers, specifically discussing the enclosure size of a 40-gallon Zilla Critter Cage, reinforce that consumers factor cage size into their buying decisions.⁸⁷ Zilla’s express statements lead consumers interested in purchasing a snake enclosure to believe that snakes measuring five feet or less (e.g., “beginner reptiles” like ball pythons and milk snakes) do well in a 40-gallon Zilla Critter Cage.⁸⁸ Meanwhile, scientific studies and herpetological treatises reveal that such an enclosure will fail to provide for a snake’s physical and behavioral needs once the snake grows beyond the length of the cage.⁸⁹ Since ball pythons and milk snakes typically grow longer than the longest Zilla Critter Cage, Zilla’s representations create a risk of substantial injury to consumers who purchase a Zilla Critter Cage under the belief that it is appropriately sized to accommodate these snakes. These consumers suffer monetary loss

⁸³ *Id.* (wakesurfer82 review from “3 years ago”).

⁸⁴ *Id.* (XDChick422 review from “3 years ago”).

⁸⁵ *Zilla Rep Yourself 2023 Catalog*, *supra* note 29.

⁸⁶ *See, e.g., Critter Cage*, AQUARIUM DEPOT, <https://aquariumdepot.ca/products/zilla-critter-cage-20-gal-1> (last visited Jan. 3, 2024).

⁸⁷ *See supra* Section V(A)(3) (describing comments from customers).

⁸⁸ *See FAQ*, *supra* note 1 (“What size cage does my snake need?”); *Best Beginner Reptiles*, *supra* note 22; *Ball Python*, *supra* note 23 (Housing).

⁸⁹ *See, e.g., Rossi*, *supra* note 6; Warwick et al., *supra* note 5.

associated with the consequences of remedying the enclosure size or jeopardizing the welfare of their snakes.

2. Zilla’s Representations Are Unfair Because Consumers Are Not Reasonably Able To Avoid Injury.

Zilla directs its representations regarding appropriate enclosure size toward beginner reptile enthusiasts, assuring consumers new to the hobby that snakes measuring five feet long will do well in a 40-gallon Zilla Critter Cage.⁹⁰ In *In re International Harvester Company*, the respondent’s attempt to place the responsibility for knowing safety information (i.e., information to avoid injury) on the consumer failed because consumers were unaware of this information and the respondent knew that.⁹¹ Likewise, Zilla expects that consumers are unaware of the injury-avoiding-information (i.e., scientific studies published in veterinary journals by reptile experts who conclude that enclosing snakes in cages that do not allow them to stretch out fully jeopardizes the snakes’ welfare) and proactively educates consumers, directing them to purchase cages that may not accommodate a straight-line body posture. Although Zilla tells consumers to “[r]esearch the species you have in mind before purchasing to make sure you are prepared for its needs throughout its life”⁹² and “[m]ake sure the habitat is appropriately sized for the animal,”⁹³ Zilla proceeds to expressly and specifically supply consumers the answer to a basic question—“What size cage does my snake need?”—presumably because it expects consumers to rely on its response.⁹⁴ Zilla’s advertising scheme interferes with the consumer’s reasonable ability to avoid injury, making Zilla’s representations unfair.

3. Zilla’s Representations Are Unfair Because Their Countervailing Benefits Do Not Offset The Injury To Consumers.

Zilla makes sales based on advertising claims that its Critter Cages are appropriately sized for snakes of particular lengths—lengths that may be 1.5 times the length of the enclosure—when, study-after-study consistently conclude that snakes do not do well in enclosures that prevent them from extending their entire body length.⁹⁵ Zilla makes its claims without providing any consumer benefit to offset the injury. On the contrary, to sell its own Zilla-branded Critter Cages—none of which exceed 37 inches in length, Zilla is incentivized to teach consumers that snake enclosures need only measure a fraction of the snake’s length.⁹⁶

VI. RELIEF REQUESTED

Zilla’s deceptive and misleading advertising appears to violate Section 5 of the FTC Act. PETA urges the FTC to take action to stop Zilla from engaging in unfair and deceptive practices by

⁹⁰ *About Zilla*, *supra* note 2; *see also Our Brands*, *supra* note 63 (describing Zilla as “Reptile products for beginners and enthusiasts”); *Information*, *supra* note 69; *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

⁹¹ *In re International Harvester Co.*, 104 F.T.C. 949, 1043 (1984).

⁹² *Snake Facts*, *supra* note 19 (“Should I Get a Snake as a Pet?”).

⁹³ *FAQ*, *supra* note 1 (“Will reptiles only grow to the size of the tank they are in?”).

⁹⁴ *Id.* (“What size cage does my snake need?”).

⁹⁵ *See, e.g., Warwick et al.*, *supra* note 5; *Hoehfurner et al.*, *supra* note 11.

⁹⁶ *See Zilla Rep Yourself 2023 Catalog*, *supra* note 29; *FAQ*, *supra* note 1 (“What size cage does my snake need?”).

representing that snakes “do well” in Zilla Critter Cages that may not be at least as long as the snakes’ body length.

Many consumers would choose not to purchase Zilla Critter Cages, or not to own snakes at all, absent Zilla’s misleading claims and if they knew the truth: enclosures that do not allow snakes to extend their bodies fully lack an essential requirement for the snakes’ physical and behavioral welfare. Consumers depend on the FTC to protect them from Zilla’s deception. This complaint demands that Zilla be held accountable for misleading consumers who seek to purchase what they reasonably believe to be appropriately sized snake enclosures.

Accordingly, the Petitioner respectfully requests that the FTC:

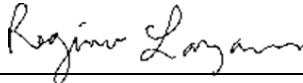
- (1) require Zilla to remove false and misleading statements from its advertising, including, but not limited to:

Hatchling snakes up to 24" do well in a 10 gallon Critter Cage, subadults (definition: passed the juvenile stage but not yet an adult) up to 40" do well in a 20 gallon long Critter Cage, and a 40 gallon breeder Critter Cage works for snakes up to 54". A good rule of thumb is to upgrade the snake’s tank once they are 1.5 times as long as the length of the enclosure (measuring from left to right). Snakes larger than 5 feet will likely need a larger custom-made enclosure.

- (2) enjoin Zilla from making such misleading statements in the future;
- (3) impose all other penalties as are just and proper.

DATED January 11, 2024.

For People for the Ethical Treatment of Animals

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