

IN THE MATTER OF

PLASKOLITE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3104. Complaint, Feb. 23, 1983—Decision, Feb. 23, 1983

This consent order requires a Columbus, Ohio manufacturer and seller of interior-mounted plastic storm windows, among other things, to cease misrepresenting the performance capabilities of storm windows; the amount of savings that will result from installation of storm windows on a house already equipped with prime and storm windows; and the purpose, content or conclusions of tests or surveys used by the company to substantiate energy-related claims. Respondent is further barred from using the words "up to" or similar terms in energy-related claims, unless the maximum level of performance can be achieved by a significant number of consumers under normal circumstances, and the class of persons who can achieve this level of performance is disclosed. Additionally, respondent is required to retain documentation for energy-related claims for a period of three years.

Appearances

For the Commission: *Marilyn J. Holmes* and *Robert C. Cheek*.

For the respondent: *Eric F. Stoer*, Washington, D.C. and *G. Robert Lucas, Porter, Wright, Morris & Arthur*, Columbus, Ohio.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Plaskolite, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Plaskolite, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1770 Joyce Avenue, Columbus, Ohio.

PAR. 2. Respondent has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of interior mounted plastic storm windows under the brand name "In-Sider."

PAR. 3. In the course and conduct of its business, respondent has

caused its interior mounted plastic storm windows, when sold, to be shipped from its manufacturing plants in Columbus, Ohio, to its distributors and retailers in various States of the United States. For the purpose of inducing the purchase of its interior mounted plastic storm windows by the consuming public, and in a manner likely to induce the purchase of said products in commerce, respondent has disseminated and caused the dissemination of certain advertisements and promotional materials through various means, including the insertion of advertisements in magazines with national circulation, and the distribution of promotional materials through the use of the United States mail. Respondent at all times mentioned herein has maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, through the use of various advertisements and promotional materials, respondent has represented that:

a. When installed with a double hung window, the In-Sider will cut heat loss through the window by 88%!

b. Triple glaze with the In-Sider (install the In-Sider in addition to a storm window or insulating window) and cut your heat loss by an additional 26%!

c. Actual test results show how much typical homes saved with In-Sider storm windows. . . . Heating \$ Saved by Adding In-Sider: Boston, \$156.62; Dallas, \$49.97; Detroit, \$87.33; Philadelphia, \$54.63. Cooling \$ Saved by Adding In-Sider: Boston, \$85.00; Dallas, \$170.00; Detroit, \$45.00; Philadelphia, \$31.00.

d. How much can you save? Field tests in three different American cities clearly show how much In-Siders can slash off a heating bill [in 1979]. . . . Projected Fuel Bill Savings Adding In-Siders to Prime Windows only: Philadelphia, \$88.05; Boston, \$252.20; Dallas, \$52.53.

PAR. 5. In truth and in fact, contrary to respondent's representations set forth in Paragraph Four:

a. The In-Sider will not cut heat loss through many double hung windows by 88 percent.

b. The In-Sider will not cut heat loss by 26 percent in many instances where it is installed in addition to a storm window or insulating window.

c. The savings on heating and cooling costs set forth in Paragraph Four, subparagraph c. above are not actual test results. The test results referred to do not establish heating cost savings of \$156.62 by installing In-Sider storm windows on a typical home in Boston. At the time the representations set forth in Paragraph Four, subparagraph c. above were made, a typical home in Boston would not have saved \$156.62 on heating costs by installing In-Sider storm windows.

d. The field tests referred to in Paragraph Four, subparagraph d. above do not establish heating cost savings of \$252.20 by installing In-Sider storm windows on a typical home in Boston. A typical home in Boston would not have saved \$252.20 on heating costs in 1979 by installing In-Sider storm windows.

Therefore, said representations are deceptive or unfair.

PAR. 6. In the course and conduct of its business, through the use of various advertisements and promotional materials, respondent has represented that:

- a. Installation of the In-Sider will "Save up to 88% of heat loss through windows."
- b. Installation of the In-Sider "cuts heat loss through your window by up to 98.5%."
- c. "And, if you have outside storm windows, the In-Sider increases their efficiency by up to 26%!"

PAR. 7. By and through the use of these and other representations, respondent has represented directly or by implication that:

- a. Installing In-Sider storm windows will save an appreciable number of consumers 88 percent or close to 88 percent of heat loss through windows under circumstances normally and expectably encountered by consumers.
- b. Installing In-Sider storm windows will reduce heat loss through windows for an appreciable number of consumers by 98.5 percent or close to 98.5 percent under circumstances normally and expectably encountered by consumers.
- c. Installing In-Sider storm windows on a house that already has prime and storm windows will reduce heat loss for an appreciable number of consumers by 26 percent or close to 26 percent under circumstances normally and expectably encountered by consumers.

PAR. 8. In truth and in fact, contrary to respondent's representations set forth in Paragraph Seven:

- a. Few, if any, consumers, under circumstances normally and expectably encountered, will save 88 percent or close to 88 percent of heat loss through windows by installing In-Sider storm windows.
- b. Few, if any, consumers, under circumstances normally and expectably encountered, will reduce heat loss through windows by 98.5 percent or close to 98.5 percent by installing In-Sider storm windows.
- c. Few, if any, consumers, under circumstances normally and expectably encountered, will reduce heat loss by 26 percent or close to

26 percent by installing In-Sider storm windows on a house that already has prime and storm windows.

Therefore, said representations are deceptive or unfair.

PAR. 9. In the course and conduct of its business, through the use of various advertisements and promotional materials, respondent has represented that:

- a. "The In-Sider Storm Window substantially outperforms outside storm windows."
- b. In-Sider storm windows "insulate far better than outside storm windows."
- c. "The In-Sider is 1/3 more effective than a triple track window!!!"

PAR. 10. In truth and in fact, contrary to respondent's representations set forth in Paragraph Nine:

- a. In-Sider storm windows do not substantially outperform many outside storm windows.
- b. In-Sider storm windows do not insulate far better than many outside storm windows.
- c. The In-Sider is not one-third more effective than many triple track windows.

Therefore, said representations are deceptive or unfair.

PAR. 11. At the time respondent made the representations alleged in Paragraphs Four, Six, Seven, and Nine, respondent did not possess and rely upon a reasonable basis for making such representations because, *inter alia*, respondent's test protocols and calculations were not designed or conducted to assess product performance in a manner appropriate and relevant to the representations made. Therefore, said representations are deceptive or unfair.

PAR. 12. Respondent's advertisements and promotional materials represent, directly or by implication, that respondent possessed and relied upon a reasonable basis for making, at the time they were made, the representations alleged in Paragraphs Four, Six, Seven, and Nine. In truth and in fact respondent did not possess and rely upon a reasonable basis for making such representations because, *inter alia*, respondent's test protocols and calculations were not designed or conducted to assess product performance in a manner appropriate and relevant to the representations made. Therefore, said representations are deceptive or unfair.

PAR. 13. The use by respondent of the aforesaid deceptive or unfair statements, representations, and practices, and the placement in the hands of its distributors and retailers of the means and instrumentali-

ties by and through which others may have used the aforesaid deceptive or unfair statements, representations, and practices, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's interior mounted storm window products by reason of said erroneous and mistaken belief.

PAR. 14. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Plaskolite, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1770 Joyce Avenue, in the City of Columbus, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, fuel cost savings, air infiltration, window or door sealing capabilities, conduction of heat, or heat gain or loss.

A *competent and reliable test* means any scientific, engineering, or other analytical report or study prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation, and analytical procedures that ensure accurate and reliable results.

Storm window means any transparent window covering, whether placed outside or inside an ordinary window, made of any material which is used to prevent or reduce air infiltration or exfiltration.

PART I

It is ordered, That respondent Plaskolite, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any storm window in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting in any manner, directly or by implication, the performance capabilities of any storm window or the ability of any storm window to reduce air infiltration, heat loss through the window, or heating costs.

(2) Misrepresenting in any manner, directly or by implication, the amount of savings that will result from installation of any storm window on a house that already has prime and storm windows.

(3) Making any energy-related claim unless, at the time that the claim is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

(4) Misrepresenting in any manner, directly or by implication, the purpose, content, or conclusion of any test or study upon which re-

spondent relies as substantiation for any energy-related claim, or making any statement or representation which is inconsistent with the results or conclusions of any such test or study.

(5) Making any energy-related claim which uses the phrase "up to" or words of similar import, unless, (a) the maximum level of performance claimed can be achieved by an appreciable number of consumers under circumstances normally and expectably encountered by consumers, and (b) the class of persons who can achieve the maximum level of performance claimed is disclosed.

PART II

It is further ordered, That respondent maintain all documentation in support of and upon which respondent relies in making any energy-related claim and any other documentation that contradicts, qualifies, or otherwise calls into question any energy-related claim included in advertising or sales promotional material disseminated by respondent or by any officer, representative, agent, employee, subsidiary, or division of respondent, concerning the performance, efficiency or quality of any storm window. Such documentation shall be retained by respondent for a period of three years from the date such advertising or sales promotional materials were last disseminated, and may be inspected by the Commission staff upon reasonable notice.

PART III

It is further ordered, That, for a period of three years from the date of service of this Order, respondent forthwith deliver a copy of this Order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, or dissemination of any advertisement promoting respondent's storm windows.

PART IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

PART V

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Interlocutory Order

101 F.T.C.

IN THE MATTER OF

SOUTHWEST SUNSITES, INC., ET AL.

*Docket 9134. Interlocutory Order, Feb. 24, 1983*ORDER ESTABLISHING PROCEDURES FOR SUBMISSION OF
PORTER REALTY CONSENT AGREEMENT

On February 11, 1981, complaint counsel and respondents, Irvin Porter and Porter Realty, Inc. ("broker respondents") executed an Agreement Containing Consent Order to Cease and Desist ("consent"). Thereafter, pursuant to a joint motion by the parties, the Administrative Law Judge ("ALJ") stayed the litigation with respect to these respondents. Trial of the remaining respondents ("subdivider respondents") was conducted from April 1981 into February 1982. On July 29, 1982, the ALJ issued an initial decision dismissing the complaint as to subdivider respondents. However, complaint counsel has acknowledged that the executed consent and supporting staff recommendation were not submitted to the Bureau of Consumer Protection for final approval so that the matter, as to broker respondents, could be withdrawn from adjudication in a timely fashion. *See* Complaint Counsel's January 24, 1983 Response to Commission's Order Directing Submission of Briefs at 2, Rules of Practice, Section 3.25(c), 16 C.F.R. 3.25(c).

Section 4.7(f) of the Commission's Rules of Practice, 16 C.F.R. 4.7(f), permit *ex parte* communications between complaint counsel and the Commission for the purpose of evaluating proposed consent settlements that are executed by some, but not all, respondents. However, to avoid any appearance that complaint counsel has obtained an advantage because of the status of the proposed consent, *it is hereby ordered* that all communications from complaint counsel to the Commission concerning the proposed consent signed by Porter Realty, Inc. and Irvin Porter be made on the record. Complaint counsel is also ordered to submit the consent agreement and any recommendations concerning it within sixty (60) days following issuance of this order. The proposed consent agreement will then be considered in conjunction with the adjudicative case now pending before the Commission.