

Complaint

IN THE MATTER OF

LONG FENCE & HOME, LLLPCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4352; File No. 112 3005
Complaint, April 5, 2012 – Decision, April 5, 2012

This consent order addresses Long Fence & Home, LLLP's marketing and sale of replacement windows for use in residences. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating the representations that consumers who replace their windows with Long Windows' Quantum2 replacement windows with SuperPak Glass are likely to achieve residential energy savings of 50% or save 50% on residential heating and cooling costs. The consent order prohibits respondent from making any representation that: (A) consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction.

Participants

For the *Commission: Robert Frisby, Zachary Hunter, Joshua Millard, and Sarah Waldrop.*

For the *Respondent: D.S. Berenson, Johanson Berenson LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Long Fence & Home, LLLP ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Long Fence is a Maryland limited liability limited partnership with its principal office or place of business at 10236 Southard Drive, Beltsville, Maryland 20705. Respondent

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does business under its own name and various trade names bearing the “Long” mark, including “Long Windows.”

2. Respondent advertises, offers for sale, sells, and/or distributes windows, including its “Long Windows” replacement window lines manufactured by Serious Energy, Inc., which formerly did business under the name Serious Materials, Inc. Respondent sells these windows through its own salespersons to consumers for residential use.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused the dissemination of advertising and promotional materials, including print advertising, advertising on its website, and brochures and other promotional materials provided to its salespersons, including but not necessarily limited to the attached Exhibits A through F. Respondent disseminated or caused the dissemination of these advertisements and promotional materials to consumers. The advertisements and promotional materials contain the following statements or depictions:

a. Long Windows Print Advertisement

**50%
SAVINGS
GUARANTEED**

PLEASE READ!

Our energy use dropped so much after installing your windows — Dominion Virginia Power thought our meter was broken! We look forward to using Long Fence and Home for many years to come!

Derek and Jennifer H.
Springfield, Virginia

Exhibit A (Jan. 2010) (Washington Post, Red Plum).

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b. Long Windows Print Advertisement

**50%
ENERGY
SAVINGS
GUARANTEED***

AMAZING RESULTS!

Our energy use dropped so much after installing your windows — Dominion Virginia Power thought our meter was broken! We look forward to using Long Fence and Home for many years to come!

Derek and Jennifer H.
Springfield, Virginia

....

* 50% Energy Savings based on manufacturer's one year savings guarantee. Many factors determine actual savings and results may vary. Call for further details on our written savings guarantee.

Exhibit B (Jan.-Nov. 2010)
(Washington Post, Red Plum, Examiner).

c. Long Windows Print Advertisement

—

Save 50% on

Energy Bills – or

LONG® PAYS YOU!

Exhibit C (Mar.-June 2009) (Washington Post, Red Plum, Examiner, Merchandiser).

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d. Long Windows Print Advertisement

will save you more than other replacement windows.

Save More Money and Energy

....

- 50% energy savings guarantee

Exhibit D (Sept. 2009) (Washington Post, Red Plum, Examiner, Merchandiser).

e. Long Windows Internet Promotional Material

50%	We guarantee you'll save 50% on your heating and cooling costs - and cut your energy bills in half - when you install Long Windows throughout your home or we'll reimburse you the difference.[] Speak to your Long Windows consultant for full details.
SAVINGS	
GUARANTEE	

Exhibit E (Sept. 2010)

(<http://www.longwindows.com>).

f. Long Windows Energy Saving Pledge:

50% Energy Savings

Guarantee

This pledges a savings of at least 50% of energy consumption for heating and cooling the residence listed below during the 12 month period beginning with the date of this pledge. In the event energy saving[s] are less than 50% of the previous 12 months['] energy consumption, the homeowner should

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notify Long Fence and Home who will provide the homeowner with the necessary forms to file for benefits under this pledge. If energy savings are less than 50% of the previous 12 month[s'] energy consumption, the homeowner will be reimbursed the difference between the actual savings and 50% of the energy costs for the previous 12 months.

Notwithstanding anything herein to the contrary, it is hereby agreed and understood that this pledge only be effective if the homeowner, located at the address shown hereon, has purchased a complete installation of Quantum2 replacement windows with SuperPak Glass™ glazing, and is effective on the dates shown.

....

Exhibit F.

5. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows – common residential window types in the United States – with Long Windows replacement windows are not likely to achieve a 50% reduction in residential energy consumption or heating and cooling costs.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- a. Consumers who replace windows with Quantum2 replacement windows with SuperPak Glass are likely to achieve residential energy savings of 50%; or
- b. Consumers who replace windows with Quantum2 replacement windows with SuperPak Glass are likely to save 50% on residential heating and cooling costs.

7. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the

Complaint

representation(s) set forth in Paragraph 6 at the time that the representation(s) were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation(s) set forth in Paragraph 6 at the time that the representation(s) were made. Therefore, the representation set forth in Paragraph 7 was false or misleading.

9. Respondent's practices, as alleged in this complaint, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this fifth day of April 2012, has issued this complaint against respondent.

By the Commission.

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Exhibit A

LONG KITCHENS
YOU CAN AFFORD YOUR DREAM KITCHEN!

LONG SIDING
MAKE YOUR HOME LOOK LIKE NEW!

LONG ATTIC MIRROR
NEW! ENERGY SAVING PRODUCT FOR 2010
SAVE 20% ON UTILITY BILLS GUARANTEED!

50% SAVINGS GUARANTEED
PLEASE READ!
Our energy use dropped so much after installing your windows - Dominion Virginia Power thought our meter was broken! We look forward to using Long Fence and Home for many years to come!
Derek and Jennifer H.
Springfield, Virginia

LONG WINDOWS
THE ULTIMATE WINDOW
LIFETIME WARRANTY

OVER 3X DOUBLE PANE PERFORMANCE
• Q-Foam® Insulation
• Heat Mirror™ Technology
• 5 Coats Low-e®
UP TO \$1500 TAX CREDIT

LONG GUTTERS
Gutter Jacket™
BEFORE NO CLOG GUARANTEE! AFTER

LONG DOORS
BEAUTIFUL & ENERGY-EFFICIENT!

CALL NOW!
1-800-637-9014
FREE ESTIMATES
www.longfenceandhome.com
Improve your home. Improve your life.
Affordable Financing
Licensed • Bonded • Insured
MHIC# 51346 • DCF# 6700678 • VM# 2705048183A

Complaint

Exhibit B

LONG® WINDOWS

THE RESPONSIBLE & Beautiful SOLUTION



LAST CHANCE! FEDERAL TAX CREDIT ENDING! HURRY!

Willard Scott

Engineered for maximum efficiency – Long Windows will help you burn less fuel, reduce carbon dioxide emissions and become more earth-friendly all while you save money and beautify your home!

Engineered for maximum efficiency – Long Windows will help you burn less fuel, reduce carbon dioxide emissions and become more earth-friendly all while you save money and beautify your home!

50% ENERGY SAVINGS GUARANTEED*

AMAZING RESULTS!

Our energy use dropped so much after installing your windows – Dominion Virginia Power thought our meter was broken! We look forward to using Long Fence and Home for many years to come!

Deek and Jennifer H. Springfield, Virginia



MIHC# 51346 • DC# 6700678 • VA# 2705048183A



- Clear Heat Mirror™ Technology dramatically reduces solar heat gain in summer and allows solar heat gain in winter
- Up to 5 layers of Low E Coating reflects damaging UV rays and increases R-value
- Patented Q Foam insulation stops air convection making frame/sash an incredible R-13!

1 DAY INSTALL!

LIFETIME WARRANTY

UP TO \$1500 TAX CREDIT

* 50% Energy Savings based on manufacturer's one year savings guarantee. Many factors determine actual savings and results may vary. Call for further details on our written savings guarantee. † One day installation on most homes. See representative for details.

COUPON + FREE REPORT

UP TO \$3000 TAX CREDIT MATCH COUPON

GO TO LONGWINDOWS.COM TO DOWNLOAD

Long® Windows Outperform All Major Brands Fullframe R-value windows from R1.2 - R 6.25

Long Windows	Long Windows Outperform All "Super Panel" Brands R 6.25 (U 0.16)
Anderson*	U 4.55 (U 0.22)
Pella*	U 3.85 (U 0.26)
Warner**	U 3.5 (U 0.28)
Wilgard**	U 3.3 (U 0.3)
Double Pans	U 2.0 (U 0.49)
Single Pans	U 1.2 (U 0.84)

3x the performance of Double Pans!

FREE ESTIMATES CALL NOW!

1-800-637-9014

longwindows.com

Improve your home. Improve your life.

Complaint

Exhibit C

Receive \$1500 Tax Credit from the Federal Government!

Save 50% on Energy Bills – or LONG® PAYS YOU!

LONG® WINDOWS

BREAKING NEWS!!!
Long® Windows will MATCH YOUR TAX CREDIT!*

FREE Estimates! Call Now!
1-800-637-9014
www.longwindows.com

Licensed • Bonded • Insured • FINANCING AVAILABLE
MHIC #51346 • DE# 6700670 • VA# 2705048183A

* Minimum purchase 6 windows. Cannot be combined with other offers.

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Exhibit D



LONG WINDOWS will save you more than other replacement windows.

Save More Money and Energy

- Up to \$3,000 in savings and tax credits
- 400% more energy-efficient than Energy Star-rated windows
- 50% energy savings guarantee
- Energy saving Heat Mirror™, recognized by *Popular Science* as a top 100 invention
- Lifetime warranty covering parts and labor

Limited Time Only. Save Up to \$3,000!
\$1,500 Federal Tax Credit
+ \$1,500 match from Long® Windows

Call or log on for a FREE report
"Is your home safe and energy-efficient?"
Includes 10-point energy-efficiency test.

1-800-637-9014
www.longwindows.com

Affordable Financing & FREE In-Home Estimates
Licensed • Bonded • Insured
MHIC# 51346 • DC# 6700678 • VAI# 2705048183A

Long® Windows Outperform All Major Brands
Full frame double windows from R 5.0 - R 11.0

Brand	U-Factor	R-Value
Long Windows	5.0	20.0
Other Brands	11.0	5.0

4x ENERGY STAR

Here's What They're Saying...

"A month after we installed Long Windows, we received a call from Dominion Virginia Power about the sudden drop in our energy use. When we said we purchased Long Windows, the representative replied, 'That explains it!'"

Derek & Jennifer H.
Derek and Jennifer H.
Springfield, VA

LONG WINDOWS
Improve your home. Improve your life.

Complaint

Exhibit E

[HOME](#) | [CONTACT US](#) | [ABOUT US](#) | [OUR BLOG](#) | [REQUEST A FREE ESTIMATE](#)

LONG FENCE and Home
 Improve your home. Improve your life. **1-800-417-LONG (5664)**

[LONG WINDOWS](#) | [LONG KITCHENS](#) | [LONG SIDING](#) | [LONG GUTTERS](#) | [LONG DOORS](#) | [LONG ATTIC MIRROR](#) | [LONG INSULATION](#)

LONG WINDOWS

- Comparison Chart
- Energy Savings
- Noise Reduction and UV Protection
- Security
- Windows Tax Credit
- The Long Windows Process
- Online Performance Data Table
- Video Library

ENERGY SAVINGS

Engineered and Built for Maximum Energy Savings

Long Windows combine an enhanced insulated glass package with fully-insulated framing systems to achieve the highest insulation performance across the full-frame - not just measured at center of glass.

Most homeowners find that Long Windows pay for themselves within 10 years of installation. Use the Energy Cost Savings Calculator below to see what kind of cost savings Long Windows can bring to you.

Two Panes of Double Strength Glass
Five Layers of High Performance Low-E Coating

ENERGY COST SAVINGS CALCULATOR

Enter your average monthly energy bill: \$ [CALCULATE SAVINGS](#)

Annual Energy Cost	\$0.00	Estimated Savings After 5 Years	\$0.00
Estimated Annual Savings	\$0.00	Estimated Savings After 10 Years	\$0.00

50% SAVINGS GUARANTEE

We guarantee you'll save 50% on your heating and cooling costs - and cut your energy bills in half - when you install Long Windows throughout your home or we'll reimburse you the difference.* Speak to your Long Windows consultant for full details.

There are a number of ways to scientifically measure the energy-efficiency of windows. Long Windows are one of the most energy-efficient windows you can purchase, by any of these measures.

R Value

A key factor of energy-efficiency is R value, which measures the thermal insulation capability of a window. The higher the R value, the better the window insulates to keep your home cool in the summer and warm in the winter.

Long Windows have industry-leading R values of 4.0 to 6.25. These are significantly higher than the R values for typical single- or double-pane windows - so advanced that they exceed Energy Star criteria for year 2015.

U-Factor

Another factor in energy-efficiency is the U-Factor, which measures how well the product traps heat inside your home. In this case, the lower the value the greater the energy-efficiency of your window.

Long Windows have an industry-leading U-Factor of 0.16. This surpasses the 2009 Energy Star Standards, which recognize a U-Factor of 0.35 as acceptable.

The guidelines for the Federal Tax Credit require that your windows carry a U-Factor of 0.30 or less. All Long Windows qualify; many Energy Star windows do not.

Solar Heat Gain Coefficient (SHGC)

REQUEST A FREE NO OBLIGATION IN-HOME CONSULTATION & ESTIMATE

[SCHEDULE NOW](#)

OR CALL 1-800-417-LONG (5664)

FOR A LIMITED TIME \$790 Off Each Replacement Window

Offer valid on a minimum purchase of 3 Long Window products. Not valid with any other offers or discounts. Some exclusions apply. Speak to your Long Windows consultant to learn more.

LONG WINDOWS
1-800-417-LONG (5664)

LONG FENCE and Home 100% SATISFACTION GUARANTEE

It is highly unlikely that any defects in material and workmanship will arise in the future; however, if a defect does occur, the defective part will be repaired or replaced by Long Fence and Home. We stand behind all the work we do.

John DePaola
John DePaola
President

Jill Long DePaola
Jill Long DePaola
Executive Officer

GREEN WINDOWS

From supplying green jobs to reducing energy use, Long Windows are good for our entire planet. Let President Obama fill you in.

30% FEDERAL TAX CREDIT UP TO \$1,500 PER HOUSEHOLD

FOR BUYING ENERGY-EFFICIENT LONG WINDOWS

[LEARN MORE](#)

LOOKING FOR PAYMENT OPTIONS?

Long Fence and Home has partnered with Landmark Funding to provide financing to our clients. [Learn More](#)

Thanks **LONG WINDOWS**

"Excellent Job! Will refer you to friends and neighbors!"

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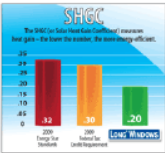
- Jim Craig, Severna Park, MD

Yet another factor in energy-efficiency is the SHGC, which measures how well the window blocks solar heat coming inside the house. Again, the lower the value the greater the energy-efficiency of your window.

Long Windows have an industry-leading SHGC of 0.20. This surpasses the 2009 Energy Star Standards, which recognize a SHGC of 0.32 as acceptable.

The guidelines for the Federal Tax Credit require that your windows carry a SHGC of 0.30 or less. All Long Windows qualify; many Energy Star windows do not.

CLICK TO ENLARGE



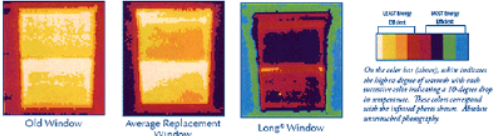
UV Transmission

A final factor in energy-efficiency is the transmission of UV light. Long Windows utilize Heat Mirror™ Technology, recognized in Popular Science magazine as one of the top 100 inventions of the last 1,000 years.

Long Windows with Heat Mirror™ Technology only allow 0.3% of damaging UV rays into your home. Other windows on the market today allow roughly 50% of damaging UV rays into your home.

The difference is clear if you look at heat mapping photos of Long Windows versus competitors.

CLICK TO ENLARGE



Request a free, no obligation in-home consultation and estimate today or call us at 1-800-417-LONG (5664).

WINDOWS

KITCHENS

SIDING

GUTTERS

DOORS

ATTIC INSULATION

INSULATION

ENERGY SOLUTIONS

ABOUT

CONTACT

PRIVACY

ESTIMATE

REQUEST

SITE MAP

Long Fence and Home is a home improvement and remodeling company serving clients in Maryland, Virginia and Washington, D.C. Contact us for a free estimate on your home improvement or remodeling project.

Other areas we service:

Long Fence and Home • 10236 Southard Drive • Beltsville, MD 20705 • 1-800-417-LONG (5664)

© 2010 Long Fence and Home

Complaint

Exhibit F



50% Energy Savings Guarantee

This pledges a savings of at least 50% of energy consumption for heating and cooling the residence listed below during the 12 month period beginning with the date of this pledge. In the event energy saving are less than 50% of the previous 12 months energy consumption, the homeowner should notify Long Fence and Home who will provide the homeowner with the necessary forms to file for benefits under this pledge. If energy savings are less than 50% of the previous 12 month energy consumption, the homeowner will be reimbursed the difference between the actual savings and 50% of the energy costs for the previous 12 months.

Notwithstanding anything herein to the contrary, it is hereby agreed and understood that this pledge only be effective if the homeowner, located at the address shown hereon, has purchased a complete installation of Quantum2 replacement windows with SuperPak Glass™ glazing, and is effective on the dates shown.

THIS PLEDGE IS BASED UPON CONSUMPTION, NOT COST. IT IS SUBJECT TO THE FOLLOWING PROVISIONS:

1. This pledge only covers Quantum2 replacement windows with SuperPak Glass™ glazing.
2. Complete installation of Quantum2 replacement windows with SuperPak Glass™ glazing is defined as all windows in this residence except attic, basement, and porches.
3. This pledge covers only single family dwellings and townhomes.
4. Maximum payment under this pledge is \$500.00
5. Claims under this pledge must be filed in writing with supporting evidence within 30 days of 1st anniversary.
6. Homeowners must properly maintain heating and cooling systems.
7. Proper allowance shall be made for cost of operation of any utilities included in energy bill in adjusting a claim.
8. Proper allowance for abnormal weather conditions shall be made in adjusting a claim.

Homeowner Name: _____

Homeowner Address: _____

City: _____ State: _____ Zip: _____

Date of Installation: _____

Decision and Order

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 a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Long Fence & Home, LLLP ("LF&H") is a Maryland limited liability limited partnership with its principal office or place of business at 10236 Southard Drive, Beltsville, Maryland 20705.
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.

Decision and Order

ORDER**DEFINITIONS**

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

- A. “Clearly and prominently” means
1. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 2. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and
 3. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language

Decision and Order

and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

- B. “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
- C. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “Competent and reliable scientific evidence” shall mean tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.
- E. “Covered product or service” means any fenestration product, any component thereof, and any product or any service for which respondent makes any claim about energy savings, energy costs, energy consumption, U-factor, SHGC, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy.
- F. “Fenestration product” means any window, sliding glass door, or skylight.
- G. “K-value” is a measure of a material’s thermal conductivity.
- H. Unless otherwise specified, “respondent” shall mean Long Fence & Home, LLLP, its successors and assigns, and its officers, agents, representatives, and employees.

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- I. “R-value” is a measure of a material’s resistance to heat flow.
- J. “SHGC” means solar heat gain coefficient, which is the fraction of incident solar radiation admitted through a window, both directly transmitted and absorbed and subsequently released inward.
- K. “U-factor” is a measure of the rate of heat loss.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not make any representation, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names that:

- A. Consumers who replace their windows with respondent’s windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or
- B. Respondent guarantees or pledges that consumers who replace their windows with respondent’s windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs;

unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction.

Provided, however, that if respondent represents that consumers who replace their windows with respondent’s windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs under specified circumstances, or if respondent guarantees or pledges up to or a

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specified amount or percentage of energy savings or reduction in heating and cooling costs under specified circumstances, it must disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge and it must substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (*e.g.*, when replacing a window of a specific composition in a building having a specific level of insulation in a specific region).

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not make any representation, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names:

- A. That any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or
- B. About energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, SHGC, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy of any covered product or service;

unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that such representation is true.

III.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order,

Decision and Order

maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

V.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the partnership that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or

Decision and Order

dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the partnership name or address. *Provided, however*, that, with respect to any proposed change in the partnership about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “Long Fence & Home, File No. 112 3005, Docket No. C-4352.”

VI.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VII.

This order will terminate on April 5, 2032, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order’s application to any respondent that is not named as a defendant in such complaint; and

Analysis to Aid Public Comment

- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Long Fence & Home, LLLP, a partnership (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves respondent’s marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with Long Windows’ Quantum2 replacement windows with SuperPak Glass are likely to achieve residential energy savings of 50% or save 50% on residential

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heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows – common residential window types in the United States – with LongWindows replacement windows are not likely to achieve a 50% reduction in residential energy consumption or heating and cooling costs. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains two provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (*e.g.*, when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief

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reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Part I of the order requires substantiation for representations including the words “up to” because the respondent may elect to make such representations in the future. The words “up to” do not effectively qualify representations regarding the energy savings or cost reductions likely to be achieved through replacement windows. Therefore, Part I requires the same level of substantiation regardless of whether the covered representation includes the words “up to.” The FTC’s proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words “up to” for other products or services in the future.

Part II addresses any product or service for which respondent makes any energy-related efficacy representation. It prohibits respondent from making any representation: (A) that any specific number or percentage of consumers who replace their windows with respondent’s windows achieve energy savings or reduction in heating and cooling costs; or (B) about energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence.

Parts III through VI require respondent to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official

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interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**CARPENTER TECHNOLOGY CORPORATION
AND
LATROBE SPECIALTY METALS, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4349; File No. 111 0207
Complaint, February 28, 2012 – Decision, April 12, 2012*

This consent order addresses the \$410 million acquisition by Carpenter Technology Corporation of certain assets of Latrobe Specialty Metals, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act in the markets for each of the specialty alloys: (1) MP159 and (2) MP35N used in aerospace applications. The consent order requires Carpenter to divest assets related to the manufacture and sale of the MP Alloys to Eramet S.A.

Participants

For the *Commission*: Marc Alvarez, Monica Castillo, Janet Kim, David Morris, Scott Reiter, Kristian Rogers, Danielle Sims, and David Von Nirschl.

For the *Respondents*: Barbara Sicalides, Pepper Hamilton LLPTom D. Smith, Jones Day.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Carpenter Technology Corporation (“Carpenter”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Latrobe Specialty Metals, Inc. (“Latrobe”), a corporation subject to the jurisdiction of the Commission (collectively, “Respondents”), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in