

Complaint

IN THE MATTER OF

WINCHESTER INDUSTRIESCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4362; File No. 102 3171
Complaint, May 16, 2012 – Decision, May 16, 2012

This consent order addresses Winchester Industries' 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 representations that consumers who replace their windows with Bristol and Winter Lock Super Triple-E A-Plus with Alpha-10 windows are likely to achieve residential energy savings of 47% or to save 47% on their heating and cooling costs when it made them. 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: Eric Horne, Eckert Seamans Cherin & Mellott, LLC.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Winchester Industries ("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 Winchester Industries is a Pennsylvania partnership with its principal office or place of business at 500 Leech Avenue, Saltsburg, Pennsylvania 15681. The partnership

Complaint

was formed in 1983 by Steel Bridge, LTD, LLC, a Canadian corporation, and Winchester Industries, Inc., a Pennsylvania corporation.

2. Respondent manufactures, advertises, offers for sale, sells, and/or distributes windows, including its “Bristol” and “WinterLock Super Triple-E A-Plus with Alpha-10” windows. Respondent distributes these windows to independent dealers and installers who in turn sell them 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, such as advertising on its website as well as brochures and other promotional materials it provided to window dealers and installers, including but not necessarily limited to the attached Exhibits A through H. Respondent’s dealers and installers disseminated or caused the dissemination of these advertising and promotional materials to consumers. The advertising and promotional materials contain the following statements or depictions:

a. Bristol Windows Internet Promotional Material

Manufacturer 47% Energy Savings Pledge

Replace your old drafty, Energy Wasting windows and doors NOW and SAVE, SAVE, SAVE

Exhibit A (www.bristolwindows.com).

[T]he triple-paned design of some replacement windows, such as Bristol windows, can also produce energy savings up to 50% per year.

Exhibit B (www.bristolwindows.com).

Since replacing the double-paned windows, according to Simon, the triple-paned windows have cut his family’s heating and cooling bills in half. ‘With the

Complaint

Bristol windows, we save over \$2,500 a year in heating and cooling costs . . .

Exhibit C (www.bristolwindows.com).

b. Bristol Windows Energy Saving Pledge

47% Energy Savings Pledge

This pledges a savings of at least 47% of energy consumption for heating and cooling the residence at the address shown hereon during the 12 month period beginning with the first full month after completed installation of Bristol units . . . it is hereby agreed and understood that this Pledge only [sic] be effective if the homeowner, located at the address shown hereon, has purchased a complete installation of Bristol Triple-E, A-Plus with ALPHA-10 insulated replacement windows, and is effective for a one year period after installation.

Exhibit D.

c. WinterLock windows Promotional Materials

“Reduce energy costs by up to 47%”

Exhibit E.

“Energy savings up to 47%”

Exhibit F.

d. Bristol Windows Promotional Materials

“Stop Wasting Money On Your Energy Bills!”

“47% Energy Savings Pledge!”

Exhibit G.

However, after reviewing my consumption of gas and electric one year after the installation, I have to admit

Complaint

that investing in three panes of glass worked for us. We consumed 53.2% less energy after getting the windows.

Exhibit H.

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 Winchester replacement windows are not likely to achieve a 47% 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 Bristol or WinterLock Super Triple-E A-Plus with Alpha-10 windows are likely to achieve residential energy savings of 47%; or
- b. Consumers who replace windows with Bristol or WinterLock Super Triple-E A-Plus with Alpha-10 windows are likely to save 47% 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 representation(s) set forth in Paragraph 6 at the time 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 the representation(s) were made. Therefore, the representation set forth in Paragraph 7 was false or misleading.

9. Respondent provided to its independent dealers and installers promotional materials referred to in Paragraph 4. By

Complaint

doing so, respondent provided them with the means and instrumentalities for the commission of deceptive acts or practices. Therefore, respondent's provision of such materials to its dealers and installers, as described in Paragraph 4 above, constitutes a deceptive act or practice.

10. The acts and practices of respondent 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 sixteenth day of May, 2012, has issued this complaint against respondent.

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

Complaint

Exhibit A



Products Research Center Company In The News Sweepstakes Contact Us Home

[About Us | Links | Dealer Lookup | Customer Service]

Enter your zip code to find a dealer in your area.



Manufacturer
47%

Energy Savings Pledge
and
Tax Credit Qualified *

Replace your old drafty, Energy Wasting windows and doors
NOW and... **up to \$1,500.⁰⁰**

SAVE, SAVE, SAVE

• Enveloped Triple Glass with Superior Heat, Cold & UV Reflective Properties
• Dual frame reinforced construction
• Deadbolt style locking system

• Year Round Savings
• Structural Integrity
• Comfort & Security

Sold and Installed by EXCLUSIVE Dealers throughout the USA!

*Bristol super glass windows and doors exceed the 30/30 AFHQ requirement. Thermal and structural performance is guaranteed by 25 years of manufacturing triple glass units. Our legacy of perfection and performance can now be yours. We've been saving the earth's energy for 25 years. Now it's your turn.

WINCHESTER INDUSTRIES • 724-639-3551

Super Triple E
ALPHA 10

**ONLY THE VIEW
STAYS THROUGH
BRISTOL WINDOWS!**




Complaint

Exhibit C



Product	Company Name	Address	City/State
How Much Can New Windows Really Save You? Can best and best built homeowners find a way to save nearly half their home energy bill by turning to green technology. Homeowners are dreading another season of sky-high winter heating or blistering summer air conditioning bills. Even if further price hikes don't occur, fairly a likely scenario, homeowners are making that typical weather stripping and insulation may not be enough to curb soaring energy costs -- not when the windows themselves are bleeding precious winter heat, summer cooling, and hard-earned dollars. The government Energy Star website, which promotes energy efficiency among U.S. consumers and businesses, acknowledges the need for better alternatives. "All energy-efficient windows have at least two panes, but not all double-paned windows are energy efficient," states the website. "Twenty years ago, double-paned meant energy efficiency; today, advanced technologies have enabled the development of windows that are much more efficient than traditional clear glass double-paned windows." While it's no-brainer to upgrade windows if you're replacing them for maintenance or aesthetic reasons anyway, more homeowners are switching from traditional single and double-paned windows to state-of-the-art, triple-paned units for comfort, cost and energy savings up to 50% per year. We Joeger the living on the inside Against winters as cold as -15° F, John and Kelly Simon's whole-house, gas heater and fireplace could make little headway. The family hunkered themselves in windows and barbecue indoors, bracing themselves against the bone-chilling cold they felt coming through the double-paned windows in their 2,300-sq.-foot Grossepointe Park, Michigan home. "The cold persisted even when we had our thermal drapes drawn, with the heater and fireplace going full blast," says John Simon. "We knew we'd always be cold during winter, even though the heating bill was going through the roof." The first winter was when ice crystals formed on the windows -- inside the house. "It was like living on the tundra at home," says Simon. "We realized the cold transformed right through the double-paned windows, and we had to do something about it." Simon went on a mission to bring comfort and manageable fuel bills to his family. He checked all the window companies in his area. He visited showrooms and other people's homes. He tested the thermal protection of energy-efficient, double-paned windows, but none fully satisfied him. "Most windows can keep out drafts, but that doesn't mean they're efficient in keeping out winter cold or locking in heat," says Simon, who checked out as many actual install sites as he could, feeling the panes for heat or cold transfer first-hand. "Based on the most energy-efficient, double-paned windows let cold penetrate or heat escape." One window technology called triple-paned windows piqued his interest. The triple-paned design with high-tech thermal spacers between each pane of glass helped prevent both cold and heat from radiating either inside or outside. When competitors, double-paned windows typically put a common inert gas, argon, between the panes, the triple-paned replacement windows, offered by Grossepointe, Pennsylvania-based Winchester Industries, provided two air spaces filled with their own proprietary mix of gases as a dual thermal insulator. Like a thermal shield, the double layer of thick gases does a much better job of slowing the transfer of cold in or heat out -- thus halting the flow of heating and cooling dollars out the windows. The Simons had the windows professionally installed in their home, and there's been no need for layered clothing indoors since. "Because the triple-paned windows are so thermally efficient, there's no need to fiddle with the thermostat in winter or summer," says Simon. "Once I set the thermostat at a comfortable temperature, I don't have to touch it all year long. You can't say that about other windows." Since replacing the double-paned windows, according to Simon, the triple-paned windows have cut his family's heating and cooling bills in half. "With the Bristol Windows, we save over \$2,500 a year in heating and cooling costs and are protected from spikes in energy cost. Best of all, we're comfortable and can finally enjoy our home year-round." Not mending summer heat anymore During Sandra King's first summer in her Mesa, Arizona home it got up to 120° F outside. She found no refuge from the heat inside her two-story, 3,000-sq.-foot home on cooling a soft source. Instead she had the air conditioning cranked all the way up, a ceiling fan going full blast, and two blast floor fans placed on either side of a picture window in her home office. "The fans were so noisy I couldn't hear the phone," says King. "Standing in front of a window, I'd break out in a sweat or burn my feet on the hardwood floor." A thermal reading of the single-paned, aluminum windows in her home read 135° F, while the home's interior topped 90° F. At a contractor's recommendation, she installed energy-efficient, double-paned windows in a new addition to her home, but was sadly disappointed at the amount of heat they still let through. King took action, asking eight window companies to visit her home. She carefully compared their offerings and paid particular attention to the heat lamp demonstrations, which were designed to show how their windows would repel heat. While the energy-efficient, double-paned windows returned heat transference better than single-paned windows, each allowed a significant amount of heat to pass. None, she felt, would cut heat from the summer sun to a comfortable level. When King investigated the triple-paned windows, however, she immediately noticed a difference. "Under a heat lamp so hot it felt like lava, the Bristol Windows passed absolutely no heat," she says. Besides the triple-paned windows' high-tech spacer system and insulating mixed gases between each pane, King credits the "windows' multiple low-E layers on two panes; these reflect more heat than the single low-E layer on energy-efficient, double-paned windows. The triple-paned windows' multiple, soft-coat low-E layers not only provide better heat reflecting performance than the single hard-coat, low-E layer of typical double-paned windows, but also greatly reduce harmful ultraviolet rays. King decided to replace her single-paned windows with triple-paned ones, and within the moment her hot home became a home for her. "The day they came to install my new windows, I was working in my home office as usual," says King. "When they removed the picture window, the heat was so intense I thought I'd die. But the instant they lifted these windows into place, the heat disappeared. I nearly got whiplash turning my head around, trying to figure out what happened to the heat." King estimates saving at least \$3,000 a year in cooling and heating costs since installing the Bristol Windows. She's so happy with the triple-paned windows that she's planning to replace her year-old, double-paned windows with them. "The first day the triple-paned windows blocked the heat and made me comfortable, that was it -- I got my life," says King. "I'm more productive and I'm home now." Building comfort and efficiency on foreign soil Debra Daggett's family had battled weather extremes in their 2,000-sq.-foot, Lakewood, Colorado home for too long. With winter			

Houseful of FREE Windows Sweepstakes

[Sweepstakes button](#)



[Contact us for additional details](#)

WIN 001507

Complaint

Exhibit D

Winchester Industries

Manufacturer of the Ultimate Bristol Replacement Windows and Doors

47% Energy Savings Pledge

This pledges a savings of at least 47% of energy consumption for heating and cooling the residence at the address shown hereon during the 12 month period beginning with the the first full month after completed installation of Bristol units. In the event energy savings are less than 47% of the previous 12 months' energy consumption, the homeowner should notify Winchester Industries who will provide the homeowner with the necessary forms to file for benefits under this Pledge. If energy savings are less than 47% of the previous 12 months' energy consumption, the homeowner will be reimbursed the difference between actual savings and 47% of energy cost 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 Bristol Triple-E, A-Plus with ALPHA-10 insulated replacement windows, and is effective for a one year period after installation.

THIS PLEDGE IS BASED ON ENERGY(FUEL) CONSUMPTION, NOT COST. IT IS SUBJECT TO THE FOLLOWING PROVISIONS:

- 1) This factory pledge covers only Bristol SUPER Triple-E, A-Plus with Alpha-10 insulating glass replacement windows.
- 2) A complete, full-house, installation of Bristol's SUPER Triple-E with Alpha-10 is defined as all windows, not less than eight, on this residence excluding basement, attic and porch.
- 3) This pledge covers only single and two family dwellings.
- 4) Maximum payment under this Pledge shall be \$500.00 and is strictly for the time period indicated on the reverse side. Reimbursements, if any, can only be issued to a homeowner that has resided at the specified address for a full 12 month period before and after the completed installation date.
- 5) Homeowners must properly maintain heating and cooling system.
- 6) Appropriate allowances for abnormal weather conditions may be made in adjusting a claim.
- 7) Claims under this Pledge must be submitted in writing with supporting evidence to Winchester Industries within 30 days after expiration of this Pledge. Also forward a copy to the Bristol Distributor where purchased.
- 8) Proper allowance shall be made for cost of operation, taxes and service fees, of any utilities included in the fuel bill in adjusting a claim.
- 9) Claim adjustments, if any, will be issued from Winchester Industries within 90 days after all information has been verified and found to be accurate.
- 10) The homeowner referred to on the reverse side as the purchaser of Bristol units must have resided at the specified residence address for a full one year period preceding the installation.
- 11) Apparent changes such as room additions, i.e., sunrooms, heated garages, etc., to the said residence during the 12 month period of the claim shall make such claims invalid.
- 12) Homes moved from one utility service to another shall make this claim null and void.
- 13) Reimbursement at rates prevailing at time of window purchase. Comparison will be based on units of energy used rather than actual dollars to compensate for inflationary increases from one year to the next.
- 14) Complete utility bills for the 24 months in question or a summary form from the authorized utility must be submitted to claim a refund.



Claims must be submitted in writing along with proof of purchase and utility bills and addressed to:

Energy Savings Dept. • Winchester Industries • P.O. Box 160, Saltsburg, PA 15681

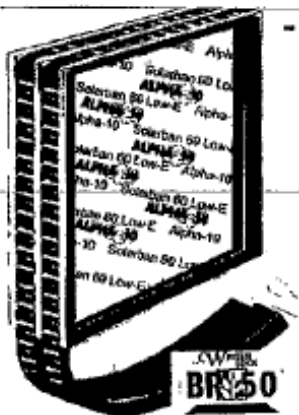
Complaint

Exhibit E



**A beautiful, durable, low
maintenance and environmentally
responsible choice**

- Renew and Improve your home's appearance
- The last window you will ever need
- A Green Choice:



- Reduce energy costs by up to 47%



WINTER LOCK
LIFETIME WINDOW SYSTEMS

Complaint

Exhibit F

Energy Savings up to 47%

WINTER LOCK

LIFETIME WINDOW SYSTEMS

Super Triple E A+ High Performance Low-E &
Special Gas Mixture Saves You Money and Energy!

Average Monthly Energy Cost	10 Years with no Increase in Energy Costs	Annually			Reflected Savings Using 10% Energy Cost Increase			
		10 Years with 5% Increase per year	10 Years with 10% Increase per year	10 Years with 15% Increase per year	15% Savings	25% Savings	40% Savings	47% Savings
\$100	\$12,000	\$15,090	\$18,125	\$24,364	\$2,869	\$4,761	\$7,650	\$8,389
\$125	\$15,000	\$18,867	\$23,908	\$30,456	\$3,586	\$5,977	\$9,562	\$11,236
\$150	\$18,000	\$22,640	\$29,687	\$36,547	\$4,303	\$7,172	\$11,475	\$13,483
\$175	\$21,000	\$26,414	\$35,469	\$42,638	\$5,020	\$8,367	\$13,387	\$15,730
\$200	\$24,000	\$30,187	\$41,250	\$48,729	\$5,737	\$9,562	\$15,300	\$17,977
\$225	\$27,000	\$33,960	\$47,031	\$54,820	\$6,455	\$10,758	\$17,212	\$20,225
\$250	\$30,000	\$37,734	\$52,812	\$60,911	\$7,172	\$11,953	\$19,125	\$22,472
\$275	\$33,000	\$41,507	\$58,594	\$67,002	\$7,889	\$13,148	\$21,037	\$24,719
\$300	\$36,000	\$45,280	\$64,375	\$73,093	\$8,606	\$14,344	\$22,950	\$26,966
\$325	\$39,000	\$49,054	\$70,156	\$79,185	\$9,323	\$15,539	\$24,862	\$29,213
\$350	\$42,000	\$52,827	\$75,937	\$85,276	\$10,041	\$16,734	\$26,775	\$31,460
\$375	\$45,000	\$56,601	\$81,718	\$91,367	\$10,758	\$17,930	\$28,687	\$33,708
\$400	\$48,000	\$60,374	\$87,500	\$97,458	\$11,475	\$19,125	\$30,600	\$35,955


WINTER LOCK
LIFETIME WINDOW SYSTEMS

Complaint

Exhibit G

**Stop Wasting Money
On Your
Energy Bills!**

**47%
Energy Savings
Pledge!**

Bristol

THE ULTIMATE REPLACEMENT WINDOWS & DOORS!
Eliminates Maintenance - Improves Security - Provides Energy Efficiency

www.bristolwindows.com

88-101 **EPG** Glass Technology SINCE 1988

Complaint

Exhibit H

"I must tell you I am so elated over the change in my home. I used to think my air conditioning wasn't working properly and I would ask the technician if I needed Freon when he did the regular check ups. He always said it was fine. I sit in front of my windows and do a lot of crafts and saw a change immediately the next day. I have the sun come in from the west and afternoons are the hottest part of the day. I realized my air conditioning was blowing hot air around before that was coming in through the windows. Now my air conditioning is blowing cool air and it reaches across the whole room. I sit in my chair now and can't get over the change. I am so comfortable and this week has been a good test. I even raised my temp to 82° and the whole place is comfortable. I do have a fan on in the living room. Sorry to write such a long letter but I must tell you I also get the full hot sun from west. I used to close my bathroom door in the summer it was like an oven and in the winter it was so cold. I hated to go in to shower. Now I have the door open during the day and night and the temperature is the same as rest of the house. I wish I had done the windows sooner. I have lived here ten years. It is well worth the investment. I am enjoying my small place so much more. The heat outside is not coming in and I know I will be more comfortable this winter. I'm sure I will get more benefit from the heating system. A job well done and your men were fine gentlemen and I will be telling my friends what a difference the windows make."

Evelyn Rokart, AZ

"This is a testimonial to the changes in my energy bills since I began replacing my old windows with Bristol windows. Prior to the initial installation in 2001, my energy bills (gas and electricity) were running \$108 per month using the budget system. Since that time, I have been replacing windows at the rate of 2-3 per year. As of November 2003, I was spending \$82 per month for energy. As of this December, I was spending \$71 per month on energy after replacing 8 windows. It definitely has made a difference and I expect the savings to continue as I work toward replacing all my windows."

Mary Ann Melnor, NE

"I just wanted to send a note of appreciation to your organization. Everyone involved with the manufacturing process should know that they are doing a great job and that the windows your organization manufactures really do work! I was skeptical about the three-pane system and the projected energy savings that the sales person made. However, after reviewing my consumption of gas and electric one year after the installation, I have to admit that investing in three panes of glass worked for us. We consumed 53.2% less energy after getting the windows."

I like the lower energy bills...my wife likes the change in comfort level. Prior to investing in the windows, my wife would complain about how cold it was during the winter months and how hot it was upstairs (mainly in the bedrooms) during the summer months. We have not had that conversation since having your windows installed."

What a great investment! Throughout the year I'm saving on average \$180.00 per month. The monthly payment for the windows is less than \$150.00 (I think that's awesome)! I read in an article that new home construction will have to install a three-pane system if the builder wants to promote the home as a "green home." Excellent! Please give this letter to potential clients; the average consumer, unfortunately, doesn't know what I know. Energy bills go down...comfort levels change...it's such a great investment. Everyone should have your windows! More than Satisfied."

K. Nuss, Rosman, VA



"We had Bristol Windows replace 12 of our existing windows in our home 2 years ago. It was a big decision for us because they are not the cheap variety, but we were convinced it was a good investment, we would get what we paid for, and we should do it. We only had 12 done instead of the 17 windows we have, and they said we could do the rest later if we were satisfied, and have time to pay it off. The time is now! We absolutely LOVE these windows. When everyone else was screaming about the heating cost when prices went up, ours stayed the same. This year our heating bill has actually gone down instead of up. They are SOOOO easy to clean, all from the inside, no ladders, we never have to struggle to get old windows open, some didn't open at all before. No more frosty over windows in winter either. Fresh air in the fall and spring is so easy to have. And they worked with us to make it affordable for us. It is definitely one of our best investments, and now we are getting the other 5 windows replaced."

Jim & Annette Helton - Fremont, NE

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, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, 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 Winchester Industries is a Pennsylvania partnership with its principal office or place of business at 500 Leech Avenue, Saltsburg, Pennsylvania 15681. The partnership was formed in 1983 by Steel Bridge, LTD, LLC, a Canadian

Decision and Order

corporation, and Winchester Industries, Inc., a Pennsylvania corporation.

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

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,

Decision and Order

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 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.

Decision and Order

- G. “K-value” is a measure of a material’s thermal conductivity.
- H. Unless otherwise specified, “respondent” shall mean Winchester Industries, a partnership, its successors and assigns, and its officers, agents, representatives, and employees.
- 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

Decision and Order

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 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

Decision and Order

competent and reliable scientific evidence to substantiate that such representation is true.

III.

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 provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact. For the purposes of this Part, “means and instrumentalities” shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product or service, in or affecting commerce.

IV.

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

Decision and Order

V.

IT IS FURTHER ORDERED that respondent Winchester Industries, 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 current personnel within thirty (30) days after the date of service of this order, and to 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.

VI.

IT IS FURTHER ORDERED that respondent Winchester Industries, 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 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: "Winchester Industries, File No. 102 3171, Docket No. C-4362."

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent Winchester Industries, 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.

VIII.

This order will terminate twenty on May 16, 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
- 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 to Aid Public Comment

**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 Winchester Industries, 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 Bristol and Winter Lock Super Triple-E A-Plus with Alpha-10 windows are likely to achieve residential energy savings of 47% or to save 47% on their 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 Winchester replacement windows are not likely to achieve a 47% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

Some promotional materials challenged in the FTC’s complaint include the words “up to” in an apparent attempt to

Analysis to Aid Public Comment

qualify representations that consumers who replace windows with respondent's windows are likely to achieve specified amounts of residential energy savings or reduction in residential heating and cooling costs. In the context of specific ads in this case, the words "up to" do not effectively qualify such representations for replacement windows. The FTC's complaint and the 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.

The proposed consent order contains three 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 reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Analysis to Aid Public Comment

Parts II and III address any product or service for which respondent makes any energy-related efficacy representation. Part II 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. Part III prohibits respondent from providing to others the means and instrumentalities with which to make any false, unsubstantiated, or otherwise misleading representation of material fact. It defines "means and instrumentalities" to mean any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Parts IV through VII 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 VIII 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 interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

SERIOUS ENERGY, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4359; File No. 112 3001
Complaint, May 16, 2012 – Decision, May 16, 2012

This consent order addresses Serious Energy, Inc.'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 representations that consumers who replace their windows with SeriousWindows 501 Series windows are likely to achieve residential energy savings of 40% or save 40% on residential heating and cooling costs or that consumers who replace their windows with SeriousWindows 600 Quantum 2 Series windows are likely to achieve residential energy savings of 49% or save 49% on residential heating and cooling costs when it made them. 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*: Lydia Parnes, Wilson Sonsini Goodrich & Rosati, PC.

COMPLAINT

The Federal Trade Commission, having reason to believe that Serious Energy, Inc. ("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: