

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:

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1. Respondent Serious is a Delaware corporation with its principal office or place of business at 1250 Elko Drive, Sunnyvale, CA 94089. Respondent does business under its own name and formerly did business under the name “Serious Materials, Inc.”

2. Respondent manufactures, advertises, offers for sale, sells, and/or distributes windows, including “SeriousWindows” replacement window lines. 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, including printed advertisements, website advertising, and other promotional materials provided to window dealers and installers, including but not necessarily limited to the attached Exhibits A through D. Respondent’s dealers and installers 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. SeriousWindows Printed Promotional Material:

Guaranteed to reduce your heating and cooling use by up to 49%*. When you replace all of your old windows with SeriousWindows 600 Series, you’ll not only improve your living comfort and your home’s value, but you can significantly lower your heating and cooling consumption. If you spend \$300 a month in heating and cooling, with Quantum2 windows you can potentially save up to 49%, that’s a savings of over \$14,400 in a decade. That’s why we say SeriousWindows 600 products are an annuity, because they will pay for themselves over time.

* Energy savings may vary and depends on numerous factors and variables pertaining to your windows and

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dwelling. Cost savings in this example does not include any energy cost increases.

Exhibit A (SeriousWindows 600 Quantum 2 Series Brochure).

b. SeriousWindows Printed Promotional Material:

SeriousWindows

SAVES MORE ENERGY THAN ANY OTHER WINDOW. PERIOD.

....

· Reduces heating & cooling

costs by up to 50%.*

....

*According to internal modeling with ResFen software & modeling parameters established by the Efficient Windows Collaborative.

Exhibit B (Print Brochure).

c. SeriousWindows Energy Savings Pledge:

49%

FUEL SAVINGS PLEDGE

....

ENERGY SAVINGS PLEDGE

This Pledges a savings of at least 49% of "Energy Consumption" for heating and cooling this residence at the address shown below during the 12 month period beginning with the date of this Pledge. If energy savings are less than 49% of the previous 12 months' energy consumption, the

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homeowner will be reimbursed the difference between actual savings and 49% of energy cost for the previous 12 months. In the event energy savings are less than 49% of the previous 12 months' energy consumption, the homeowner should notify the SeriousWindows™ Quantum2 Dealer who will provide the homeowner with the necessary forms to file for benefits under this Pledge.

....

Exhibit C.

d. SeriousWindows Printed Promotional Material:

Cut Your Energy Bills By Up to 40%
SeriousWindows 501 Series offers some of the most energy efficient residential windows on the market today. You'll save money on heating and cooling costs, as well as energy. If you spend \$200 a month on heating and cooling that's \$2,400 a year. SeriousWindows 501 products cut 40% off that figure and would save you \$960 in just the first year and over \$9,600 over the next decade.

Exhibit D (SeriousWindows 501 Series Brochure).

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 SeriousWindows replacement windows are not likely to achieve a 40% or 49% 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 SeriousWindows 600 Quantum 2 Series windows are likely to achieve residential energy savings of 49%;

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- b. Consumers who replace windows with SeriousWindows 600 Quantum 2 Series windows are likely to save 49% on residential heating and cooling costs;
- c. Consumers who replace windows with SeriousWindows 501 Series windows are likely to achieve residential energy savings of 40%; or
- d. Consumers who replace windows with SeriousWindows 501 Series windows are likely to save 40% 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 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 provided to its independent dealers and installers promotional materials referred to in Paragraph 4. By 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. 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 sixteenth day of May, 2012, has issued this complaint against respondent.

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

Exhibit A

Guaranteed to reduce your heating and cooling use by up to 49%*. When you replace all of your old windows with SeriousWindows 600 Series, you'll not only improve your living comfort and your home's value, but you can significantly lower your heating and cooling consumption. If you spend \$300 a month in heating and cooling, with Quantum2 windows you can potentially save up to 49%, that's a savings of over \$14,400 in a decade. That's why we say SeriousWindows 600 products are an annuity, because they will pay for themselves over time.

*Energy savings may vary and depends on numerous factors and variables pertaining to your windows and dwelling. Cost savings in this example does not include any energy cost increases.

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Exhibit B

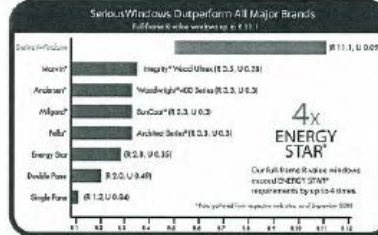
SeriousWindows

SAVES MORE ENERGY THAN ANY OTHER WINDOW. PERIOD.



Our windows save more energy than any other window while improving comfort and providing the design & style you expect from premium windows.

- Reduces heating & cooling costs by up to 50%.*
- 18% warmer glass than standard dual-pane low-E windows.
- Highest insulating full-frame R-value windows.
- Blocks 99.5% UV rays vs. 84% standard dual-pane low-E windows.

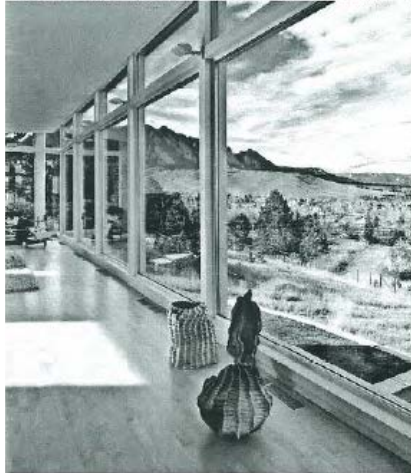


(800)797-8159
www.seriouswindows.com
www.seriousmaterials.com

* According to internal modeling with Passifx software & modeling parameters established by the Efficient Windows Collaborative.

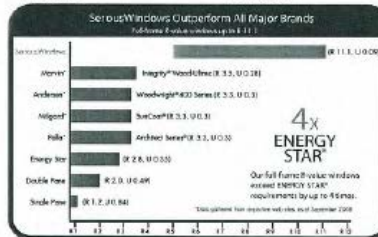
SeriousWindows

SAVES MORE ENERGY THAN ANY OTHER WINDOW. PERIOD.



Our windows save more energy than any other window while improving comfort and providing the design & style you expect from premium windows.

- Reduces heating & cooling costs by up to 50%.*
- 18% warmer glass than standard dual-pane low-E windows.
- Highest insulating full-frame R-value windows.
- Blocks 99.5% UV rays vs. 84% standard dual-pane low-E windows.



(800)797-8159
www.seriouswindows.com
www.seriousmaterials.com

* According to internal modeling with Passifx software & modeling parameters established by the Efficient Windows Collaborative.

SM 001747

COMPLAINT EXHIBIT B

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Exhibit C

ENERGY SAVINGS PLEDGE

This Pledge a savings of at least 49% of "Energy Consumption" for heating and cooling this residence at the address shown below during the 12 month period beginning with the date of this Pledge. If energy savings are less than 49% of the previous 12 months' energy consumption, the homeowner will be reimbursed the difference between actual savings and 49% of energy cost for the previous 12 months. In the event energy savings are less than 49% of the previous 12 months' energy consumption, the homeowner should notify the *SeriousWindows™ Quantum2 Dealer* who will provide the homeowner with the necessary forms to file for benefits under this Pledge.

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

1. This Pledge covers only the *SeriousWindows Quantum2* window with high performance glass.*
2. This Pledge covers only single and two family dwellings.
3. Complete installation of these windows is defined as all the windows and glass patio doors on this residence except in the untreated or cooled areas such as attics, basements and outside porches.
4. Maximum payment under this Pledge is \$500.00.
5. Claims under this Pledge must be filed in writing with support evidence within 30 days after expiration of this Pledge to the *SeriousWindows Quantum2 Dealer*.
6. Homeowners must properly maintain heating and cooling systems.
7. All other doors must be energy efficient and weather tight.
8. Proper allowance for abnormal weather conditions shall be made in adjusting a claim.
9. Reimbursement at rates prevailing at the time of window purchase.
10. All claims are subject to an inspection by a *SeriousWindows Quantum2 Dealer system engineer*.

Name _____

Address _____

City _____

State _____

Zip _____

Date of Issue _____

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 above has purchased a "Complete" installation of insulated replacement windows with high performance glass* and is effective on the date shown.

* High performance glass is the *SeriousGlass™ 10 PowerQ* system.

PN #114-002B-021629

SM 001778

COMPLAINT EXHIBIT C

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SM 001779



FUEL SAVINGS PLEDGE

Installation Date* _____

Issued to (Name) _____

Address _____

City _____ State _____ Zip _____

Authorized _____ Officer

Quantum2

Serious Windows 600 Series

*Expires 12 months from installation date.

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Exhibit D

Cut Your Energy Bills By Up to 40% SeriousWindows 501 Series offers some of the most energy efficient residential windows on the market today. You'll save money on heating and cooling costs, as well as energy. If you spend \$200 a month on heating and cooling that's \$2,400 a year. SeriousWindows 501 products cut 40% off that figure and would save you \$960 in just the first year and over \$9,600 over the next decade.



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 Serious Energy, Inc. ("Serious") is a Delaware corporation with its principal office or place of business at 1250 Elko Drive, Sunnyvale, CA 94089.

Decision and Order

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, contrast to the background against which it appears, the length of time it appears on the screen,

Decision and Order

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.
 - G. “K-value” is a measure of a material’s thermal conductivity.

Decision and Order

- H. Unless otherwise specified, “respondent” shall mean Serious Energy, Inc., 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 or almost all consumers are likely to receive the maximum represented savings or reduction.

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

Decision and Order

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 Serious, 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 in its possession or control 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 Serious, 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 Serious, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation 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: "Serious Energy, Inc., File No. 112 3001, Docket No. C-4359."

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent Serious, 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 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 Serious Energy, Inc., a corporation (“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 SeriousWindows 600 Quantum 2 Series windows are likely to achieve residential energy savings of 49% or save 49% on residential heating and cooling costs. Additionally, according to the FTC complaint, respondent represented 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.

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 SeriousWindows replacement windows are not likely to achieve a 40% or 49% 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

Analysis to Aid Public Comment

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 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

Analysis to Aid Public Comment

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.

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

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

Docket No. C-4360; File No. 112 3053
Complaint, May 16, 2012 – Decision, May 16, 2012

This consent order addresses Gorell Enterprises, 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 respondent’s Thermal Master III® glass system windows are likely to achieve residential energy savings of 40% or save 40% 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*: Steve Stallings, Burns White LLC.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gorell Enterprises, 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:

1. Respondent Gorell is a Pennsylvania corporation with its principal office or place of business at 1380 Wayne Avenue, Indiana, Pennsylvania 15701. Respondent has done business as