

Complaint

IN THE MATTER OF

THV HOLDINGS LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4361; File No. 112 3057**Complaint, May 16, 2012 – Decision, May 16, 2012*

This consent order addresses THV Holdings LLC'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 its windows likely pay for themselves in energy savings alone within eight years, when consumers replace their windows with THV Composit windows with Alter-Lite® triple pane glass; that consumers who replace their windows with these THV windows are likely to achieve residential energy savings of 40%, save 40% on residential heating and cooling costs, or reduce their energy bills by half; and that homeowners have saved 35%-55% off their energy bills by replacing their windows with THV windows 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 Berman, Baker Botts, LLP; and Cory Skolnick, Frost Brown Todd LLC.

COMPLAINT

The Federal Trade Commission, having reason to believe that THV Holdings LLC ("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 THV Holdings LLC is a Delaware limited liability company with its principal office or place of business at 5611 Fern Valley Road, Louisville, Kentucky 40228. It does business as THV Compozit Windows & Doors, Leingang Home Center, Primax Home Center, True Home Value, Rolox Home Center, and Thomas Construction.

2. Respondent manufactures, advertises, offers for sale, sells, installs, and/or distributes windows, including its THV Compozit Window line with Alter-Lite® triple pane glass. Respondent sells these windows directly to consumers for residential use, and distributes the windows to numerous independent distributors 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 web page, newspaper and magazine advertising, brochures, telemarketing scripts, and sales training materials, including but not necessarily limited to the attached Exhibits A through I. Respondent and its independent distributors disseminated or caused the dissemination of these advertising and promotional materials and representations to consumers. The advertising and promotional materials contain the following statements or depictions:

a. THV Window Systems Premium Warranty

THV Window Systems will pay for themselves in energy savings within eight years or we pay the difference! . . .

This warranty guarantees a total energy savings equal to or greater than the total purchase price of a full house installation of THV Window Systems at the address shown hereon for a period of eight (8) years. The eight year total energy savings begin the first day of the month subsequent to the completed installation of THV Window Systems. In the event total energy

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savings over the eight-year period are less than the complete installation purchase price, the Purchaser shall notify THV using the provided claim forms to file for benefits under this warranty. If energy savings over the eight-year period are less than the completed installation, THV will reimburse the difference between actual savings and the purchase price.

Exhibit A.

- b. Thermal Line Windows - THV Compozit Window Systems

Sales Training Manual

■ *What would happen to your fuel bills if I were able to build a window that acted more like a thermos bottle than a jelly jar? Do you think they would go up or down?*

Get Answer: They'd go down!

State answer pointing to the fuel savings warranty saying:

They would pay for themselves in energy savings alone within 8 years!

. . . .

Now ask the question that clears the deck for the Closing Sequence. The goal of this question is to make sure the only thing holding them back is the money.

Great window isn't it? Other than the cost, is there any reason you wouldn't want to own these windows and cut that energy bill in half?

Exhibit B.

Complaint

c. THV Sales Training Materials

Why are our windows better than everyone else's?

It is the only product that is FREE! That's right, FREE! Homeowners will typically experience a 35% to 55% reduction in monthly energy bills. Our windows will pay for themselves in energy savings alone within eight years or we will pay the difference. **And that's the Thomas promise!**

Exhibit C.

d. THV Telemarketing Sales Script

THOMAS CONSTRUCTION MANUFACTURES OUR OWN COMPOSIT WINDOW. OUR HOME OWNERS HAVE NOTICED THAT OUR WINDOWS HAVE SAVED THEM 35-55% OFF THEIR ENERGY BILLS AND OUR WINDOWS SYSTEM WILL PAY FOR THEMSELVES IN ENERGY SAVINGS ALONE WITHIN 8 YEARS OR WE WILL PAY THE DIFFERENCE!!

WHAT THIS MEANS TO OUR HOME OWNERS!!

OUR WINDOWS ARE FREE!!! THAT'S THE THOMAS PROMISE!!!

Exhibit D.

e. THV Telemarketing Sales Script

CASH BACK DIRECT MAIL PITCH

STEP I Hello is Mr. _____ in?

Hi this is _____ with Rolox Industries. I'm calling to see if you looked over the material we mailed to you?

STEP II What it tells about is a special neighborhood savings program, offering you up to a thousand dollars off on your next home improvement.

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So you can remodel your home with triple glass, energy efficient windows and reduce your heating and cooling bills by at least 40%.

Exhibit E.

f. THV Newspaper Advertising

LOWER ENERGY BILLS & INCREASE YOUR
COMFORT WITH THV REPLACEMENT
WINDOWS

....

■ 40% Fuel Savings

...

THV GUARANTEES IN WRITING . . .

Our windows will pay for themselves in utility bills alone or we will pay you the difference.

Exhibit F.

Up to 40% FUEL SAVINGS

Compozit frame for superior energy performance and savings. . . . Our fuel pledge is that THV windows will pay for themselves or we will pay you the difference.

GUARANTEED!

Exhibit G.

g. THV Magazine Advertisement

WINNING THE WAR ON HIGH ENERGY BILLS

40% FUEL SAVINGS *Guaranteed*

Our windows pay for themselves or we pay you the difference! GUARANTEED!

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Exhibit H.

h. THV 40% Fuel Pledge

Our pledge: Your new THV Compozit windows will give you an energy savings of 40% on your fuel consumption during the first 12 months after installation or we will pay you the difference!

....

This pledges a savings of 40% on your heating and cooling consumption for this residence at the address shown hereon during the 12 month period beginning with the date of this Pledge.

....

Exhibit I.

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 THV replacement windows are not likely to achieve a 40%, 50%, or 35%-55% 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. Its windows likely pay for themselves in energy savings alone within eight years, when consumers replace their windows with THV compozit windows with Alter-Lite® triple pane glass;
- b. Consumers who replace windows with THV compozit windows with Alter-Lite® triple pane glass are likely to achieve residential energy savings of 40%;

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- c. Consumers who replace windows with THV composited windows with Alter-Lite® triple pane glass are likely to save 40% on residential heating and cooling costs;
- d. Consumers who replace windows with THV composited windows with Alter-Lite® triple pane glass are likely to reduce their energy bills by half; or
- e. Home owners have saved 35-55% off their energy bills by replacing their windows with THV composited windows.

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 distributors 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 distributors, 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

The Industry's **FIRST** Energy Savings **GUARANTEE**
 THV Window Systems will pay for themselves in energy savings
 within eight years or we pay the difference!

Issued to: _____ Phone# (____) _____
Purchaser (Homeowner)

Residence Street Address _____ City _____ State _____ Zip Code _____

of Units Installed _____ Warranty/Contract No. _____

Effective _____ to _____
Date Installed (Eight Years Later)

Validated by: _____
THV Window Systems Certified Home Remodeler

See reverse side for complete instructions

The THV Window Systems are distributed by THV Certified Home Remodelers
 PO Box 34749, Louisville, Kentucky 40232
 Copyright © 2004, ThermoView Industries, Inc.

**CUSTOMER ACTIVATION RECEIPT -**

Fill out and return to THV within 30 days of your completed installation or
 Warranty is Null and Void. Mail with previous 12 months of utility bills/summary to:
 THV, PO Box 34749, Louisville, KY 40232

Issued To _____ Phone # _____ Number of Units Installed _____ Warranty/Contract No. _____

Residence Street Address _____ Contract # _____ Date _____

City _____ State _____ Zip _____ Effective _____ to _____
Date Installed Eight years later

Purchaser's Signature _____ Date _____ Certified Home Remodeler (Installer) _____ Date _____

**SUBSIDIARY ACTIVATION RECEIPT -**

Fill out and return to THV upon completion of approved contract. Once received
 and processed at THV, a deduction will be made from your Subsidiary Account.
 THV, PO Box 34749, Louisville, KY 40232

Issued To _____ Phone # _____ Number of Units Installed _____ Warranty/Contract No. _____

Residence Street Address _____ Contract # _____ Date _____

City _____ State _____ Zip _____ Effective _____ to _____
Date Installed Eight years later

Measure's Signature _____ Date _____ Finance/Ordering Dept. Signature _____ Date _____

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THV LIMITED PREMIUM WARRANTY

This warranty guarantees a total energy savings equal to or greater than the total purchase price of a full house installation of THV Window Systems at the address shown hereon for a period of eight (8) years. The eight year total energy savings begin the first day of the month subsequent to the completed installation of THV Window Systems. In the event total energy savings over the eight-year period are less than the complete installation purchase price, the Purchaser shall notify THV using the provided claim forms to file for benefits under this warranty. If energy savings over the eight-year period are less than the completed installation, THV will reimburse the difference between actual savings and the purchase price.

Notwithstanding anything herein to the contrary, it is hereby agreed and understood that this warranty shall only be effective if the Purchaser, located at the address indicated above, has purchased a complete installation of THV Window Systems units, remains the owner at such residence for an eight-year period after installation and is in compliance with the terms and conditions stated below. This warranty is based on energy (fuel) consumption, not cost. It is subject to the following provisions:

TERMS AND CONDITIONS OF THV LIMITED PREMIUM WARRANTY

1. The Premium Warranty covers only Total Energy Savings resulting from a complete installation of THV Window Systems units.
2. A "complete installation" is defined as all windows at the residence except basement, attic and porch. The Premium Warranty covers only energy savings of installations at single and two family dwellings.
3. To activate Premium Warranty the Customer's Activation Receipt must be submitted to THV, PO Box 34749, Louisville, KY 40232 within 30 days of completed installation, and include 12 months of utility bills evidencing energy usage.
4. Premium Warranty claims, if any, can only be issued by a purchasing homeowner that resides at the specified address for a full eight-year period after completed installation date.
5. Heating/cooling system at the residence must be properly maintained.
6. Appropriate allowances for abnormal weather conditions may be made in adjusting a claim.
7. Purchaser must submit claims under this Premium Warranty, in writing within 60 days after the complete installation eight-year anniversary.
8. Total energy savings includes eligible tax credits available to the Purchaser as a result of the purchase of THV Window Systems units.
9. Claim determinations or adjustments, if any, will be made within 90 days after all claim information has been received, authenticated and verified.
10. Modifications that could increase energy consumption, such as room additions, i.e., sun-rooms, heated garages, etc., to the said residence during the eight-year time period of the claim shall make such claims invalid unless submitted to THV for prior approval.
11. A change of energy related utility service (e.g., change from electric to gas) at the residence shall make the Premium Warranty null and void.
12. Reimbursement, if any, is determined using average energy rates during the Premium Warranty period. Reimbursement calculations are based on reduced units of energy (e.g. MCF dollars per thousand cubic feet) not reduction in actual dollars. Reimbursement, if any, is calculated using the change in energy usage, excluding the impact of changes in weather (measured by non-heating and cooling days derived from statistics gathered from the National Oceanic and Atmospheric Administration) multiplied by average energy rate over the warranty period. Cost of operation, taxes and service fees of any utilities are excluded from reimbursement calculation.
13. Purchaser must submit complete utility bills for the 96 month Premium Warranty period, or a summary form, from the authorized utility to claim a refund. The claim must be forwarded to THV, PO Box 34749, Louisville, KY 40232 within 60 days of the eight-year anniversary date.
14. Implied warranties shall be limited to the duration of this limited Warranty. Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.
15. This Warranty excludes incidental and consequential damages. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you.
16. This Warranty gives you specific legal rights, and you may have other rights which vary from State to State.

Warranty Activation:

Following completion of a "complete installation" of THV Window System units, the eligible homeowner must take the following action to initiate the THV Limited Premium Warranty:

1. Complete the Customer Activation Receipt provided by THV at the completion of installation.
2. Obtain 12 months prior energy usage from utility company.
3. Within 30 days after completed installation mail Customer Activation Receipt and a copy of the 12 months prior energy usage to:
THV
PO Box 34749
Louisville, KY 40232
4. Within 90 days Purchaser will receive "Your Personal Warranty Packet" and THV confirmation letter.

Subsidiary Warranty Activation:

1. Salesperson must validate offer and acceptance of Premium Warranty in writing on contract and include signature and date of Seller and Purchaser.
2. Contract number shall serve as Premium Warranty number.
3. Contract number/Premium Warranty number must be applied to Customer Premium Warranty, Customer Activation Receipt and Subsidiary Activation Receipt and checked for accuracy against original contract.
4. Upon approval of contract, fill out front of Subsidiary Activation Receipt and mail to:
THV
PO Box 34749
Louisville, KY 40232
5. Once received and processed at THV, a deduction will be made from your Subsidiary Account.
6. Installer must return Customer Premium Warranty and Customer Activation Receipt to Purchaser at the time of completed installation.
7. Installer must verbally communicate instructions for Activation Receipt to Purchaser.

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Exhibit B

**THE THERMOS®
COMPARISON****Your response:**

No, you heat with money...

Point to the estimated fuel usage on the fuel savings warranty sheet you talked about during the company story.

Major statement – memorize:

Your present windows can keep your home no warmer than this jelly jar can keep your coffee hot! And in the summer you have the same situation keeping the heat out.

Pull out your thermos and separate the liner from the case:

- *You would use a thermos if you wanted to keep your coffee hot for longer than 10 minutes, wouldn't you?*

Get answer: Yes

- *If I were to put hot coffee in this thermos and put it outside in the winter's night, how long before it would get cold?*

Get answer: 10 hours! — Sixty times more effective!

- *What would happen to your fuel bills if I were able to build a window that acted more like a thermos bottle than a jelly jar? Do you think they would go up or down?*

Get Answer: They'd go down!

State answer pointing to the fuel savings warranty saying:

They would pay for themselves in energy savings alone within 8 years!

- *That's what we set out to do, build a window that thinks it's a Thermos bottle!*

Why? To offer homeowners a window that is an investment, not an expense.

- *We need the two elements of a Thermos bottle:*

1. *Dead air space.*
2. *Reflective surface*

Hold up your THV Compozit Corner Section.

- *We thought if one air space was good, two had to be better! Makes sense, doesn't it?*

Get Answer: Yes

- *The silver lining was a bit more difficult. We use a "soft coat" Low-E rather than the less expensive hard coat. You may get a flyer in the mail from my competition giving away free Low-E... they use hard coat; it's not nearly as effective as soft coat!*

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GET AN ANSWER

You may have to help get a conclusion.

We are very flexible on monthly payments and terms. Again, the many people I deal with feel differently about the monthly payments. Our goal is to keep it comfortable, so you enjoy the windows without payment pressure.

What type of payment would fit you best?

Write both figures down. Make them important.

Now ask the question that clears the deck for the Closing Sequence. The goal of this question is to make sure the only thing holding them back is the money.

Great window isn't it? Other than the cost, is there any reason you wouldn't want to own these windows and cut that energy bill in half?

THV 0568

Complaint

Exhibit C

Product Knowledge

*Show & sell training
Bill D.
not approved 6 months*

Division #1: Windows and Siding

The window and siding division is the largest division and the bread and butter of the company. This means that these should be the first products you promote! Why? Windows and siding projects are likelier to issue, demo and approve than many other products. The more you promote windows and siding, the more money you'll make. **Don't forget, your income is under your control!**

Windows

- We manufacture our very own Thomas Construction Window at a manufacturing plant in Mandan, North Dakota! The window is made out of an aerated polymer, which is 214% more efficient than vinyl.
- We are the exclusive carriers of this window.
- Products in this division come with a 50 year warranty and 3 year glass breakage warranty.
- The window in triple paned with a krypton/argon gas mix and tilts in for easy cleaning.
- Many types are available, including bay, bow, garden, casement, slider and double hung windows. There are also many colors available including a wood grain finish.
- This division also includes entry, French and patio doors by precision.

Why are our windows better than everyone else's?

It is the only product that is FREE! That's right, FREE! Homeowners will typically experience a 35% to 55% reduction in monthly energy bills. Our windows will pay for themselves in energy savings alone within eight years or we will pay the difference. **And that's the Thomas promise!**

Siding

- _____ is the manufacturer of our siding and Thomas is the exclusive carrier of the product.
- Our siding is solid vinyl, not recycled.
- The siding is maintenance free, which means the homeowner will NEVER have to paint the house again.
- We can cover the whole home, including soffit and fascia.
- Several colors and styles are available, including vertical siding.
- Siding comes with a lifetime warranty.
- We use styrene wrap on the back of the siding for flat surface and air flow.

Division #2: Roofing

- Our roofing manufacturer is _____.
- This is the last roof a homeowner will ever need to replace on their home.
- Our 50 year warranty is transferable, which is attractive to homeowners who are thinking about selling and hoping to add more value.
- The roof is hail resistant.
- We can also put in aluminum gutters with roof installation.

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Exhibit D

Tel2 market script

WINDOWS:

THOMAS CONSTRUCTION MANUFACTURES OUR OWN
COMPOSIT WINDOW. OUR HOME OWNERS HAVE NOTICED
THAT OUR WINDOWS HAVE SAVED THEM 35-55% OFF THEIR
ENERGY BILLS AND OUR WINDOWS SYSTEM WILL PAY FOR
THEMSELVES IN ENERGY SAVINGS ALONE WITHIN 8 YEARS
OR WE WILL PAY THE DIFFERENCE!!

WHAT THIS MEANS TO OUR HOME OWNERS!!

OUR WINDOWS ARE FREE!!! THAT'S THE
THOMAS PROMISE!!!

DO YOU WORK DURING THE DAY OR EVENINGS? THE
REASON I ASK IS BECAUSE WHAT WE WOULD LIKE TO DO IS
SHOW YOU WHAT WE HAVE TO OFFER AND ANSWER ANY
QUESTIONS YOU MAY HAVE AND LEAVE YOU WITH A COST
FREE NO OBLIGATION ESTIMATE.

I HAVE AN APPOINTMENT AVAILABLE TOMORROW
@_____ WHICH WOULD BE BETTER FOR YOU?

(ABC) ALWAYS BE CLOSING!!
(GO TO BUTTON UP)

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Exhibit E

CASH BACK DIRECT MAIL PITCH

STEP I Hello is Mr. _____ in?

Hi this is _____ with Rolox Industries. I'm calling to see if you looked over the material we mailed to you?

STEP II What it tells about is a special neighborhood savings program, offering you up to a thousand dollars off on your next home improvement. So you can remodel your home with triple glass, energy efficient windows and reduce your heating and cooling bills by at least 40%.

STEP III But first, let me ask:

1. How old is your home? How long have you owned it?
2. Is that a frame or brick house?
3. When you folks eventually change to a window that cuts your utility bills, how many will you need?

(SECONDARY WINDOW QUESTION)

I guess what I'm asking is, if Rolox could show you a window that you liked, and a way to get up to 100% of your investment back, how many of your windows would you change?

STEP IV Right now our factory reps are going directly to homeowners to demonstrate the advantages of our windows and for a limited time we have a cash back offer which will enable you to put Rolox windows in your home and in 3 years, you can claim and receive up to 100% of your investment back. While we are doing this, I'll have him stop by!

STEP V

1. But how did I catch you at home, do you work days?
2. Does Mrs/Mr work days or nights?
3. What time are you both home from work?

STEP VI Ok, I'll put you on our factory reps schedule for (time). Now tomorrow being (day), that isn't club, church, bowling or anything like that is it? In case he's a little late, you folks will be home all evening anyway, won't you?

STEP VII By the way, what is your wife/husband name? Do me a favor Mr/Mrs _____ tell _____ that this is our factory rep coming out, not some door-to-door salesman. What he will do is show you a working model of our window. If you see something you like he can measure your opening and let you know exactly what our cost would be. If it's something we can help you with, great! If not, we'll shake hands and part friends.

Now our factory rep only leaves the office on the appointments I set for him, so I can count on you and Mrs/Mr both being there, can't I? Ok great, what is your correct address? And that's in _____. Ok, what's your zip code? Well thanks a lot for the appointment and we'll look forward to seeing you both (day & time).

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Exhibit F

**LOWER ENERGY BILLS & INCREASE YOUR COMFORT
WITH THV REPLACEMENT WINDOWS**



- 50 Year Warranty
- Easy to clean tilt-in feature
- 40% Fuel Savings
- Maintenance free inside and out

THV GUARANTEES IN WRITING...
Our windows will pay for themselves in utility bills alone or we will pay you the difference.

ALTER-LITE®
TRIPLE FRAME GLASS

THV
composit
WINDOW SYSTEMS

7
Star Rating

ACT NOW!

FREE INSTALL
WITH PURCHASE OF 5 OR MORE WINDOWS
Offer Ends in 30 Days. One offer per household. Not valid with any other offer or sale.

WE SELL ENERGY STAR

CREATE IMPACT WITH DOORS



STEEL DESIGNER ENTRY DOORS

\$150 OFF

THV
composit
DOOR SYSTEMS

PATIO DOORS



\$250 OFF

THV
True Home Value, Inc.
www.thvstores.com

CALL FOR YOUR FREE ESTIMATE
(800) 460-3129
LOCALLY OPERATED

Complaint

Relax with the safety and convenience of **MAINTENANCE-FREE GUTTERS**

- Diverts leaves and debris
- Prevents mold growth
- Prevents mosquito breeding
- Resistant to fading from the sun and cleaning solvents
- Prevents termite damage
- Protects your home against foundation and landscape damage
- Keeps you safe from climbing to clean gutters



Offer Ends In 30 Days. One offer per household. Not valid with any other offer or sales.

**25%
OFF
GUTTER
PROTECTION**



THV is the exclusive supplier of:

CLEARWATER
Gutter Protection System

ADD VALUE AND CURB APPEAL WITH SIDING



VISIT OUR SHOWROOM

5140 Frederica St Ste C
Between Applebee's & Olive Garden

9-6 M-F, 9-1 Sat., Sun. by appt.

**CALL FOR YOUR FREE ESTIMATE
(800) 460-3129**



Offer Ends In 30 Days. One offer per household. Not valid with any other offer or sales.

**\$99 OFF
Per Square**

**FINANCING AVAILABLE
SENIOR DISCOUNTS for 55 and OLDER**
www.thvstores.com

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Exhibit G

IT'S A GREAT TIME TO REPLACE WINDOWS!

Up to 40% FUEL SAVINGS

Composite frame for superior energy performance and savings. Fifty-year warranty. Our fuel pledge is that THV windows will pay for themselves or we will pay you the difference. **GUARANTEED!**

ALTER-LITE®
TRIPLE PANE GLASS

- Low-E coating
- Thin easy to clean feature
- 50 Year Warranty
- Maintenance-free

TAX CREDIT UP TO \$1750

FIND OUT IF YOU QUALIFY FOR THE TAX CREDIT. CALL TODAY

TRUCCATING
2 1/2" Thick or Greater

25% OFF
FIRST 25 CALLERS GET FREE INSTALLATION

Offer expires in 30 days. Not valid with any other discounts or offers.

9am

5pm

INEXPENSIVE ONE DAY BATH REMODEL

NU-BATH
Like a Shower

Various styles and options for you to choose from. Easy to clean. Installed over your old tub in one day. Professional and affordable.

\$250 OFF
ANY BATH/SHOWER PKG

Offer expires in 30 days. Not valid with any other discounts or offers.

SIDING

Many colors and styles to choose from. Give your great curb appeal and added insulation. Maintenance-free.

ENTRY/PATIO DOORS

Composite core for energy efficiency. Security features. Various colors, styles and hardware to choose from.

GUTTER PROTECTION

Protect your home's foundation. Stop breeding of mosquitoes. No more ladders.

33% OFF
ALL OTHER PRODUCTS

Offer expires in 30 days. Not valid with any other discounts or offers.

**CALL TO JOIN A GREAT TEAM
NOW HIRING SALES REPS**

\$25,000 Home Improvement

THV Sweepstakes

ONE LUCKY HOMEOWNER WILL

\$15,000 & \$10,000

in FREE THV HOME IMPROVEMENTS CASH TO SPEND HOW YOU LIKE

CALL to ENTER TODAY!

THV
True Home Value, Inc.

CALL: FOR YOUR FREE ESTIMATE
800-460-3135
CLICK: www.thvstores.com

COME BY:
SHOWROOM
130 Walton Ave
Bowling Green

BUY FEB 2010 PAY JULY 2010

*NO PURCHASE NECESSARY. PURCHASE \$100.00 MINIMUM. Open to homeowners who live in the United States. Sweepstakes ends 12/31/10. Odds 1:10,000. Not redeemable for cash. Prize \$10,000. Limit one entry per person/family. For Official Rules, go to www.thvstores.com or write to: Sweepstakes Rules, P.O. Box 33070, Louisville, KY 40233. Sponsor: THV, Inc. 18070 Louisville, KY 40237.

Complaint

Exhibit H

**WINNING THE WAR
ON HIGH ENERGY BILLS**

**40% FUEL
SAVINGS
*Guaranteed***

Our windows pay for themselves or we pay you the difference!
GUARANTEED!

LIFETIME WARRANTY

TRUCOATING
Fourteen Exterior Colors

**WINDOWS • SIDING • DOORS • TUBS
GUTTER PROTECTION**

ROLOX
HOME CENTER
A Division of
THV
True Home Value, Inc.

FREE ESTIMATE
800-950-3060
www.rolox.com

25% OFF
ALL PRODUCTS

All offers good for 30 days.
One offer per household.
Not valid with any other offer or sales.

Complaint

Exhibit I


40% Fuel Pledge

THV Composit®
Windows & Doors

Our pledge: Your new THV Composit windows will give you an energy savings of 40% on your fuel consumption during the first 12 months after installation or we will pay you the difference!

Issued to: _____ Phone # _____

Residence Street Address _____ City _____ State _____ Zip Code _____

of Units: _____ Pledge/Contract No. _____

Effective _____ to _____

Validated by: _____
THV Certified Home Remodeler

See reverse side for complete instructions

The THV Pledge is backed by THV Certified Home Remodelers
P.O. Box 34740 • Louisville, KY 40232
Copyright 2010 THV

THV 0342



CUSTOMER ACTIVATION RECEIPT
Fill out and return to THV Composit Windows & Doors within 30 days of your completed installation to: THV PO Box 34749, Louisville, KY 40232

Issued To _____	Phone # _____	Number of Units Installed _____	Pledge/Contract No. _____
Residence Street Address _____		Contract # _____	Date _____
City _____	State _____ Zip _____	Effective _____	Date Installed _____
Purchaser's Signature _____	Date _____	Certified Home Remodeler (Installer) _____	Date _____



DEALER ACTIVATION RECEIPT
Fill out and return to THV Composit Windows & Doors with copy of approved contract to: THV PO Box 34749, Louisville, KY 40232

Issued To _____	Phone # _____	Number of Units Installed _____	Pledge/Contract No. _____
Residence Street Address _____		Contract # _____	Date _____
City _____	State _____ Zip _____	Effective _____	Date Installed _____
Signature _____	Date _____		

Complaint

TERMS AND CONDITIONS OF THE
40% FUEL PLEDGE

Complaint Ext

This pledges a savings of 40% on your heating and cooling consumption for this residence at the address shown hereon during the 12 month period beginning with the date of this Pledge. In the event fuel savings are less than 40% of the previous 12 months fuel consumption, the homeowner should notify THV Composit Windows & Doors, who will provide the homeowner with the necessary forms to fill out for benefits under this Pledge. If fuel savings are less than 40% of the previous 12 months fuel consumption, the homeowner will be reimbursed the difference between actual savings and 40% of fuel 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 THV Composit Triple Alter-Lite® Glass replacement windows, effective on the dates shown.

This Pledge is based on fuel consumption, not cost. It is subject to the following provisions.

1. This Pledge covers only THV Composit Triple Alter-Lite® Glass replacement windows.
2. Complete installation of THV Composit Triple Alter-Lite® Glass replacement windows is defined as all windows on this residence except basement, attic and porch.
3. THV Composit one inch Double Glass insulated replacement windows may be substituted when window sizes exceed Triple Alter-Lite® Glass.
4. This Pledge covers only single and two family dwellings.
5. Maximum payment under this Pledge is \$1,200.
6. Customer must fill-out and send in the Customer Activation Receipt within 30 days of the completed installation of THV Composit Triple Alter-Lite® Glass replacement windows for Pledge to be activated.
7. Claims under this Pledge must be filled out in writing, with supporting evidence, within 60 days of the 12 month anniversary of this Pledge to THV Composit Windows & Doors. **Failure to make a claim within 60 days of the 12 month anniversary will void the Pledge and any reimbursement due to customer.**
8. Homeowners must properly maintain heating and air conditioning system.
9. An allowance shall be made for any non- heating and cooling utilities included in the utility bill such as, dish washers, refrigerators, lighting, computers, etc. when calculating a claim.
10. Proper allowance for abnormal weather conditions shall be made in adjusting a claim.
11. Reimbursement at rates prevailing at time of window purchase.
12. THV calculations are final and are based on information provided at the activation of this Pledge form.



THV 0343

Complaint

Dear THV Premium Warranty Customer:

Due to the fluctuating rates for utilities, our energy savings pledge is based on the amount of fuel used, not the cost.

Additionally, our savings pledge states that the fuel use will be adjusted for the weather. To make the adjustment, we rely on statistics published by the National Oceanic and Atmospheric Administration. This agency of the United States Government records the temperature each hour, 24 hours per day and averages these readings to arrive at the average hourly temperature for each day. If the average temperature is 65 degrees F., cooling is required. If the average temperature is below 65 degrees F., heating is required.

Each degree below 65 degrees F., is considered a "heating degree day" meaning one degree is required for one day. Thus, 10 heating degrees could mean one degree of heating for each of ten days, or two degrees of heating for each of five days, etc.

Conversely, cooling degree days apply in the same manner when the average daily temperature is above 65 degrees F.

We use these heating degree days and cooling degree days to compare the relative severity of the weather before and after installation of the windows. Our fuel savings pledge is that you will use less fuel after adjustments are made, up or down, for the change in the weather.

Since both gas and electricity are used for purposes other than heating and cooling your home, we attempt to compute the amount of fuel actually used for the heating and cooling. To do this, we examine your utility statements to determine the consumption during those months when there are no heating or cooling days, then pro-rate that non-heating or non-cooling consumption over the entire year.

The enclosed analysis is based on the above and shows how much more or less was saved on both your gas and electric bills. The cost for this energy is based on the rate charged on the statement nearest the date of installation of your windows.

If you have any additional questions, please give us a call.

Complaint

Consumption during months with essentially no cooling or heating degree days: 1,206 Kwh per month before, and 1973 Mcf after installing the windows.
Using these averages for 12 months gives the estimated "Non-cooling or non-heating" uses.

Consumption before installation windows:	<u>8,338</u> Kwh
Change in degree day: <u>195</u> to <u>174</u>	<u>-10.77%</u>
Assumed consumption due to weather	<u>7,440</u> Kwh
Assumed consumption less 40%	<u>4,464</u> Kwh
Actual consumption after installing windows	<u>6,971</u> Kwh
Difference	<u>2,507</u> Kwh
Cost at *\$ <u>0.064</u> per Kwh	<u>\$ 160.46</u> \$

* Rate charged on gas statement nearest 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, 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 THV Holdings LLC ("THV Holdings") is a Delaware limited liability company with its principal office or place of business at 5611 Fern Valley Road, Louisville, Kentucky 40228.

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 THV Holdings LLC, 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.

Decision and Order

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. About the ability of respondent's windows to pay for themselves in energy savings alone within any specific number of years or other time period, when consumers replace their windows with respondent's windows;
- B. 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
- C. 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;

Decision and Order

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, 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, telemarketing scripts, 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 THV Holdings, and its successors and assigns, within thirty (30) days of the issuance of this order, must:

- A. Establish and implement a training program for all principals, officers, directors, managers, employees, agents, and representatives who direct or engage in the promotion or sale of any covered product or service;
- B. Designate a manager to coordinate and oversee the implementation of this training program;
- C. Require all current principals, officers, directors, managers, employees, agents, and representatives who direct or engage in the promotion or sale of any covered product or service to complete the training program within sixty (60) days of the order’s issuance,

Decision and Order

and require all future principals, officers, directors, managers, employees, agents, and representatives to complete the training program before directing or engaging in the promotion or sale of any covered product or service;

- D. Ensure that the training program addresses:
 - 1. the trainee's duty not to use or make any representation prohibited under this order;
 - 2. all representations specifically approved by the respondent concerning energy savings, reduction in heating and cooling costs, and any other energy-related attribute of any covered product or service; and
 - 3. the trainee's duty not to use or make any representation concerning energy savings, reduction in heating and cooling costs, or any other energy-related attribute of any covered product or service unless the respondent has authorized the representation after the order's issuance;
- E. Secure from each participant in this training program, at the conclusion of training, a signed statement acknowledging that he or she has completed the program;
- F. Maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments obtained pursuant to this Part, as well as a copy of all materials used in training pursuant to this Part; and
- G. Regularly evaluate and adjust its training program in light of any material changes to respondent's promotional materials, operations, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of the training program required pursuant to this Part.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent THV Holdings, 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.

VI.

IT IS FURTHER ORDERED that respondent THV Holdings, 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 supervisory 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.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent THV Holdings, 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 corporation; 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: “THV Holdings LLC, File No. 112 3057, Docket No. C-4361.”

VIII.

IT IS FURTHER ORDERED that respondent THV Holdings, 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.

IX.

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

Analysis to Aid Public Comment

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 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 THV Holdings LLC, a limited liability company (“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

Analysis to Aid Public Comment

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 its windows likely pay for themselves in energy savings alone within eight years, when consumers replace their windows with THV Composit windows with Alter-Lite® triple pane glass. The respondent also allegedly represented that consumers who replace their windows with these THV windows are likely to achieve residential energy savings of 40%, save 40% on residential heating and cooling costs, or reduce their energy bills by half. In addition, the respondent allegedly represented that homeowners have saved 35%-55% off their energy bills by replacing their windows with THV windows. According to the complaint, 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 THV replacement windows are not likely to achieve a 40%, 50%, or 35%-55% 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 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

Analysis to Aid Public Comment

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.

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) about the ability of respondent’s windows to pay for themselves in energy savings alone within any specific number of years or other time period, when consumers replace their windows with respondent’s windows; (B) that any specific number or percentage of consumers who replace their windows with respondent’s

Analysis to Aid Public Comment

windows achieve energy savings or reduction in heating and cooling costs; or (C) 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 VIII require respondent to: train personnel who direct or engage in the promotion or sale of any product or service covered by the order not to make representations prohibited by the order; 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 supervisory 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 IX 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

**POM WONDERFUL LLC,
ROLL INTERNATIONAL CORP.,
STEWART A. RESNICK,
LYNDA RAE RESNICK,
AND
MATTHEW TUPPER**COMPLAINT AND INITIAL DECISION IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT*Docket No. 9344; File No. 082 3122**Complaint, September 24, 2010 – Initial Decision, May 17, 2012*

This case addresses POM Wonderful LLC and Roll International Corporation's advertising and promotional materials for POM Wonderful 100% Pomegranate Juice, POMx Pills, and POMx Liquid. The complaint alleged that respondent POM Wonderful LLC ("POM"), its sister company Roll Global LLC, and principals Stewart A. Resnick, Lynda Rae Resnick, and Matthew Tupper (collectively "Respondents") falsely advertised that POM-branded pomegranate juice could treat prostate cancer and erectile dysfunction or reduce the risk of heart disease. The complaint alleges respondent did not possess and rely upon a reasonable basis substantiating representations of the claimed benefits of using its products. In the Initial Decision the Administrative Law Judge ("ALJ") determined that the advertising claims respondents made regarding their products were false or misleading and unsubstantiated by competent scientific evidence. The ALJ ordered the respondents to cease and desist making claims that their products are effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease, including, but not limited to, any representation that the product will treat, prevent, or reduce the risk of heart disease, including by decreasing arterial plaque, lowering blood pressure, or improving blood flow to the heart; treat, prevent, or reduce the risk of prostate cancer, including by prolonging prostate-specific antigen doubling time; or treat, prevent, or reduce the risk of erectile dysfunction; unless, at the time it is made, the representation is non-misleading and, Respondents possessed and relied upon competent and reliable scientific evidence that is 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 the representation is true. Respondents appealed the Initial Decision.