

Complaint

IN THE MATTER OF

AMERICAN PLASTIC LUMBER, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4478; File No. 132 3200
Complaint, July 24, 2014 – Decision, July 24, 2014

This consent order addresses American Plastic Lumber, Inc.'s green claims made while promoting its plastic lumber products. The complaint alleges that the post-consumer recycled plastic in Respondent's products was substantially less than Respondent represented. The consent order prohibits Respondent from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence.

Participants

For the *Commission*: Robert M. Frisby.

For the *Respondent*: James A. Kaminski, Hughes & Bentzen, PLLC.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Plastic Lumber, Inc., a corporation ("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 American Plastic Lumber, Inc. is a California corporation with its principal office or place of business at 3867 Dividend Drive, Suite B, Shingle Springs, California 95682.
2. Respondent has advertised, offered for sale, sold, and distributed plastic lumber products, including picnic tables, benches, trash receptacles, wheel stops, and speed bumps, to end-use consumers and businesses in the construction industry.

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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. Since at least June 2011, Respondent has disseminated advertisements and promotional materials for plastic lumber products, including but not necessarily limited to the attached Exhibits A and B. These materials contain the following statements:

- a. “American Plastic Lumber is made from recycled milk jugs . . .”

“APL’s HDPE products are made of high-density polyethylene (HDPE), UV-inhibited pigment systems, foaming compounds and selected process additives. The HDPE raw material is derived from post-consumer bottle waste, such as milk and detergent bottles. . . . with the resulting finished product containing over 90% recycled plastic by weight[.]”

(Exhibit A, excerpt from www.american-plasticlumber.com)

- b. “And finally, because plastic lumber is made from recycled plastic milk jugs, it is the environmentally responsible solution to all of your lumber needs.”

(Exhibit B, brochure)

5. A consumer acting reasonably under the circumstances is likely to interpret the representations described in Paragraph 4 to mean that American Plastic Lumber or the recycled plastic in American Plastic Lumber is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

6. From June 2011 to June 2013, the post-consumer recycled plastic in Respondent’s products was substantially less than Respondent represented. During this period, Respondent’s products, on average, contained about 79% post-consumer content. During this period, about 8% of Respondent’s sales were

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products with zero post-consumer content and about 7% were products with only 15% post-consumer content.

False or Misleading Claims

7. In connection with the advertising, promotion, offering for sale, or sale of plastic lumber products, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Its products are all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and
- b. The recycled plastic in its products is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

8. In fact:

- a. Respondent's products are not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and
- b. The recycled plastic in its products is not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

9. The representations set forth in Paragraph 7 are false or misleading, or were not substantiated at the time the representations were made.

Violations of Section 5

10. The acts and practices of Respondent as alleged in this complaint constitute 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 twenty-fourth day of July, 2014, has issued this Complaint against Respondent.

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By the Commission.

Exhibit A-1



American Plastic Lumber Inc.

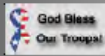
Largest selection of colors, sizes, and grades available
Premium, structural, utility and sheet goods
50 year limited warranty

Exhibit A-1



[About Us](#) | [Contact Us](#)

- Home
- Contact Us
- Request For Quote
- Testimonials
- Lumber Sizes
- Colors & Sizes
- Decks & Railings
- Sheet Goods
- Structural Lumber
- Docks & Boardwalks
- Outdoor Furniture / Site Amenities
- Custom Signage
- Utility Plastic Lumber
- Client List
- Overstock / Closeouts
- Installation Instructions
- Technical Data/Span Charts



American Plastic Lumber's frequently asked questions (FAQ's)

If you can not find the answer to your question here, please [contact us](#) and we will do our best to help you out.

What is plastic lumber made of?
 American Plastic Lumber is made from recycled milk jugs. Each chair contains thousands of old milk jugs and one foot of 2x4 contains hundreds of used milk jugs.

How long does it take for you to ship it to me?
 Orders go out the next business day after your order is placed, and then it is an additional 3 to 5 days with UPS. Rushed delivery is available.

Does plastic lumber really cost that much more?
 While the initial cost to purchase recycled plastic lumber averages 20% to 50% more than the price of wood, it pays off in two to four years when you factor in maintenance and replacement costs. We guarantee our products to last up to 50 years and we offer free replacement if it cracks or splinters.

Are the boards slippery?
 Plastic lumber is less slippery wet than dry. The material has a paraffin base and just like the surf boards that are waxed so that the surfers can stand on them in the water, our plastic boards become more tacky when they are wet.

Can I paint or glue it?
 Since our recycled plastic boards do not absorb water, they do not absorb paint or glue.

What type of tools do I need?
 All of your normal wood working tools can be used to cut, drill, sand, or router our plastic boards and sheets.

Will it stain from bird or animal droppings?
 The plastic boards are not porous so they will not absorb stains or water. This makes them able to resist salt, gas, oil and water. Because they will not absorb water, they will not rot, crack, split or warp.

If you do not find the color you are looking for in our color chart, please [contact us](#) for more available colors.

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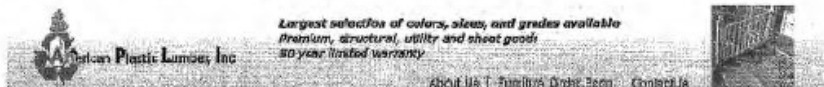
Contact Toll Free (877) 677.7701 - Local (530) 677.7700 - Fax (530) 677.6718
 Email sales@aplinc.us - Address P.O. Box 514, Shingle Springs CA. 95682
 Copyright © 2013 American Plastic Lumber

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Exhibit A-2

American Plastic Lumber - Decking and railing including Trimax, Denswood, and Certires materials

Exhibit A-2



HDPE Decking

Technical Data

DESCRIPTION

APL's HDPE products are made of high-density polyethylene (HDPE), UV-inhibited pigment systems, foaming compounds and selected process additives.

The HDPE raw material is derived from post-consumer bottle waste, such as milk and detergent bottles. This material is cleaned in APL's Building Products' decontamination process to a high purity level, which removes contaminants such as food residue, paper, and adhesives. It is then compounded into a rigid board stock material, with the resulting finished product containing over 90% recycled plastic by weight.

Because HDPE products are made with a single, purified polymer, they are manufactured to existing, repeatable specifications. They have exceptional resistance to common substances, oils and fuels, inorganic, acid, salt spray, and other environmental stresses. They do not absorb moisture; therefore, they will not rot, splinter, or crack.

HDPE products are manufactured in many dimensional lumber sizes, shapes, and colors. Planks, posts, rails, balusters, tongue and groove, groove and groove, and many specialty profiles are available. The products remain in many wood tones and popular colors, including Sand, Weathered Wood, Light Gray, Cedar, Redwood, and White.

HDPE products have excellent weathering resistance; however, as with other polyethylenes, it is possible that two molecules will fade slightly over the service life of the product. These products require no waterproofing, painting, staining, or similar maintenance when used in many exterior applications.

BASIC USES

HDPE products are used in many conventional wood lumber applications and are often the products of choice for exterior applications where weathering resistance and low maintenance are required.

Used in both residential and municipal applications, HDPE products are well suited for decking, porch flooring, docks, piers, furnishings, fencing, and lawn and garden items. HDPE products are cost-effective alternatives for ground contact and animal contact, wet, and environmentally harsh conditions.

LIMITATIONS

This type of product has less rigidity (modulus of elasticity) and greater elongation than wood lumber. Therefore, it is not recommended for use as a true structural member. Examples of applications that are inappropriate would be load-bearing walls, deck framing, and floor joists. It is recommended that an engineering study be performed prior to use of HDPE products if the application involves structural requirements. For commercial applications where the system design calls for concentrated loads, APL's Structural Lumber should be considered.

When utilizing HDPE products for decking or flooring, careful attention must be paid to joist spacing; joist spans will depend upon which HDPE deck board is installed. Multiple span data at 120°F or less are presented here:

Deflection Limit	12" Span	16" Span	19.2" Span	24" Span
1 X Decking Board (E = 0.75)				
1/8"	95	-	-	-
1/4"	123	54	-	-
1/2"	171	72	-	-
5/4 G & G Deck Board (E = 1.25)				
1/8"	233	89	57	-
1/4"	353	149	86	-
1/2"	473	195	115	-
2 X Decking Board (E = 1.50)				
1/8"	749	915	100	84
1/4"	1154	474	274	140
1/2"	1468	602	355	167

Note: Table provides limiting uniform load in pounds per square foot (psf) based on noted deflection criteria. Recommended standard is to limit live load deflection for floors to 1/360 and to limit total deflection (dead + live load) to 1/240. Designers may choose less restrictive or more restrictive criteria for a given application. Except for very unusual and heavy loading, deflection criteria will control allowable plank span. Deflection determination is based on the second modulus of elasticity measured at 75 strain at 10°F in accordance with published data. Utilize such data where uniform load is present on three spans (deflection = 308W/L⁴). This formulation is consistent with and slightly more conservative than the plank span data promulgated by the Western Woods Product Association and others. Multiple span values are applicable to plank continuous over at least two spans.

INSTALLATION

HDPE products can be fabricated and installed with the same tools used to work wood lumber. The product will cut and drill very cleanly, as there is no grain to split or chip. It is not necessary to pre-drill the plastic lumber when fastening. Stainless steel or coated decking nails and screws are recommended for use with HDPE products. Screws offer the best form of attachment; however, nails and staples may also be utilized in some applications. See recommended fastener configurations and minimum screw

http://www.americanplasticlumber.com/tech/specs/hdpe_decking_technical_data.html#618251191012-AM

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Exhibit B

Why compromise with composites and a 10 year warranty?

Many decking and lumber products have emerged in the marketplace within the past few years. Nearly all are an improvement on high-maintenance and short-life traditional lumber. However, none can offer the advantages of our plastic lumber, made from 100% recycled plastic. It is more durable than wood and will not rot, crack, splinter, or chip. It never needs paint, stain, or sealer, and is impervious to insects, mold, mildew, and salt water. And though many of the composites on the market may make some of these claims, the fact is that these boards still contain wood, and will stain and eventually fall apart. This is why composites offer only a 10-year limited warranty, while the



warranty on 100% plastic lumber is 50-years. Standard woodworking tools are all that is necessary to work with the product, and plastic lumber holds screws 40% better than wood. And perhaps the biggest selling point is that 100% plastic lumber is completely maintenance-free.



Plastic lumber comes in a large variety of colors and sizes, as well as standard grade, structural grade, and utility grade. It can be used for nearly any application. If you can think of it, it can most likely be built with plastic lumber. This is why corporations from various

areas are all ordering plastic lumber for their projects. The Department of Transportation, Parks and Recreation, the National Park Service, San Diego Zoo, state and county governments, and even the US Coast Guard are recognizing the benefits of plastic lumber and utilizing it in a variety of applications.

And finally, because plastic lumber is made from recycled plastic milk jugs, it is the environmentally responsible solution to all of your lumber needs.



So feel free to contact us with any questions about our lumber or our decking systems, or furnish us with a materials list for a free quotation. We can also provide you with assistance in the design/ engineering aspect of your project on a time and materials basis.

STANDARD DECKING COLORS

EXHIBIT B

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 violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts

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necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Plastic Lumber, Inc. is a California corporation with its principal office or place of business at 3867 Dividend Drive, Suite B, Shingle Springs, California 95682.
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. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- B. "Competent and reliable scientific evidence" means 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

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relevant and reliable scientific evidence, to substantiate that a representation is true.

- C. Unless otherwise specified, “respondent” means American Plastic Lumber, Inc., a corporation, and its successors and assigns.

I.

IT IS ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not make any representation, in any manner, expressly or by implication, about:

- A. The recycled content of any product or package;
- B. The post-consumer recycled content, such as milk jugs or detergent bottles, of any product or package;
or
- C. The environmental benefit of any product or package;

unless such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence. For any representation that a product or package contains recycled content, such evidence must show that any recycled content in such product or package is composed of materials that have been recovered or otherwise diverted from the waste stream.

II.

IT IS FURTHER ORDERED that respondent 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:

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- 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 their 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.

III.

IT IS FURTHER ORDERED that respondent 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 must 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.

IV.

IT IS FURTHER ORDERED that respondent 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

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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: “American Plastic Lumber, Inc., Docket No. C-4478.”

V.

IT IS FURTHER ORDERED that respondent, 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 in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all reports required by this Part shall also 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: “American Plastic Lumber, Inc., Docket No. C-4478.”

VI.

This order will terminate on July 24, 2034, 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;

Analysis to Aid Public Comment

- 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.

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 American Plastic Lumber, 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 addresses allegedly deceptive green claims that Respondent made while promoting its plastic lumber products. According to the FTC complaint, Respondent represented that: (1) its products are all, or virtually all, post-consumer recycled

Analysis to Aid Public Comment

content such as milk jugs or detergent bottles; and (2) the recycled plastic in its products is all, or virtually all, post-consumer recycled content such as milk jugs or detergent bottles. The complaint also alleged that, from June 2011 to June 2013, the post-consumer recycled plastic in Respondent's products was substantially less than Respondent represented -- on average about 79% post-consumer content. According to the complaint, during this period, about 8% of Respondent's sales were products with zero post-consumer content, and about 7% were products with only 15% post-consumer content. Thus, the complaint alleges that both of the above claims were false, misleading, or unsubstantiated in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits Respondent from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims ("Green Guides"), 16 C.F.R. § 260.13(b), Part I specifically requires Respondent to substantiate recycled content claims by demonstrating that such content is composed of materials that were recovered or otherwise diverted from the waste stream.

Parts II through VI are reporting and compliance provisions. Part II requires Respondent to keep (and make available to the Commission on request): copies of advertisements and promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; and evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part III requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and

Analysis to Aid Public Comment

make available to the FTC all acknowledgments of receipt of the order. Part IV requires notification to the FTC of changes in corporate status. Part V mandates that Respondent submit an initial compliance report to the FTC and subsequent reports requested by the FTC. Part VI is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

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

Docket No. C-4481; File No. 132 3089
Complaint, August 13, 2014 – Decision, August 13, 2014

This consent order addresses Fandango, LLC's security in the development and maintenance of its mobile application. The complaint alleges that Fandango deceived consumers regarding the security it provided for ticket purchases made through Fandango Movies for iOS. The complaint further alleges that attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to Fandango Movies for iOS, including the consumer's credit card number, security code, expiration date, billing zip code, email address, and password. The consent order requires Fandango to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by Fandango or input into, stored on, captured with, or accessed through a computer using Fandango's products or services. The order also prohibits Fandango from misrepresenting the extent to which Fandango or its products or services maintain and protect the privacy, security, confidentiality, or integrity of covered information.

Participants

For the *Commission*: Jarad Brown and Nithan Sannappa.

For the *Respondent*: Jim Halpert, DLA Piper LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Fandango, 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:

1. Respondent Fandango, LLC ("Fandango") is a Delaware limited liability company with its principal office or place of business at 12200 W. Olympic Boulevard, Suite 400, Los Angeles, CA 90064.