

Complaint

IN THE MATTER OF

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

Docket No. C-4485; File No. 132 3204
Complaint, August 20, 2014 – Decision, August 20, 2014

This consent order addresses Engineered Plastic Systems, LLC's green claims made while promoting its plastic lumber products. The complaint alleges that Respondent represented that some of its benches and tables are all, or virtually all, recycled plastic, but that these products contained substantially less recycled plastic than claimed. The consent order prohibits Respondent from making representations regarding the 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*: Jack Joyce, President, *pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Engineered Plastic Systems, LLC, a corporation ("Respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Engineered Plastic Systems, LLC is a limited liability company with its principal office or place of business at 885 Church Road, Elgin, IL 60123.
2. Respondent has advertised, offered for sale, sold, and distributed plastic lumber products, including picnic tables and benches.
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.

Complaint

4. Since at least June 2011, Respondent has disseminated one or more 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. “Sports Bench . . . Made entirely of recycled plastic lumber” (Exhibit A, brochure, p. 11)

“Eco Table . . . Made entirely of recycled plastic synthetic lumber” (*Id.*, p. 13)

“Perennial Table . . . Made entirely of recycled plastic lumber” (*Id.*, p. 15)

“Hexagonal Table . . . Made entirely of recycled plastic lumber” (*Id.*, p. 16)

“Geneva Bench . . . All recycled plastic design” (*Id.*, p. 24)

“Garden Bench . . . Constructed using 2x4 recycled plastic lumber profiles . . . Choice of recycled plastic-molded legs or ¼” steel legs” (*Id.*, p. 8)

“Trailside Bench . . . Constructed using 2x6 recycled plastic lumber profiles . . . Choice of recycled plastic molded legs or ¼” steel legs” (*Id.*, p. 9)

- b. “Eco Table . . . All recycled plastic construction” (Exhibit B, excerpt from www.epsplasticlumber.com)

“Hexagonal Table . . . All recycled plastic construction” (*Id.*)

5. A consumer acting reasonably under the circumstances is likely to interpret the representations described in Paragraph 4 to mean that Respondent’s tables and benches are made from all, or virtually all, recycled plastic.

6. In fact, Respondent’s tables and benches contained substantially less recycled plastic than Respondent represented.

Complaint

From June 2011 to early 2014, Respondent's tables and benches, on average, contained only about 72% recycled plastic. The products also contained some non-recycled plastic and a mineral component.

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 its Eco, Hexagonal, and Perennial Tables and its Garden, Geneva, Sports, and Trailside Benches are all or virtually all recycled plastic.

8. In fact, Respondent's tables and benches are not all or virtually all recycled plastic.

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

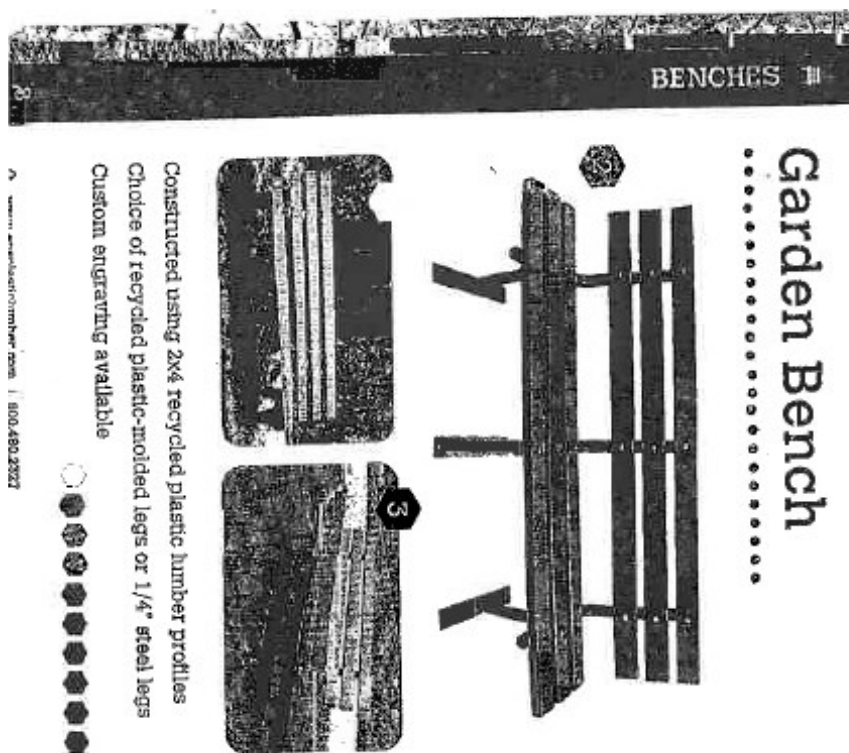
10. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twentieth day of August, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A



One-Piece Plastic Molded Legs, Black

All plastic bench model. Molded legs easily anchor to or land. Legs do not come pre-drilled.

SIZE	DIMENSIONS	SLAP	LEGS	WEIGHT
4' Branch	48" x 25" x 33" H	48" x 14" H	2	76 lbs
6' Branch	72" x 25" x 33" H	72" x 14" H	3	113 lbs
8' Branch	96" x 25" x 33" H	96" x 14" H	4	151 lbs

Steel Leg with Surface Mount (2)

1/4" powder-coated steel legs. Surface mount complimentary cement anchors and pre-drilled anchor

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT
4' Bench	48" L x 25" W x 35" H	48" L x 16" H	2	74 lbs
6' Bench	72" L x 25" W x 33" H	72" L x 16" H	3	110 lbs
8' Bench	98" L x 23" W x 33" H	96" L x 18" H	4	147 lbs

Steel Leg with In-Ground Mount (3)

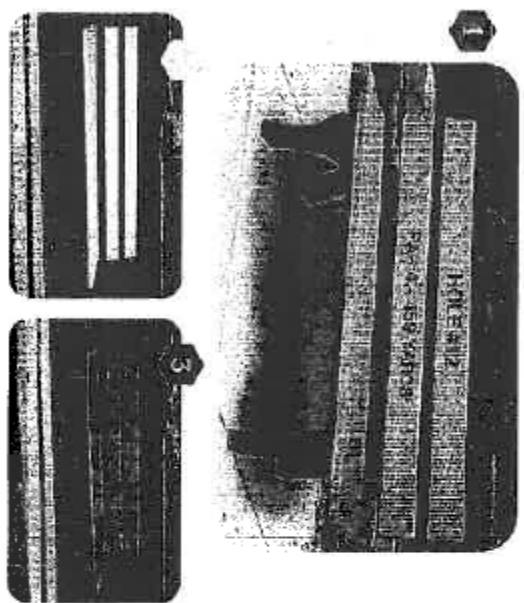
1/4" powder-coated steel legs. In-ground mount or 18" of additional pipe for mounting.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT
4 Bench	48"L x 25"W x 33"H	48"L x 16"H	2	74 lbs
6 Bench	72"L x 25"W x 33"H	72"L x 16"H	3	110 lbs
8 Bench	96"L x 25"W x 33"H	96"L x 16"H	4	147 lbs

Complaint

Trailside Bench

.....



1

2

3

Constructed using 2x6 recycled plastic lumber profiles

Choice of recycled plastic molded legs or 1/4" steel legs

Widest seat for added comfort



One-Piece Plastic Molded Legs (1)

All plastic bench model. Molded legs easily anchor to cement or land. Legs do not come pre-drilled. Black in color.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	85 lbs	TSB4
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	128 lbs	TSB6
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	170 lbs	TSB8

Steel Leg with Surface Mount (2)

1/4" powder-coated steel legs. Surface mount comes w/ complimentary cement anchors and pre-drilled anchor hole

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	83 lbs	TSLB4
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	125 lbs	TSLB6
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	166 lbs	TSLB8

Steel Leg with In-Ground Mount (3)

1/4" powder-coated steel legs. In-ground mount comes w/ 1.8" of additional pipe for mounting.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	83 lbs	TSLB4-IG
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	125 lbs	TSLB6-IG
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	166 lbs	TSLB8-IG

Complaint

Sports Bench



4' Sports Bench - Model # SB4

DIMENSIONS	SEAT	LEGS	WEIGHT
48" L x 18.5" W x 20" H	18.5" H	2	65 lbs

6' Sports Bench - Model # SB6

DIMENSIONS	SEAT	LEGS	WEIGHT
72" L x 18.5" W x 20" H	18.5" H	2	85 lbs

8' Sports Bench - Model # SB8

DIMENSIONS	SEAT	LEGS	WEIGHT
96" L x 18.5" W x 20" H	18.5" H	3	121 lbs

12' Sports Bench - Model # SB12

DIMENSIONS	SEAT	LEGS	WEIGHT
144" L x 18.5" W x 20" H	18.5" H	4	177 lbs

For All Benches:

Stainless steel fasteners and all parts necessary for assembly are included.

Custom colors for plastic molded legs available with orders of 100 or more.

Custom engraving available for all benches. See p.29 for more details.

One-Piece Plastic Molded Leg For Benches with Back (Black)
Model # GBLBG
4" L x 25" W x 32" H | 17 lbs

One-Piece Plastic Molded Leg For Benches with No Back
Model # SBLBG
4" L x 19" W x 16" H | 12 lbs

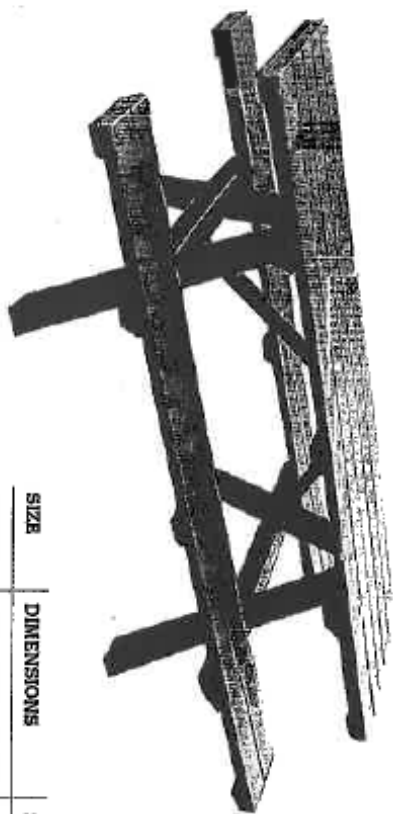


Made entirely of recycled plastic lumber
Black one-piece plastic molded legs
Plastic fastener covers included



Complaint

Picnic Tables from Perennial Park Products are durable and easy to maintain. All parts made of our signature recycled plastic lumber are waterproof, resistant to graffiti and stains, and will not rot, crack, splinter or peel. All tabletops are non-toxic and food-safe.



Eco Table

.....
Made entirely of recycled plastic
synthetic lumber

Your choice of color for tabletop
and benches, black legs
Rounded edges for added safety

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
6' Table	72"L x 58"W x 32.5"H	72"L x 18"H	2	250 lbs	ECO6
8' Table	96"L x 58"W x 32.5"H	96"L x 18"H	2	306 lbs	ECO8



Complaint



Perennial Table with Single Overhang

MODEL # PT8-H1

Wheelchair accessible & ADA compliant



DIMENSIONS	SEAT	LEGS	WEIGHT
96"L x 58"W x 32"H	72"L x 18"H	2	300 lbs



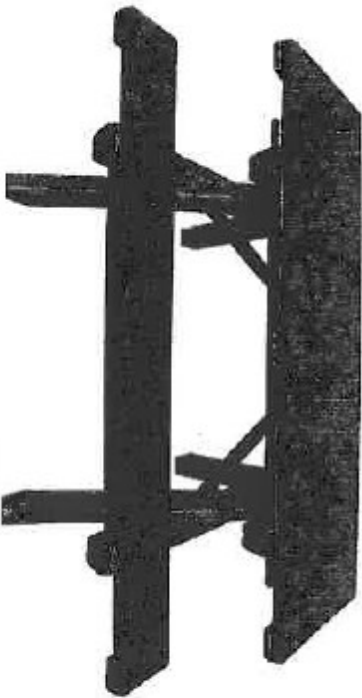
Perennial Table with Dual Overhang

MODEL # PT8-H2

Wheelchair accessible & ADA compliant



DIMENSIONS	SEAT	LEGS	WEIGHT
96"L x 58"W x 32"H	72"L x 18"H	2	300 lbs



Perennial Table

Made entirely of recycled plastic lumber
Step-over design with A-shaped frame
Round, smooth edges for added safety



SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Table	48"L x 58"W x 32"H	48"L x 18"H	2	300 lbs	PT4
6' Table	72"L x 58"W x 32"H	72"L x 18"H	2	375 lbs	PT6
8' Table	96"L x 58"W x 32"H	96"L x 18"H	2	428 lbs	PT8

W W W . E N G I N E E R E D P L A S T I C S Y S T E M S . C O M | 8 0 0 . 4 8 0 . 2 3 6 2

•••••



• • • • •



.....



4' square table with four easy to walk-through benches

Black powder-coated steel legs
Frame will support an umbrella

DIMENSIONS	SEAT	LEGS	WEIGHT
72"L x 72"W x 28"H	19"H	8	320 lbs

6-sided hexagonal table with
three angled benches

Made entirely of recycled plastic lumber

DIMENSIONS	SEAT	LEGS	WEIGHT
72" L. X 72" W X 32" H	19" H	9	250 lbs

**Pedestal feet and rounded ed
help create unique design**

Four angled benches seat up
eight adults

Choose a combination of two colors or a one-color design

DIMENSIONS	SEAT	LEGS
82"L X 62"W X 32"H	19"H	8



As a service mark of the publisher, the name of the publisher is printed in the right margin of the page.

© Nex and match seat and tabletop colors

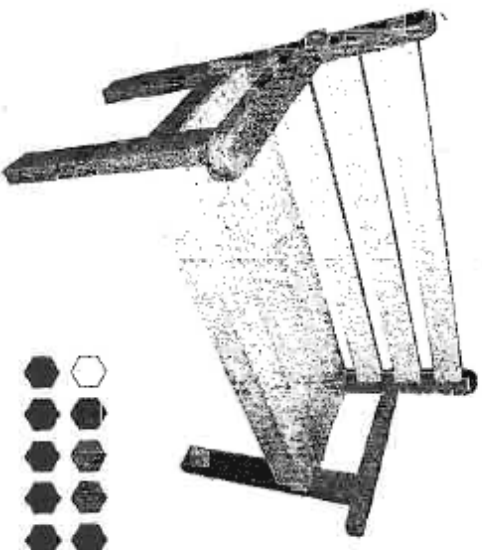
Complaint

OUTDOOR LIVING

24

Outdoor Living is what we're all about. Whether for homes, recreation areas, businesses public use, these accessories let you incorporate eco-friendly furnishings into your deck and landscaping. All pieces are built for comfort and feature stylish, classic designs.

The Geneva Collection - All New!



GENEVA BENCH

NEW!

MODEL # GENBENCH

Curved seat for added comfort

All recycled plastic design

Weatherproof, resistant to fading, easy to clean

Will not blow in wind

Choose two-tone colors or one color design

DIMENSIONS	SEAT	LEGS	WEIGHT
51 1/2" L x 25" W x 38" H	45" L x 18" H	4	81.5 lb

www.engrplastic.com

800.480.2327

Complaint

Exhibit B

Eco Table (6ft)



Perennial
PARK PRODUCTS



**800-480-2327**

SEARCH

Customer Service | My Account | Shopping Cart | Contact Us

RECYCLED PLASTIC FURNITURE
Picnic Tables
Benches
Outdoor Living
Trash & Recycling Centers
Children's Furniture
Accessories
Custom Opportunities
COLORS
CUSTOM ENGRAVING
OWNERSHIP
Cleaning
Warranty
THE PLASTIC ADVANTAGE
What is HDPE?
Benefits
Product Comparison
GSA
ABOUT US
Our Company
Green Initiative
Satisfied Customers
REQUEST A SAMPLE
CATALOG
FAQ
SHIPPING / FREIGHT
RESOURCES & LINKS

OUR OTHER BRANDS


FOLLOW US ON 

Eco Table (6ft)

[click for larger view](#)

Product #: EDO6
Weight: 250lb
Length: 72"
Width: 58"
Height: 32.5"
Seat: 18.5"
Legs: 2

BUY MORE AND SAVE! - Quantity Discounts Applied to Entire Order

From	To	Discounted Price
3	4	\$659.00
5	9	\$656.00
10	And Above	\$653.00

Color

Engraving [Click Here for Engraving Pricing & Details](#)

Epoxy Fill Color

Image Engraving Upload

Custom Engraved Text

☐ Umbrella Hole

Quantity:



White Gray Putty Cedar Tan Black Redwood Chocolate Brown Green

ADD TO CART

Price: \$670.00
FREE SHIPPING ON ALL ORDERS!
PRODUCT INFORMATION

- 6-foot table and benches
- All recycled plastic construction
- Weatherproof, resistant to fading, easy to clean
- Choose your tabletop and bench color
- Legs come in Black
- Ground to seat is 16"; ground to top is 30.5"
- Rounded edges for added safety
- Stainless steel fasteners included

ENGRAVING
Custom engraving is available for this product. Epoxy fill available in white or black.
COLORS
TABLETOP & BENCH COLORS: White, Gray, Putty, Tan, Cedar, Weathered Wood, Redwood, Green, Chocolate Brown, Black
LEG COLOR: Black
UMBRELLA HOLE
Umbrella hole available for a drilling fee of \$5. Umbrella holes will be placed slightly off-center to accommodate the structure of the table.

SHIPPING & FREIGHT
INCLUDED IN ALL ORDERS! >

STAINLESS STEEL FASTENERS INCLUDED! >

QUANTITY & GROUP DISCOUNTS >
[CLICK HERE TO VIEW-IN](#)

May we also suggest

http://www.epoplasticlumber.com/index.cfm/product/104_2eco-table-6ft.cfm[6/17/2013 11:14:56 AM]

Complaint

Hexagonal Table


Perennial
 PARK PRODUCTS


 800-480-2327

SEARCH
 Customer Service | My Account | Shopping Cart | Contact Us

RECYCLED PLASTIC FURNITURE
 Picnic Tables
 Benches
 Outdoor Living
 Trash & Recycling Centers
 Children's Furniture
 Accessories
 Custom Opportunities
COLORS
CUSTOM ENGRAVING
OWNERSHIP
 Cleaning
 Warranty
THE PLASTIC ADVANTAGE
 What is HDPE?
 Benefits
 Product Comparison
GSA
ABOUT US
 Our Company
 Green Initiative
 Satisfied Customers
REQUEST A SAMPLE
CATALOG
FAQ
SHIPPING / FREIGHT
RESOURCES & LINKS

Hexagonal Table

[click for larger view](#)
 Product #: PT-Hex4S
 Weight: 250lb
 Length: 72"
 Width: 72"
 Height: 32"
 Seat: 19"
 Legs: 9
Price: \$620.00
FREE SHIPPING ON ALL ORDERS!
PRODUCT INFORMATION

- 6-sided hexagonal table with three angled benches
- All recycled plastic construction
- Seats up to 6 adults
- Walk-through design
- Ground to seat 19", ground to top 32"
- Pre-assembled legs and tabletop
- Rounded edges for added safety
- Stainless steel fasteners included

ENGRAVING
 Custom engraving is available for this product. Epoxy fill available in white or black.
COLORS
 White, Gray, Putty, Tan, Cedar, Weathered Wood, Redwood, Green, Chocolate Brown, Black
UMBRELLA HOLE
 Umbrella hole available for a drilling fee of \$5. Umbrella holes will be placed slightly off-center to accommodate the structure of the table.

BUY MORE AND SAVE! - Quantity Discounts Applied to Entire Order

From	To	Discounted Price
3	4	\$611.00
5	9	\$592.00
10	And Above	\$583.00

Color
Engraving [Click Here for Engraving Pricing & Details](#)
Epoxy Fill Color
 Image Engraving Upload
 Custom Engraved Text
☐ Umbrella Hole
 Quantity:

White

Gray

Putty

Cedar

Tan

Black

Redwood

Chocolate Green

Brown

ADD TO CART

SHIPPING & FREIGHT
 INCLUDED IN ALL ORDERS! >

STAINLESS STEEL FASTENERS INCLUDED! >

QUANTITY & GROUP DISCOUNTS >
[CLICK HERE TO SIGN-IN](#)

[Picnic Tables](#)
[Wheelchair Accessible](#)
[All Plastic Models](#)

back | next

DATE: 06/11/2013

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 violations of the Federal Trade Commission Act; and

The respondent 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 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, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Engineered Plastic Systems, LLC, a limited liability company, has its principal office or place of business at 885 Church Road, Elgin, IL 60123.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

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

- A. “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 relevant and reliable scientific evidence, to substantiate that a representation is true.
- C. Unless otherwise specified, “respondent” means Engineered Plastic Systems, LLC, a limited liability company, 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; or
- B. 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.

Decision and Order

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:

- 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

Decision and Order

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 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: “Engineered Plastic Systems, LLC, Docket No. C-4485.”

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

Analysis to Aid Public Comment

line must begin: “Engineered Plastic Systems, LLC, Docket No. C-4485.”

VI.

This order will terminate on August 20, 2034, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

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

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

By the Commission.

**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

Analysis to Aid Public Comment

consent order from Engineered Plastic Systems, 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 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 some of its benches and tables are all, or virtually all, recycled plastic. The complaint also alleges that these products contained substantially less recycled plastic than Respondent represented. According to the complaint, from June 2011 to early 2014, Respondent’s tables and benches, on average, contained only about 72% recycled plastic. Thus, the complaint alleges that 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 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

Analysis to Aid Public Comment

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 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

JACOB J. ALIFRAGHIS
D/B/A
INSTANTUPCCODES.COM

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

Docket No. C-4483; File No. 141 0036
Complaint, August 20, 2014 – Decision, August 20, 2014

This consent order addresses Jacob J. Alifraghis's invitation to certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices. The complaint alleges that Mr. Alifraghis sent messages proposing that all three competitors raise their prices to meet the higher prices charged by another competitor. The consent order prohibits Respondent from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Participants

For the *Commission*: Dana Abrahamsen and Matthew Accornero.

For the *Respondent*: David Balto, Solo Practitioner.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Jacob J. Alifraghis, also doing business as InstantUPCCodes.com (hereinafter sometimes referred to as "Respondent"), has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows: