

Complaint

IN THE MATTER OF

**PROFESSIONAL LIGHTING AND SIGN
MANAGEMENT COMPANIES OF AMERICA,
INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4507; File No. 141 0088
Complaint, February 5, 2015 – Decision, February 5, 2015*

This consent order addresses provisions in the Professional Lighting and Sign Management Companies of America (“PLASMA”) bylaws that limit competition among its members. PLASMA is a non-profit corporation consisting of licensed electricians, with approximately 25 member firms across the country. PLASMA’s members specialize in commercial lighting and electrical sign installation and maintenance. The complaint alleges that PLASMA violated Section 5 of the FTC Act by adopting and maintaining provisions in its Bylaws and Standard Operating Procedures that restrict members from competing in the territory of another member, that restrict price competition, and that restrict members from soliciting the customers of another member upon termination of membership in the association. Under the terms of the order, PLASMA is required to cease and desist from allocating territories, restraining price competition among its members, and restraining its members from soliciting customers. It is also required to maintain an antitrust compliance program and take other steps to further the remedial objectives of the order. The order also requires PLASMA to revise its bylaws, publicize its settlement with the FTC, and implement an antitrust compliance program.

Participants

For the *Commission*: Barbara R. Blank and Gustav P. Chiarello.

For the *Respondent*: Edward Matto, Bricker & Ecklar LLP.

COMPLAINT

The Federal Trade Commission (“Commission”), 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, having reason to believe that Professional Lighting and Sign Management Companies of America, Inc. (“Respondent” or “PLASMA”), a corporation, has violated and is

Complaint

violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 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:

I. RESPONDENT

1. Respondent Professional Lighting and Sign Management Companies of America, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Florida, with its office and principal place of business located at 1100-H Brandywine Boulevard, Zanesville, Ohio.

2. Respondent is an association of licensed electricians, with approximately 25 member firms located across the country. Respondent's members specialize in commercial lighting and electrical sign installation and maintenance. Except to the extent that competition has been restrained as alleged herein, some of Respondent's members have been and are now in competition among themselves and with other electricians.

II. JURISDICTION

3. Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation," as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

4. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. NATURE OF THE CASE

5. Respondent maintains a set of Member Bylaws and Standard Operating Procedures ("Bylaws") applicable to the commercial activities of its members, and requires its members to comply with its Bylaws.

Complaint

6. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by designating a territory for each member, and by restricting through its Bylaws the ability of its members to compete in the designated territory of another member; to compete on price; and to solicit or compete for the customers of other members. Specifically, Respondent maintains the following provisions in its Bylaws:

- a. A provision that prohibits a member from providing to a customer commercial lighting or sign services in the designated territory of another member, unless such other member first declines to perform the work;
- b. A price schedule governing the price of any such work performed in the designated territory of another member; and
- c. A provision that bars any member, for one year following termination of membership, from soliciting or competing for the customers (or prospective customers) of another member.

7. In furtherance of the combination alleged in Paragraph 6, Respondent established a grievance committee to uphold and maintain industry standards and member business practices as set forth in Respondent's Bylaws. The grievance committee provides an avenue for resolving alleged violations of the Bylaws, as well as a process through which Respondent may sanction violations of the Bylaws.

IV. VIOLATION CHARGED

8. The purpose, effect, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 6 and 7 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among licensed electricians, and by depriving consumers and others of the benefits of free and open competition among licensed electricians.

Complaint

9. The combination, agreement, acts and practices alleged in Paragraphs 6 and 7 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of February, 2015, issues its Complaint against Respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Professional Lighting and Sign Management Companies of America, Inc. (“Respondent” or “PLASMA”) and Respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. §45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that 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 Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having 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 described 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 (“Order”):

1. Respondent Professional Lighting and Sign Management Companies of America, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Florida, with its office and principal place of business located at 1100-H Brandywine Boulevard, Zanesville, Ohio.

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**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

- A. “Respondent” or “PLASMA” means Professional Lighting and Sign Management Companies of America, Inc., its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.
- B. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.
- C. “Antitrust Counsel” means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.
- D. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et seq.*
- E. “FTC Settlement Statement” means the statement attached to this Order as Appendix A.
- F. “Leaders” means PLASMA’s board of directors and officers.
- G. “Member” means a member of PLASMA.
- H. “Organization Documents” means any documents relating to the governance, management, or direction

Decision and Order

of PLASMA, including, but not limited to, bylaws, rules, regulations, codes of ethics, standard operating procedures, policy statements, interpretations, commentaries, or guidelines.

- I. “Regulating” means (1) adopting, maintaining, or enforcing any rule, regulation, standard operating procedure, interpretation, ethical ruling, policy, or commentary; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.
- J. “Services” or “Servicing” means the installation or maintenance of any lighting, electrical sign, or related project performed in exchange for compensation.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent’s activities as an association in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from:

- A. Regulating, restricting, restraining, impeding, or interfering with the provision of Services by Members to customers in any geographic area;
- B. Regulating, restricting, restraining, impeding, or interfering with Members’ setting of rates, prices, or fees for any Services;
- C. Regulating, restricting, restraining, impeding, or interfering with Members’ solicitation of, or competition for, the customers of any other Member.

Provided, however, that nothing in this Paragraph II shall prohibit Respondent from requesting, but not requiring, a Member to identify any geographic region(s) within which such Member can quickly respond for service. PLASMA shall place no restrictions

Decision and Order

on the number of Members that may identify a particular geographic region as a “quick response” region.

III.**IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
 - 1. Post and thereafter maintain for three (3) years on PLASMA’s website, together with a link from Respondent’s home or menu page that is entitled “Antitrust Compliance,” the following items:
 - a. The FTC Settlement Statement; and
 - b. A link to the Federal Trade Commission’s website that contains the press release issued by the Commission in this matter; and
 - 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its Leaders, employees, and Members.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
 - 1. Remove from PLASMA’s Organization Documents and PLASMA’s website any statement that is inconsistent with Paragraph II. of this Order, and
 - 2. Publish on PLASMA’s website, alongside the items required by Paragraph III.A.1, any revisions of PLASMA’s Organization Documents.
- C. For a period of three (3) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:

Decision and Order

1. New Member no later than thirty (30) days after the date of commencement of the membership; and
 2. Member who receives a membership renewal notice at the time the Member receives such notice.
- D. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws, including but not limited to:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the Chief Executive Officer of Respondent, after which three-year period a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or employee of Respondent.

Decision and Order

- C. For a period of three (3) years from the date this Order is issued, Respondent shall provide annual training to its Leaders and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.
- D. Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its Leaders, employees, and Members) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 - 2. Discipline Leaders, employees, and Members for failure to comply fully with this Order.
- E. For a period of three (3) years from the date this Order is issued, Respondent shall conduct a presentation at each annual meeting of PLASMA that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

Decision and Order

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent;
or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

Decision and Order

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on February 5, 2035.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the Professional Lighting and Sign Management Companies of America, Inc. (“PLASMA”). The Commission’s complaint (“Complaint”) alleges that PLASMA, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining provisions in its Bylaws and Standard Operating Procedures that restrict members from competing in the territory of another member, that restrict price competition, and that restrict members from soliciting the customers of another member upon termination of membership in the association.

Under the terms of the proposed Consent Agreement, PLASMA is required to cease and desist from allocating territories, restraining price competition among its members, and restraining its members from soliciting customers. It is also required to maintain an antitrust compliance program and take other steps to further the remedial objectives of the proposed order.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on

Analysis to Aid Public Comment

the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by PLASMA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

PLASMA is a non-profit corporation consisting of licensed electricians, with approximately 25 member firms across the country. PLASMA’s members specialize in commercial lighting and electrical sign installation and maintenance.

B. The Anticompetitive Conduct

PLASMA maintains a set of Member Bylaws and Standard Operating Procedures (“Bylaws”) applicable to the commercial activities of its members, and requires its members to comply with its Bylaws. PLASMA maintains the following provisions in its Bylaws:

- A provision that prohibits a member from providing to a customer commercial lighting or sign services in the designated territory of another member, unless such other member first declines to perform the work;

Analysis to Aid Public Comment

- A price schedule governing the price of any such work performed in the designated territory of another member; and
- A provision that bars any member, for one year following termination of membership, from soliciting or competing for the customers (or prospective customers) of another member.

PLASMA also established a grievance committee to resolve alleged violations of the Bylaws, as well as a process through which PLASMA could sanction violations of the Bylaws.

II. The Allegations

The Complaint alleges that PLASMA has violated Section 5 of the Federal Trade Commission Act by designating a territory for each member, and by restricting through its Bylaws the ability of members to compete in the designated territory of another member; to compete on price; and to solicit or compete for the customers of other members.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of PLASMA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among licensed electricians.

III. The Proposed Order

The Proposed Order has the following substantive provisions: Paragraph II requires PLASMA to cease and desist from restraining its members from competing in the territories of other members; from restraining price competition among members; and from restraining members from soliciting the customers of other members upon the termination of membership in the association. The Proposed Order does not prohibit PLASMA from requesting that its members identify any geographic region(s) within which such members can quickly respond for service. However, PLASMA may not place restrictions on the number of

Analysis to Aid Public Comment

members that may identify a particular geographic region as a “quick response” region.

Paragraph III of the Proposed Order requires PLASMA to remove from its website and organization documents any statement inconsistent with the Proposed Order. PLASMA must distribute a statement describing the Consent Agreement (“the Settlement Statement”) to PLASMA’s board of directors, officers, employees, and members. Paragraph III also requires PLASMA to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Paragraph IV of the Proposed Order requires PLASMA to design, maintain, and operate an antitrust compliance program. PLASMA will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of three years, PLASMA will have to provide annual training to its board of directors, offices, and employees, and conduct a presentation at its annual conference that summarizes PLASMA’s obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. PLASMA must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its leaders, employees, and members for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed order impose certain standard reporting and compliance requirements on PLASMA.

The Proposed Order will expire in 20 years.

Initial Decision

IN THE MATTER OF

ECM BIOFILMS, INC.INITIAL DECISION IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. D-9358; File No. 122 3118**Complaint, October 18, 2013 – Initial Decision, January 28, 2015*

This Initial Decision addresses allegations that ECM Biofilms, Inc. (“ECM”) violated Section 5 of the FTC Act by deceptively claiming, and providing others with the means to claim, that plastics treated with ECM’s proprietary additive would completely biodegrade in a landfill within a period ranging from nine months to five years. In October 2013, the Commission filed an administrative complaint against ECM, alleging that ECM’s MasterBatch Pellets additives failed to enhance the biodegradability of plastic products as advertised and that ECM lacked any substantiation to prove its advertised claims. Following an administrative hearing, the Administrative Law Judge (“ALJ”) ruled that ECM’s claims that plastics treated with its additives would biodegrade in less than five years deceived consumers in violation of the FTC Act. Further, ECM provided the means to promote this deception to others in the supply chain. However, ECM did not violate the FTC Act by claiming that plastics treated with its additives were “biodegradable” generally. Following his decision, the ALJ issued an order barring ECM from representing – or providing others the means to represent – that any product can biodegrade within any time period unless it has “competent and reliable scientific evidence” supporting the representation.

Participants

For the *Commission*: Jonathan Cohen, Arturo DeCastro, Elisa Jillson, Katherine Johnson, Joshua Millard, and Benjamin Theisman.

For the *Respondent*: Peter Arhangelsky, Lou Caputo, Jonathan Emord, and Bethany Kennedy, Emord & Associates P.C.