

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of	)	File No. 112 3005
	)	
LONG FENCE & HOME, LLL P,	)	AGREEMENT
a partnership.	)	CONTAINING
	)	CONSENT ORDER

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The Federal Trade Commission has conducted an investigation of certain acts and practices of Long Fence & Home, LLLP ("LF&H"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between LF&H, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent LF&H is a Maryland limited liability limited partnership with its principal office or place of business at 10236 Southard Rd, Beltsville, Maryland 20705.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
5. This agree

6. This agreement contemplates that it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order and understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

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

1. "Clearly and prominently" means

A. 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 and comprehend it;

B. 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. If 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, and its location, for an ordinary consumer to notice and comprehend it; and



- 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 saving or reduction.

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 saving 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 name, on or after 1/1/2000 (a) T19(e) F400 0.0000

III .

IT IS FURTHER ORDERED that respondent LF&H, 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

IV.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, shall deliver a copy of this order to its 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 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.

V.

IT IS FURTHER ORDERED that respondent LF&H, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the partnership that may affect compliance obligations arising under this order including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the

of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "Long Fence & Home, File No. \_\_\_\_."

VI.

IT IS FURTHER ORDERED that Respondent LF&H, 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.

VII.

This order will terminate twenty (20) years from the date of its issuance, 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 which ever 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 or the date such dismissal or ruling is upheld on appeal.

LONG FENCE & HOME, LLLP

By: \_\_\_\_\_ Date \_\_\_\_\_  
JOHN DEPAOLA  
President

\_\_\_\_\_  
D.S. BERENSON  
Berenson LLP  
Attorney for respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOSHUA S. MILLARD  
Counsel for the Federal Trade  
Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
SARAH WALDROP  
Counsel for the Federal Trade  
Commission

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
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Division of Enforcement

\_\_\_\_\_  
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