

costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence.

Parts III through VI require respondent to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

*Comments Received on the Proposed Consent Order*

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Winchester Industries, a partnership ("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 involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with Bristol and Winter Lock Super Triple-E A-Plus with Alpha-10 windows are likely to achieve residential energy savings of 47% or to save 47% on their heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with Winchester replacement windows are not likely to achieve a 47% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

Some promotional materials challenged in the FTC's complaint

include the words "up to" in an apparent attempt to qualify representations that consumers who replace windows with respondent's windows are likely to achieve specified amounts of residential energy savings or reduction in residential heating and cooling costs. In the context of specific ads in this case, the words "up to" do not effectively qualify such representations for replacement windows. The FTC's complaint and the proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words "up to" for other products or services in the future.

The proposed consent order contains three provisions designed to prevent