

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<b>UNITED STATES OF AMERICA,</b>	)
	)
Plaintiff,	)
	)
v.	)
	)
<b>NORTHWESTERN OHIO FOAM</b>	)
<b>PACKAGING, INC.,</b> a corporation,	)
and	)
	)
<b>WALLY RADJENOVIC,</b> individually	)
and as an officer of the corporation,	)
	)
Defendants.	)

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT FOR  
CIVIL PENALTIES, INJUNCTION,  
AND OTHER RELIEF**

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b),

56(a), and 57b to obtain: (a) monetary civil penalties, an injunction, payment of damages, and other relief against Defendants for violations of the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation ("R-value Rule" or "Rule"), 16 C.F.R. Part 460; and (b) to secure a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for engaging in deceptive acts or practices and disseminating false advertisements in connection with the advertising and sale of insulation products, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), 56(a), and 57b.
3. Venue in the United States District Court for the Northern District of Ohio is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

#### **THE DEFENDANTS**

4. Defendant Northwestern Ohio Foam Packaging, Inc. (also known as Northwestern Ohio Foam Products, Inc.) ("NOFP") is an Ohio corporation, with its principal office or place of business at 123 South Shoop Avenue, Wauseon, Ohio 43567. NOFP transacts or has transacted business in this District.
5. Defendant Wally Radjenovic ("Radjenovic") is President and the sole officer of NOFP. At all times relevant to this Complaint, acting individually or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts or

practices set forth in this Complaint. Radjenovic resides in and transacts or has transacted business in this District.

### **COMMERCE**

6. At all times relevant to this Complaint, the alleged acts and practices of NOFP and Radjenovic (collectively "Defendants") have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' COURSE OF CONDUCT**

7. At all times material herein, Defendants have manufactured home insulation, as "home insulation" is defined in Section 460.2 of the R-value Rule (16 C.F.R. § 460.2).
8. At all times material herein, Defendants have manufactured, distributed, sold or promoted home insulation as those terms are used in Section 460.4 of the R-value Rule (16 C.F.R. § 460.4). While engaging in these activities, Defendants have issued and published, or caused to be issued and published, product labels, advertisements, and other promotional materials in or affecting commerce, as "commerce" is used in Section 460.1 of the R-value Rule (16 C.F.R. § 460.1).
9. At all times material herein, Defendants have engaged in the manufacturing, advertising, labeling, offering for sale, sale, and distribution of insulation products called "The Barrier" and "MicroFoil" for residential, commercial, and industrial applications. "The Barrier" is a foam insulation that is covered with vapor barrier material and is 3/8 of an inch thick. The approximate retail price of the "The Barrier" is \$150.00 for a roll measuring four feet wide and sixty feet long. "MicroFoil" is a foil-faced reflective insulation product.

10. To induce consumers to purchase “The Barrier” insulation, Defendants have disseminated advertisements, or have caused advertisements to be disseminated, which make various claims regarding the thermal performance of “The Barrier” insulation, including but not limited to the following:
  - (A) “Performance R-Value . . . 11.2.” (Attachment A - Internet Ad).
  - (B) “The Barrier has a comparative R-Value of 11.7 . . . .” (Attachment B - Internet Ad).
  - (C) “As shown on the test data - The Barrier<sup>TM</sup> has a K-Value of .019. This means it eliminates 99.981% of the heat and cold transfer that occurs in an underground insulation application.” (Attachments C and D - Internet Ad and Brochure).
  - (D) “Stop 99.981% of heat/cold transfer.” (Attachment E - Magazine Ad).
  - (E) “Values equal to blueboard . . . .” (Attachment E - Magazine Ad).
  - (F) “Equal to 2" of blueboard at ½ the price.” (Attachment F - Ad).
11. In numerous instances, Defendants have disseminated advertisements, such as Attachments C, D, and F, for “The Barrier” insulation which provided a thickness for the product, but did not provide the product’s R-value or a statement explaining R-values.
12. In numerous instances, Defendants have disseminated labels for “The Barrier,” such as Attachment G, and “MicroFoil” insulation, such as Attachment H, that do not disclose the product’s R-value or contain any explanatory statements about R-value or instructions related to installation.
13. The results of an R-value test conducted for NOFP on “The Barrier” indicate the product has an R-value of 1.64 at a thickness of 3/8 inches.

**DEFENDANTS' VIOLATIONS OF SECTION 5 OF THE FTC ACT**

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. As set forth below, the Defendants have engaged in and are continuing to engage in such unlawful practices in connection with the marketing and sale of "The Barrier" insulation.

**FALSE CLAIMS ABOUT "THE BARRIER" INSULATION**

**Count I**

15. Defendants have represented, expressly or by implication, that:
- (A) "The Barrier" insulation's .019 K-value means that the product eliminates 99.981% of the heat and cold transfer that occurs in an underground insulation application; and
  - (B) "The Barrier" insulation has an R-value of R-11 or greater.
16. In truth and in fact:
- (A) A K-value of .019 for an insulation product does not mean that the product eliminates 99.981% of the heat and cold transfer that occurs in an underground insulation application; and
  - (B) The tested R-value for "The Barrier" insulation is not R-11, but is significantly lower than R-11.

Therefore, Defendants' representations set forth in Paragraph 15 above are false and misleading and constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a).

**UNSUBSTANTIATED CLAIMS ABOUT “THE BARRIER” INSULATION**

**Count II**

17. Defendants have represented, expressly or by implication, that “The Barrier” insulation eliminates 99.981% of the heat and cold transfer that occurs in an underground insulation application.
18. Defendants did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 17 at the time the representation was made. Therefore, the making of the representation set forth in Paragraph 17 constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**THE R-VALUE RULE**

19. The R-value Rule was issued by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a. The Rule became effective on September 29, 1980. Since then, the Commission has issued several exemptions and stays that are not relevant to this action. The Commission amended the Rule on March 28, 1996 and on May 31, 2005, under Section 18 of the FTC Act, 15 U.S.C. § 57a, and these amendments became effective on April 29, 1996 and November 28, 2005, respectively. The Rule specifies substantiation and disclosure requirements for insulation products used in the residential market and prohibits certain claims unless they are true.
20. Section 460.5 of the R-value Rule requires that R-values given in labels, fact sheets, ads, and other promotional materials must be based on tests done under the methods listed in the Rule.

21. Section 460.8 of the R-value Rule prohibits manufacturers from selling individual specimens of insulation if such specimens have an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation.
22. Section 460.12 of the R-value Rule requires manufacturers to label all packages of their insulation with the insulation's type, the insulation's R-value, and the statement:  
"R means resistance to heat flow. The higher the R-value, the greater the insulating power."
23. Under Section 460.18(c) of the R-value Rule, insulation sellers that disclose the thickness of their insulation in advertising must also disclose the insulation's R-value at that thickness.
24. Under Section 460.18(d) of the R-value Rule, insulation sellers that compare one type of insulation to another in advertising must also disclose the R-value at a specific thickness for each insulation.
25. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the R-value Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

### **VIOLATIONS OF THE R-VALUE RULE**

#### **Count III**

26. In numerous instances within the past five (5) years, Defendants, in connection with the manufacture, distribution, promotion, and sale of home insulation, have provided, in advertising and other promotional materials, R-values for "The Barrier" insulation that were not based upon the R-value test procedures required by Section 460.5(a) of the R-value Rule, thereby violating Section 460.5 of the Rule.

**Count IV**

27. In numerous instances within the past five (5) years, Defendants, in connection with the manufacture, distribution, promotion, and sale of home insulation, have sold “The Barrier” insulation with an R-value more than 10% below R-values displayed in advertisements and other promotional materials, thereby violating Section 460.8 of the Rule.

**Count V**

28. In numerous instances within the past five (5) years, Defendants, in connection with the manufacture, distribution, promotion, and sale of home insulation, have disseminated home insulation labels for “The Barrier” insulation and “MicroFoil” insulation that do not disclose the product’s R-value and do not contain explanatory statements about R-value or instructions related to installation as required by Section 460.12 of the Rule, thereby violating Section 460.12 of the Rule.

**Count VI**

29. In numerous instances within the past five (5) years, Defendants, in connection with the manufacture, distribution, promotion, and sale of home insulation, have disseminated advertising that provided a thickness for “The Barrier” but did not provide the product’s R-value at that thickness as required by Section 460.18(c) of the Rule, thereby violating Section 460.18 of the Rule.

**Count VII**

30. In numerous instances within the past five (5) years, Defendants, in connection with the manufacture, distribution, promotion, and sale of home insulation, have disseminated



advertising comparing “The Barrier” to another type of insulation without giving the R-value at a specific thickness for each insulation as required by Section 460.18(d) of the Rule, thereby violating Section 460.18 of the Rule.

#### **CIVIL PENALTIES**

31. Defendants have violated the provisions of the R-value Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
32. Each dissemination of an advertisement and each product label distributed by Defendants during the last five years with an R-value Rule violation, as described in Paragraphs 26-30, above, constitutes a separate violation for purposes of computing civil penalties.

#### **CONSUMER INJURY**

33. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants’ unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

#### **THIS COURT’S POWER TO GRANT RELIEF**

34. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC’s Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the R-value Rule.

35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including but not limited to rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the Defendants, to prevent and remedy any violations of any provision of law enforced by the FTC.
36. Section 19 of the FTC Act, 15 U.S.C. 57b, authorizes the Court to award such relief as is necessary to redress the injury to consumers or others resulting from Defendants' violations of the R-value Rule.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 57b, and pursuant to its own equitable powers:

- (A) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
- (B) Award Plaintiff monetary civil penalties from Defendants for each violation of the R-value Rule;
- (C) Enjoin Defendants permanently from violating the R-value Rule;
- (D) Enjoin Defendants permanently from making false or misleading claims in connection with the sale of products that purportedly insulate, save energy, or save on fuel costs;
- (E) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the R-value Rule and

Section 5(a) of the FTC Act, including but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the Defendants; and  
(F) Award Plaintiff the costs of bringing this action and any other equitable relief as the Court may determine to be just and proper.

Dated: October 5, 2006

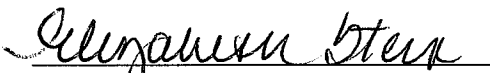
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2006, a copy of the foregoing Complaint for Civil Penalties, Injunction, and Other Relief, was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Steven J. Paffilas  
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Assistant U.S. Attorney