

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MEYER ENTERPRISES, LLC,)
INSULATION SOLUTIONS, INC., and)
DONALD L. MEYER,)
)
Defendants.)

CIVIL ACTION NO. 09-1074

STIPULATED JUDGMENT AND ORDER
FOR CIVIL PENALTIES, INJUNCTION,
AND OTHER RELIEF

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendants Meyer Enterprises, LLC, Insulation Solutions, Inc., and Donald L. Meyer have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint, nor admitting the truth of the allegations in the Complaint;

THEREFORE, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Central District of Illinois is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b.
3. The acts and practices of Defendants were, and are, in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear its own costs and attorneys’ fees.
6. Entry of this Order is in the public interest.

DEFINITIONS

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

1. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. “Corporate Defendants” means Meyer Enterprises, LLC; Insulation Solutions, Inc.; and their successors and assigns.
3. “Covered product or service” means any home insulation and any other product or service for which Defendants make any representation, directly or by implication, about the R-value, K-value, thermal performance, energy costs, energy savings, energy consumption,

insulation qualities, or energy-related efficacy.

4. "Defendants" means the Corporate Defendants and Donald L. Meyer, individually, collectively, or in any combination.
5. "FTC" or "Commission" means the Federal Trade Commission.
6. "Home insulation" is any material mainly used to slow down heat flow for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes.
7. "K-value" is a measure of a material's thermal conductivity.
8. "R-value" is a measure of a material's resistance to heat flow.

I. PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants; their officers, agents, servants, employees, and attorneys; and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marketing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, are hereby permanently restrained and enjoined from making or assisting others in making any representation, in any manner, expressly or by implication, including through the use of endorsements or trade names, about the R-value, K-value, thermal performance, energy costs, energy savings, energy consumption, insulation qualities, or energy-related efficacy of such product or service, unless:

- (A) The representation is true and not misleading; and
- (B) At the time of making such representation Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II. PROHIBITION ON VIOLATING THE R-VALUE RULE

IT IS FURTHER ORDERED that Defendants; their officers, agents, servants, employees, and attorneys; and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marketing, labeling, advertising, promotion, offering for sale, sale, distribution or installation of home insulation, in or affecting commerce, are hereby permanently restrained and enjoined from failing to comply with any provision of the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (16 C.F.R. Part 460) ("R-value Rule" or the "Rule"), a copy of which is attached hereto as "Appendix A," or of the Rule as it may hereafter be amended, including but not limited to:

- (A) Failing to base R-value claims only on tests conducted under American Society of Testing and Materials ("ASTM") methods, at a mean temperature of 75 degrees Fahrenheit, and on the insulation material alone, as required by 16 C.F.R. § 460.5;
- (B) Failing to label all packages of home insulation with the R-value of the insulation in the package and the explanatory statement: "R means resistance to heat flow. The higher the R-value, the greater the insulating power," as required by 16 C.F.R. § 460.12; and
- (C) Providing R-values in advertisements without disclosing the thickness needed to obtain those R-values, providing a thickness of the insulation in advertisements without disclosing the R-value at that thickness, and comparing R-values of different types of insulation in advertisements without disclosing the R-value at a specific thickness for each insulation, as required by 16 C.F.R. § 460.18.

III. CIVIL PENALTY

IT IS FURTHER ORDERED that:

- (A) Pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), Defendants, jointly and severally, are ordered to pay a monetary civil penalty in the amount of One Hundred and Fifty-Five Thousand Dollars (\$155,000).
- (B) Meyer Enterprises, LLC, Insulation Solutions, Inc., Donald L. Meyer, and their successors and assigns, must make the payment required by Paragraph A, within five (5) days after the date of entry of this Consent Decree, by electronic fund transfer in accordance with instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.
- (C) In the event of any default in payment, interest shall accrue, computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment.
- (D) Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- (E) This judgment represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission solely to enforce its rights to any payment or money judgment pursuant to this Order.

- (F) Upon request, Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to Plaintiff and the FTC Defendants' tax identification and social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.
- (G) Pursuant to Section 604(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a) any consumer reporting agency may furnish a consumer report concerning any Defendant to Plaintiff or the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

IV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- (A) Within ten (10) days of receipt of written notice from a representative of Plaintiff or the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in each such Defendant's possession or direct or indirect control to inspect the business operation;
- (B) In addition, Plaintiff and the Commission are authorized to use all other lawful means, including but not limited to:
 - (1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;

- (2) posing as consumers and suppliers to: Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- (C) Defendants each shall permit representatives of Plaintiff and the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- (A) For a period of three (3) years from the date of entry of this Order,
 - (1) Donald L. Meyer shall notify the Commission of the following:
 - (a) His changes in residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - (b) His changes in employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the

name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

- (c) Any changes in his name or use of any aliases or fictitious names.
- (2) Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.
- (B) One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied

and are complying with this Order. This report shall include, but not be limited to:

- (1) For Donald L. Meyer:
 - (a) His then-current residence address, mailing addresses, and telephone numbers;
 - (b) His then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for, a detailed description of the nature of the business, and a detailed description of his duties and responsibilities in connection with the business or employment; and
 - (c) Any other changes required to be reported under Subsection A of this Section.
- (2) For all Defendants:
 - (a) A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 - (b) Any other changes required to be reported under Subsection A of this Section.
- (C) Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- (D) For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports

and notifications required by this Order to the Commission to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-2122
Washington, D.C. 20580

Re: FTC v. Meyer Enterprises, LLC, et al., Civil Action No. _____.

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

- (E) For purposes of the compliance reporting and monitoring required by this Order, Plaintiff and the Commission are authorized to communicate directly with each Defendant.

VI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendants, in connection with the manufacturing, marketing, labeling, advertising, promoting, offering for sale, sale, distribution or installation of any covered product or service, and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and/or retain the following records:

- (A) All advertisements and promotional materials containing any representation subject to this Order, together with:

- (1) All materials that were relied upon in disseminating the representation;
and
 - (2) 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;
- (B) Copies of all labels and fact sheets for home insulation;
 - (C) Accounting records that reflect the cost of any covered product or service sold, revenues generated, and the disbursement of such revenues;
 - (D) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
 - (E) Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of any covered product or service purchased, and description of any covered product or service purchased, to the extent such information is obtained in the ordinary course of business;
 - (F) Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

- (G) All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled “Distribution of Order” and “Acknowledgment of Receipt of Order” and all reports submitted to the FTC pursuant to the Section titled “Compliance Reporting.”

VII. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- (A) **Corporate Defendants:** Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, representatives, and distributors who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in structure.
- (B) **Donald L. Meyer as Control Person:** For any business that Donald L. Meyer controls, directly or indirectly, or in which Donald L. Meyer has a majority

ownership interest, Donald L. Meyer must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Donald L. Meyer. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- (C) **Donald L. Meyer as employee or non-control person:** For any business where Donald L. Meyer is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Donald L. Meyer must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- (D) Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

IX. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 7th day of March, 2009.

s/ Michael M. Mihm

United States District Judge
Central District of Illinois

STIPULATED AND AGREED TO:

FOR THE COMMISSION:

JAMES A. KOHM,
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s/: Melinda Claybaugh

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s/: Donald L. Meyer

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