

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of American Plastic Lumber, Inc., File No. 1323200

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from American Plastic Lumber, Inc., a corporation (“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 addresses allegedly deceptive green claims that Respondent made while promoting its plastic lumber products. According to the FTC complaint, Respondent represented that: (1) its products are all, or virtually all, post-consumer recycled content such as milk jugs or detergent bottles; and (2) the recycled plastic in its products is all, or virtually all, post-consumer recycled content such as milk jugs or detergent bottles. The complaint also alleged that, from June 2011 to June 2013, the post-consumer recycled plastic in Respondent’s products was substantially less than Respondent represented -- on average about 79% post-consumer content. According to the complaint, during this period, about 8% of Respondent’s sales were products with zero post-consumer content, and about 7% were products with only 15% post-consumer content. Thus, the complaint alleges that both of the above claims were false, misleading, or unsubstantiated in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits Respondent from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims (“Green Guides”), 16 C.F.R. § 260.13(b), Part I specifically requires Respondent to substantiate recycled content claims by demonstrating that such content is composed of materials that were recovered or otherwise diverted from the waste stream.

Parts II through VI are reporting and compliance provisions. Part II requires Respondent to keep (and make available to the Commission on request): copies of advertisements and promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; and evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part III requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and make available to the FTC all acknowledgments of receipt of the order. Part IV requires notification to

the FTC of changes in corporate status. Part V mandates that Respondent submit an initial compliance report to the FTC and subsequent reports requested by the FTC. Part VI is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.