

DAVID C. SHONKA  
Acting General Counsel

ALEJANDRO ROSENBERG  
OMOLARA BEWAJI JOSENEY  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Mailstop CC-9528  
Washington, DC 20580  
Telephone: (202) 326-2698 (Rosenberg)  
Telephone: (202) 326-2599 (Joseney)  
Facsimile: (202) 326-3197  
Email: arosenberg@ftc.gov; ojoseney@ftc.gov  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

INNOVATIVE DESIGNS, INC.,  
Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR A  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant Innovative Designs, Inc.’s (“IDI”) acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2. IDI markets its “Insultex House Wrap” through deceptive claims related to R-values, which measure the insulating ability of materials, including home insulation. IDI claims

R-values of either “R-3” for its thinner product, or “R-6” for its thicker product, and consequently, significant energy savings for consumers. However, IDI cannot substantiate these claims. Indeed, they are false. Even IDI’s “R-6” product has an R-value of substantially less than R-1. IDI’s claims are not established by valid scientific testing. Because IDI continues to pass on these deceptive claims in commerce to the injury of consumers, the FTC seeks equitable relief, including an injunction.

### **Jurisdiction and Venue**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and other applicable provisions.

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(2), and (d) and 15 U.S.C. § 53(b).

### **Plaintiff**

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

### **Defendant**

7. IDI is a Delaware corporation with its principal place of business at 124 Cherry Street, Pittsburgh, PA 15215. IDI transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, IDI has manufactured,

advertised, offered for sale, and sold products to consumers, including Insultex House Wrap to consumers throughout the United States

### **Commerce**

8. The acts and practices of Defendant alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

### **IDI’s Business Practices**

9. Since at least November 2011, Defendant has disseminated or has caused the dissemination of advertising, packaging, and promotional materials for Insultex House Wrap, including through advertisements on its website and printed materials for its retailers.

10. House wrap is a weather-resistant barrier. During construction of a house or similar building it may be added as a layer inside external walls. House wrap is designed to prevent rain from penetrating, but to allow water vapor from inside the house to escape, so that moisture does not accumulate inside the wall.

11. Defendant describes its Insultex House Wrap’s performance in terms of an “R-value.” For example, Defendant sells its products as “THE ONLY HOUSE WRAP WITH AN R VALUE.”

12. An R-value is a measurement of resistance to heat flow. *See* FTC’s Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (“R-value Rule” or “Rule”), 16 C.F.R. Part 460 (initially issued in 1980 and last amended in 2005). R-value is the numeric measure of the ability of an insulation product to restrict the flow of heat and, therefore, to reduce energy costs – the higher the R-value the better the product’s insulating ability. 70 Fed. Reg. 31258 (2005).

**IDI claims that Insultex House Wrap has an R-Value of R-3 or R-6**

13. Defendant claims on the product itself that Insultex House Wrap has an “R-value.” Its marketing materials further specify that value as “R-3” or “R-6,” depending on the thickness of the material.

14. Originally, Defendant marketed Insultex House Wrap with an insulating R-value of R-3. *See, e.g.*, Exhibit A (Promotional Brochure for Insultex House Wrap, Jan. 19, 2015).

15. In 2015, Defendant began advertising a thicker version of the Insultex House Wrap product and claimed it had an insulating R-value of R-6.

16. As of at least summer of 2016, Defendant continued to market Insultex House Wrap with an R-value of either R-3 or R-6. *See, e.g.*, Exhibit B (Promotional Brochure for Insultex House Wrap).

**IDI claims that Insultex House Wrap saves consumers money**

17. Defendant describes the purported insulating performance of Insultex House Wrap as resulting in energy savings to consumers. Defendant’s claims of R-values for Insultex House Wrap convey that it saves consumers money on their home energy costs. The higher the claimed R-value for the Insultex House Wrap, the greater the purported insulating power, and consequently the larger the purported resulting energy cost savings.

18. Through statements on its website, Defendant also represents that the purported insulating performance of Insultex House Wrap saves consumers energy and construction costs compared to other house wraps. For example, Defendant’s website states:

A. “Q: How can something so thin provide insulation?

A: The key component in Insultex House Wrap is the Insultex Insulation.

...

Q: Does Insultex House Wrap cost more than other house wraps?

A: The actual cost of Insultex House Wrap may be slightly higher, but you need to look at the entire picture. Are you comparing Insultex House Wrap to another house wrap with an R-value? Are you taking into account the cost savings when comparing it to the elimination of 4 x 8 sheets of insulated board that is no longer necessary along with the labor costs? Are you looking at eliminating the need to go from 2 x 4's to 2 x 6's to add 'thicker' insulation?

Q: Will using Insultex House Wrap help me save on my energy bills?

A: Not only will you realize savings if you live in a region that experiences cold winters, but your energy bills will also decrease when the air conditioning is running in the summer!" *See Exhibit C.*

- B. "Before, I would use a 3/8" foam underlayment, which uses up too much of the window edge and only adds less than R2 in insulation. The window edge issue costs additional material and labor for each window. That's more cost for me and my customers. Insultex House Wrap saves time and money, plus it gives my customers more insulation value." *See Exhibit D.*
- C. "[W]e decided to use Insultex House Wrap because of its R-3 value rating. Since its installation, we have seen a reduction in heating and air conditioning costs . . . ." *See Exhibit D.*
- D. "In the subsequent winter, we have noticed warmth in our home that we have never experienced in the past twenty years. We attribute this new-found coziness to your R-6 house wrap. With the approaching hot

summers of the South, we are looking forward to lower air conditioning usage.” *See* Exhibit D.

E. “I am writing this to thank you for your product and let you know how satisfied we are after purchasing and installing Insultex R-6 House Wrap on our home. We had new siding put on our home and took the opportunity to wrap our 35 year old home with this wonderful product . . . . Since the installation was completed in December of 2014 our utility bill has dropped 40%. We normally have high heating bills in the winter even though I live in Texas due to the fact that my home is heated by electric heat and can cost me more a month than A/C in the summer. I have never had winter bills so low.” *See* Exhibit D.

**IDI claims that scientific testing establishes its R-values**

19. Defendant’s claim of an R-value strongly implies testing because an R-value can only be established by testing. As the R-value Rule explains, “R-values given in labels, fact sheets, [advertisements], or other promotional materials must be based on tests done under the methods listed [in the Rule]. They were designed by the American Society of Testing and Materials (ASTM).” 16 C.F.R. 460.5. The Rule further identifies specific ASTM test methods and standards for calculating R-values.

20. Defendant expressly claims that its purported R-values of R-3 or R-6 are based upon testing. For example, its website states:

Q: Are the test results valid?

A: All of the testing has been conducted in certified laboratories under strict controls.

*See* Exhibit C (FAQs).

21. Defendant's promotional materials compare Insultex House Wrap's claimed R-value of R-3 or R-6 to competing house wrap products, such as Tyvek, as having an R-value of R-0. These comparisons convey that IDI based its claims on testing. *See, e.g.*, Exhibits A and B (Testing Comparison pages in each brochure).

**IDI's R-value related claims are false or unsubstantiated**

22. Defendant did not possess and rely upon competent and reliable testing for the R-values it claimed for Insultex House Wrap. Defendant's purported test data does not have a reasonable technical basis. Defendant's test data is not substantiation. Defendant's R-value claims are not established by testing.

23. Insultex House Wrap does not restrict heat flow to the extent claimed by Defendant. Insultex House Wrap does not have an R-value of R-3 or R-6. Indeed, the R-value of Insultex House Wrap is substantially less than 1, and thus, Defendant's R-value claims are false.

24. Consequently, Insultex House Wrap does not significantly insulate, let alone at the levels IDI claims. Defendant's energy savings claims are false or unsubstantiated.

**IDI's claims are material and the means and instrumentalities of deception**

25. Defendant's R-value-related claims are material because they are likely to affect consumers' decisions to purchase Insultex House Wrap. Indeed, Defendant touted its purported R-value and resulting energy savings to consumers as a basis of superiority over competing house wrap products.

26. Defendant also provided its deceptive promotional materials to independent builders, dealers, installers, and building supply stores ("Resellers"), who in turn passed on the deceptive claims to consumers who were buying or renovating their homes. Through these

promotional materials, Defendant provided the means and instrumentalities for the commission of deceptive acts or practices.

27. Insultex House Wrap retails for \$279 for a 5'x100' roll of its R-6 product, and \$223.52 for the same size roll of its R-3 product, or \$0.56 and \$0.45 per square foot, respectively. In contrast, other widely available house wraps that do not claim an R-value retail for between \$0.06 and \$0.24 per square foot.

### **Violations of the FTC Act**

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.” Misrepresentations and unsubstantiated claims constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### **Count I**

#### **False or Unsubstantiated Performance Claims**

29. In connection with the advertising, promotion, offering for sale, or sale of Insultex House Wrap, Defendant has represented, directly or indirectly, expressly or by implication, that:

- A. Insultex House Wrap has an insulation value of either R-3 (for the thinner product) or R-6 (for the thicker product).
- B. Using Insultex House Wrap, with its purported insulation value, will save consumers money.

30. These representations are false or misleading, or were not substantiated at the time the representations were made 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).



## **Count II**

### **False Establishment Claim of R-values**

31. In connection with the advertising, promotion, offering for sale, or sale of Insultex House Wrap, Defendant has represented, directly or indirectly, expressly or by implication, that testing establishes R-values of R-6 or R-3 for Insultex House Wrap.

32. In fact, testing does not establish these R-values. Therefore, the representations are false or 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).

## **Count III**

### **Means and Instrumentalities**

33. By furnishing Resellers with promotional materials for Insultex House Wrap, including printed materials such as brochures, that make false or misleading representations, Defendant has provided the means and instrumentalities that 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).

### **Consumer Injury**

34. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### **This Court's Power to Grant Relief**

35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations

of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

**Prayer for Relief**

36. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including a preliminary injunction;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

Date: 11/3/2016

DAVID C. SHONKA  
Acting General Counsel

/s/ Alejandro Rosenberg  
ALEJANDRO ROSENBERG (NY 4545810)  
OMOLARA BEWAJI JOSENEY (NY 4937132)  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Mailstop CC-9528  
Washington, DC 20580  
Telephone: (202) 326-2698 (Rosenberg)  
Telephone: (202) 326-2599 (Joseney)  
Facsimile: (202) 326-3197  
Email: arosenberg@ftc.gov; ojoseney@ftc.gov  
Attorneys for Plaintiff