

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**SUPERIOR PRODUCTS INTERNATIONAL
II, INC., and JOSEPH E. PRITCHETT,**

Defendants.

Case No. 2:20-cv-02366-HLT

PERMANENT INJUNCTION

Plaintiff Federal Trade Commission brings this enforcement action against Defendants Superior Product International II, Inc. (“SPI”) and its president and CEO Joseph E. Pritchett. Defendants market and sell Super Therm[®] and Sunshield. The Court resolved the competing summary judgment motions and determined that Plaintiff is entitled to a permanent injunction. The Court thus enters the following orders:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the District of Kansas is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
2. The Amended Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45, in the marketing of architectural coating products that they purported were the equivalent of adding insulation with particular R-values and would save users substantial amounts of money on their energy bills.
3. The Amended Complaint also charges that Defendants participated in deceptive acts

or practices in violation of Section 460.22 of the Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (“R-value Rule” or “Rule”), 16 C.F.R. Part 460, in the marketing of their non-insulation products.

4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b.

5. The acts and practices of Defendant were, and are, in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44. The record demonstrates that, absent the issuance of a permanent injunction, Defendants’ deceptive acts and practice are likely to recur.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

“**Defendants**” means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

“**Corporate Defendant**” means Superior Products International II, Inc., and its successors and assigns.

“**Individual Defendant**” means Joseph E. Pritchett.

“**Non-Insulation Products**” means products Defendants create that are not insulation but marketed, in whole or in part, to reduce energy use.

ORDER

CONDUCT RELIEF

I.

THE COURT ORDERS that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any Non-Insulation Product are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that Defendants' Non-Insulation Products have an R-value equivalent to or substantially similar to the R-value of any other product or system, or provide the equivalent of adding insulation with any specific R-value;
- B. that Defendants' Non-Insulation Products provide energy savings or any particular amount of energy savings;
- C. the existence, contents, validity, results, conclusions, or interpretations of any test or study; or
- D. any other material fact concerning Defendants' Non-Insulation Products.

II.

THE COURT FURTHER ORDERS that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Non-

Insulation Products, are permanently restrained and enjoined from making any representation, expressly or by implication:

- A. that Defendants' Non-Insulation Products are equivalent to or substantially similar to the R-value of any other product or system, or provide the equivalent of adding insulation with any specific R-value; or
- B. that Defendants' Non-Insulation Products will provide energy savings, or any particular amount of energy savings,

unless the representation is non-misleading, and, at the time such representation is made, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

III.

THE COURT FURTHER ORDERS that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Non-Insulation Products, 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"), including but not limited to:

- A. Failing to base R-value claims only on tests done under the methods set forth in 16 C.F.R. § 460.5;
- B. Failing, in any advertised R-value, to fairly reflect the results of the tests conducted under to 16 C.F.R. § 460.5, as set forth in 16 C.F.R. § 460.22.

IV.

THE COURT FURTHER ORDERS that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, package, or service in or affecting commerce, shall not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact covered by Sections I, II, or III.

V. MONETARY JUDGMENT

THE COURT FURTHER ORDERS that Judgment in the amount of \$14,182.95 will be entered in favor of the Commission against Individual Defendant and Corporate Defendant, jointly and severally, as monetary relief.

VI. ADDITIONAL MONETARY PROVISIONS

THE COURT FURTHER ORDERS that:

- A. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting

on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

- B. All money received by the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for consumer relief, consistent with the Court's Order, relating to certain sales of Super Therm® from May 13, 2020, through the date of this Order, and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after such redress is completed, the Commission shall so-notify the Court and Defendants. Defendants may seek a return of remaining assets at that time.

VII. CUSTOMER INFORMATION

THE COURT FURTHER ORDERS that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 21 days.

VIII. NOTICE TO MANUFACTURERS, RESELLERS, AND DISTRIBUTORS

THE COURT FURTHER ORDERS that within 30 days of entry of this Order, Defendants shall send by electronic mail and certified U.S. mail, with return receipt, a copy of this Order and

the notice attached hereto as Attachment A to each reseller, distributor, and authorized representative to whom they sold their Non-Insulation Products; Defendants shall also require the recipients of such notice to remove from their marketing materials any false, misleading, or deceptive claims about Defendants' Non-Insulation Products that are not in compliance with this Order. The mailing shall not include any other document. The cost of this mailing shall be borne by Defendants. Within five (5) days after the date this mailing is completed, Defendants shall provide to the Commission a list of all persons to whom Attachment A was sent, together with the address to which it was mailed (including email address(es), for notices provided electronically). Defendants shall maintain records evidencing the sending of the notice attached hereto as Attachment A for a period of 5 years following the date of entry of this Order.

IX. ORDER ACKNOWLEDGMENTS

THE COURT FURTHER ORDERS that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, the Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for the marketing of Non-Insulation Products and all agents and representatives who participate in the marketing of Non-Insulation Products; and (3) any business entity resulting from any change in structure

as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must use all reasonable efforts to obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

X. COMPLIANCE REPORTING

THE COURT FURTHER ORDERS that Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
 - 1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business and the involvement of any other Defendant (which Individual Defendant must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 5 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 21 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls, directly or indirectly, that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 21 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Superior Products International II, Inc.*, FTC Matter No. X200053.

XI. RECORDKEEPING

THE COURT FURTHER ORDERS that Defendants must create certain records for 5 years after entry of this Order, and retain each such record for 5 years. Specifically, Corporate Defendant and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;

- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. A copy of each unique advertisement or other marketing material; and
- F. For any claim covered by Section II of this Order, Defendants shall maintain all records that prove or disprove such claim for five years, and such five-year period shall begin anew each time Defendants make the claim. A claim is "made" each time Defendants make it as well as on each day it appears on Defendants' website or other forum.

XII. COMPLIANCE MONITORING

THE COURT FURTHER ORDERS that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within 21 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33,

34, 36, 45, and 69. Defendants may seek any appropriate relief from the Court on the propounded discovery.

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning the Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XIII. RETENTION OF JURISDICTION

THE COURT FURTHER ORDERS that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

Dated: September 22, 2022

/s/ Holly L. Teeter
HOLLY L. TEETER
UNITED STATES DISTRICT JUDGE

ATTACHMENT A
NOTICE TO DISTRIBUTORS

[To be printed on Superior Products International II, Inc. letterhead and sent by email and certified mail]

[Date]

[Name and address of recipient]

Re: *Federal Trade Commission v. Superior Products International II, Inc.*, No. 2:20-cv-2366-HLT-GEB (D. Kan.)

Dear [Recipient]:

The Federal Trade Commission (FTC), the nation's consumer protection agency, sued us for making false and misleading claims about two of our products, Super Therm® and Sunshield.

We said that:

- Super Therm provides substantial energy savings
- Super Therm has an R-value of R-19, or is equal, equivalent, or comparable to R-19
- Sunshield has an R-17 equivalent rating.

The FTC said that:

- These claims are false because we do not have scientific evidence to prove them
- The R-value, and R-value equivalent, of Super Therm and of Sunshield is no greater than R-0.1, not R-19.

A U.S. federal court has determined that our claims were false and unsubstantiated. The Court entered a Permanent Injunction against us prohibiting us from making these types of claims about our products if we do not have competent and reliable scientific evidence to prove them. Anecdotal evidence and consumer testimonials are not considered competent and reliable scientific evidence.

As a distributor of Super Therm and/or Sunshield, you must correct your marketing, advertising, and promotional materials to remove any false or misleading claims about these products. If you make any claims about the performance of these products, you must have competent and reliable scientific evidence to prove them.

We have enclosed a copy of the final court order. Read it. **Failure to follow any provisions of the order that apply to you could result in civil or criminal sanctions.**

For more information, go to <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/r-value-rule>. If you have any questions, please contact [name, address, phone number, and email address of representative of Defendants].

Sincerely,

J.E. Pritchett
Superior Products International II, Inc.