

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

FILED
U.S. DISTRICT COURT
AUGUST 19, 2022

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CLEGG
SO. DIST. OF GA. *JA*

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CV 620-073

F&G INTERNATIONAL GROUP
HOLDINGS, LLC; FG
INTERNATIONAL, LLC; and J.
GLENN DAVIS,

Defendants.

O R D E R

FINDINGS

1. This Court has jurisdiction over this matter and the Defendants. Venue is proper as to all Parties in the Southern District of Georgia.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in the marketing of coating products which they claimed were the equivalent of adding insulation with particular R-values.
3. Defendants' activities are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Corporate Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, by deceptively marketing and selling FGI-4440, claiming that it provided an insulative value at a particular R-value when applied as instructed and that those insulative claims were substantiated by laboratory testing.
5. Individual Defendant J. Glenn Davis participated in and had authority to control the Corporate Defendants' deceptive marketing and sale of FGI-4440.

6. In light of Defendants' conduct, there is a cognizable danger that they will continue to engage in activities that violate the FTC Act unless enjoined from such acts and practices.

DEFINITIONS

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

- A. "**Architectural Coating Product**" means any coating marketed for application on buildings or other structures, including paint, paint with additives (such as ceramic spheres), varnishes, lacquers, and epoxies, and products that incorporate such coatings.
- B. "**Defendants**" means both the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.
- C. "**Corporate Defendants**" means FG International, LLC, and F & G International Group Holdings, LLC, and their successors and assigns.
- D. "**Individual Defendant**" means Jesse Glenn Davis, a/k/a J. Glenn Davis.
- E. "**K-value**" is a measure of a material's thermal conductivity.
- F. "**R-value**" is a measure of a material's resistance to heat flow.

PERMANENT INJUNCTION ORDER

CONDUCT RELIEF

I.

IT IS ORDERED 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 good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that Defendants' Architectural Coating 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' Architectural Coating Products provide a K-value, thermal performance, energy costs, energy savings, energy consumption, insulation qualities, or energy-related efficacy;

C. the existence, contents, validity, results, conclusions, or interpretations of any test or study; or

D. any other material fact concerning any good or service.

II.

IT IS FURTHER ORDERED 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 Architectural Coating Products, are permanently restrained and enjoined from making any representation, expressly or by implication:

A. that Defendants' Architectural Coating 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; or

B. that Defendants' Architectural Coating Products will provide a K-value, thermal performance, energy costs, energy savings, energy consumption, insulation qualities, or energy-related efficacy,

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.

IT IS FURTHER ORDERED 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 or II.

IV.

IT IS FURTHER ORDERED that within 30 days of entry of this Order, Defendants shall send by certified U.S. mail with return receipt, a copy of this Order and the notice attached hereto as Attachment A to each reseller, distributor, installer, and authorized representative to whom they sold Architectural Coating Products, and who is either in the United States or sells to consumers in the United States; Defendants shall also inform the recipients of such notice about the need to remove any false, misleading, or deceptive claims about Defendants' Architectural Coating Products from their marketing materials that are not in compliance with this Order. The notice shall not include any other document. The cost of this mailing shall be borne by Defendants. Within 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. Defendants shall maintain records evidencing the sending of the notice attached hereto as Attachment A for a period of 10 years following the date of entry of this Order.

V. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED 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 10 years after entry of this Order, Individual Defendant for any business that he, individually or collectively with any other Defendants, 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

Architectural Coating Products and all agents and representatives who participate in the marketing of Architectural Coating 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 obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED 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 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 20 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, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, 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. FG International, LLC, FTC Matter No. X200049

VII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, 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 titles or positions; 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; and
- E. a copy of each unique advertisement or other marketing material.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with 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.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant.

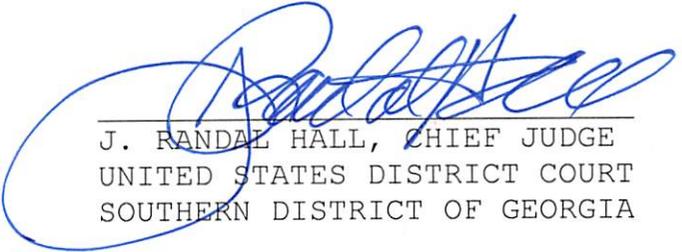
Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

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.

IX. RETENTION OF JURISDICTION

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

ORDER ENTERED at Augusta, Georgia, this 19th day of August, 2022.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ATTACHMENT A: NOTICE TO DISTRIBUTORS OR INSTALLERS

[To be printed on Corporate Defendants' letterhead and sent by certified U.S. mail with return receipt]

[Date]

[Name and address of recipient]

Re: Federal Trade Commission v. FG International, LLC, et al.,
No. 6:20-cv-073-RSB-CLR (S.D. Ga.)

Dear [Recipient]:

The Federal Trade Commission ("FTC"), the nation's consumer protection agency, sued us for making false and misleading claims about our product, FGI-4440 (a/k/a Revolution 360, SFI4440, TGS-9044, TAR 007).

We said that: FGI-4440 has an R-value greater than R-30, and testing substantiates the greater than R-30 claim.

The FTC says that: These claims are false because we don't have scientific evidence to prove them, and the R-value of FGI-4440 is approximately R-0.0072, not greater than R-30.

The Court ruled in favor of the FTC. Therefore, as a distributor or installer of FGI-4440, you are advised to 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. Anecdotal evidence, consumer testimonials, or information related to the thermal properties of FGI-4440 previously provided by us are not competent and reliable scientific evidence.

We've enclosed a copy of the Court's final order. Read it. Failure to follow any of 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>.

Sincerely,
J. Glenn Davis
FG International, LLC
F&G International Group Holdings, LLC