

refund of moneys paid, disgorgement of ill-gotten gains, and other equitable relief against Defendant for engaging in deceptive acts or practices in connection with the advertising and sale of insulation products, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
3. Venue in the United States District Court for the Middle District of Florida is proper under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

THE DEFENDANT

4. Edward Sumpolec is an individual doing business as Thermalkool, Thermalcool, and Energy Conservation Specialists (“Defendant”). At all times relevant to this Complaint, acting individually or in concert with others, Defendant has formulated, directed, controlled, had authority to control, or participated in the acts or practices set forth in this Complaint. Defendant resides in Palm Bay, Florida and transacts or has transacted business in this District and throughout the United States.

COMMERCE

5. At all times relevant to this Complaint, Defendant’s alleged acts and practices have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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DEFENDANT'S COURSE OF CONDUCT

6. Since at least 2007, Defendant has engaged in the advertising, offering for sale, sale, or distribution of at least two types of insulation products for home, commercial, and industrial applications: liquid coatings and foil radiant barriers. Brand or trade names associated with Defendant's products include Thermalkool, Thermalcool, and Energy Conservation Specialists.

7. Through Internet-based stores, including a store on eBay, Defendant disseminates, or causes others to disseminate, advertisements stating that Defendant's liquid coatings slow down heat flow. Defendant sells these products for prices typically starting at \$189.99 per container. To induce consumers to purchase his coating products, Defendant makes or has made various claims regarding their thermal performance and energy savings, including but not limited to the following:
 - (A) "4 layered coating system . . . equals R-100 in insulating value."

 - (B) "This . . . reflective coating will reduce wall and roof temperatures by 50-95 degrees to help keep your home extremely cool in the summer and substantially warmer in the winter."

 - (C) "Reasons to Thermalkool:
 - Stops 98% of radiant heat
 - . . .
 - Out performs better than 36 inches of R-100 insulation, with the 4 layered system
 - Lowers your attic temperature by 50-95 degrees
 - Keeps roof, attic and exterior of home cooler
 - . . .
 - Stops heat buildup in your insulation
 - Adds interior comfort to your home
 - Saves 40 to 60 % on your energy bills
 - Adds life to your air conditioning system

- . . .” [sic]
- (D) “Adds as much as R-100 insulating value”
- (E) “3 Layers Ceramic R75 Free Coating”
- (F) “Insulating Radiant Barrier Paint . . . R-100”
- (G) “R-100 Insulating Radiant Barrier Paint Saves U Money . . . Radiant Barrier Paint Will Help You Save Tremendously on Your Home Utility Bills! . . . Will stop the problem of Summer heat beating down on your home resulting in higher utility bills. . . If it can be painted then it can be insulated! If your going to be spending money painting then why not make it better money spent that will give a PAYBACK!” [sic]
- (H) “Ceramic R75 Free Coating . . . This will cut any homes energy bill 40-60% plus the added bonus of never having to re-roof! On a 2000 sq ft home you could easily save \$60.00 a month with this coating ! 60 times 12 months = \$720.00 a year that means in 4 years and 9 months not only do you have a new roof but you’d actually make \$20.00. So the roof would be free any you’d make \$20.00 ta boot!” [sic]
- (I) “Ceramic R75 Free Coating . . . Out performs better than 30 inches of R-75 insulation, with the 3 layered system . . . Lowers your attic temperature by 50-95 degrees . . . Stops heat build up in your insulation Adds interior comfort to your home Saves 40 to 60 % on your energy bills Adds life to your air conditioning system . . .” [sic]

8. Through Internet-based stores, including a store on eBay, Defendant disseminates, or causes others to disseminate, advertisements stating that Defendant’s radiant barriers slow down heat flow. Defendant sells these products for prices typically ranging between \$169.99 and \$396.00 per roll, in dimensions typically varying between 2,000 and 4,000 square feet. To induce consumers to purchase his radiant barrier products, Defendant makes or has made various claims regarding their thermal performance and energy savings, including but not limited to the following:

- (A) **RADIANT BARRIER FOIL INSULATION**
 2000 sq. ft., \$169.99, R53
 3000 sq. ft., \$249.00, R53
 4000 sq. ft., \$396.00, R53
- (B) “Radiant Barrier Foil Insulation, R53 . . . Anyone Can Live at 60% Less Energy, Than They Are Paying Right Now, !!! w/ Our 3 Main Products . . . The Only Class “A” Firerated Radiant Barrier . . . Our Ceramic Additive, & The Thermalkool 4 Layered Roof & Wall Coating System, These 3 Products , Will Drop Your Home Energy Bill 60%. . . .” [sic]
- (C) “Home Energy Reduction Package for \$1,899.99 . . . depending on the size of your home this is all that you will need to drop your homes energy bill between 40 to 60 % percent GUARANTEED!” [sic]
- (D) “Radiant Barrier Foil Insulation, R53 . . . Remember at one time we believed the world was flat, now we know the truth ... THERMALKOOL’S Radiant Barrier Offers 4 Times the Insulating Value for 1/2 the Price of Regular Insulation !!!” [sic]
- (E) “Make sure what you are buying is a real radiant barrier, be careful of wording Can also be used for: Any Type of Building Structures, Pole Barns, Boats, Cars Even as Sunvisors. Has a Theoretical R Value of 53 with a 3/4 or More Air Space.” [sic]
- (F) “Thermalkool’s Radiant Barrier Pays Back Many Times It’s Cost by Reducing Your Energy Bills” [sic]
- (G) “Thermalkool’s Radiant Barrier Reduces Energy Load Requirements on Heating and Air Conditioning Systems”
- (H) “By Installing Thermalkool’s Radiant Barrier System your have now achieved an insulating value of R-60 for Attic area with an R-53 for walls.” [sic]

9. In numerous instances, in connection with the dissemination of advertisements set forth in Paragraphs 7 and 8, Defendant did not possess and rely upon competent and reliable testing to determine the R-value of his products.

10. A liquid coating by itself is not likely to have an R-value greater than 1. In numerous instances, in connection with the dissemination of advertisements set forth in Paragraphs 7 and 8, Defendant did not possess and rely upon a reasonable basis for fuel or cost savings claims. Further, Defendant did not make savings-claim disclosures and did not retain records of all data regarding such claims for three years.
11. In numerous instances, Defendant has sold home insulation to customers without making fact sheets available to such customers.
12. In numerous instances, Defendant has sold home insulation to customers without making certain disclosures, including but not limited to insulation type, insulation thickness, R-value significance, and insulation coverage area.

DEFENDANT'S VIOLATIONS OF SECTION 5 OF THE FTC ACT

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. As set forth below, Defendant has engaged in and is continuing to engage in such unlawful practices in connection with the marketing and sale of liquid coating and radiant barrier insulation products.

COUNT I – False or Unsubstantiated Claims

14. In numerous instances, in connection with the distribution, promotion, and sale of insulation, Defendant has represented, expressly or by implication, that certain of Defendant's insulation products possess thermal resistance or energy savings benefits, including but not limited to:
 - (A) They have insulation values greater than R-52;

- (B) They produce savings of between 40% and 60% on utility bills; and
- (C) They achieve thermal performance greater than 30 inches of conventional insulation.

15. The representations set forth in Paragraph 14 are false or were not substantiated at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 14, above, constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE R-VALUE RULE

16. The R-value Rule was issued by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a. The Rule became effective on September 29, 1980. Since then, the Commission has issued several exemptions and stays that are not relevant to this action. The Commission amended the Rule on March 28, 1996 and on May 31, 2005, under Section 18 of the FTC Act, 15 U.S.C. § 57a, and these amendments became effective on April 29, 1996 and November 28, 2005, respectively. The Rule specifies substantiation and disclosure requirements for insulation products used in the residential market and prohibits certain claims unless they are true.
17. Section 460.2 of the Rule defines insulation as “any material mainly used to slow down heat flow.”
18. Section 460.5 of the Rule requires that R-values given in labels, fact sheets, advertisements, and other promotional materials must be based on tests conducted under the methods listed in the Rule.
19. There is no generally accepted test procedure to determine the R-value of radiant

barrier insulation products. 68 Fed. Reg. 41,890 (July 15, 2003).

20. Under Sections 460.13 and 460.14 of the Rule, insulation sellers must have disclosures printed on standard fact sheets for the insulation that they sell, and they must make such fact sheets available to their customers.
21. Under Section 460.18(a) of the Rule, insulation sellers that disclose the R-value of their insulation must also disclose the type of insulation and thickness needed to get that R-value and include the statement: “The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.”
22. Under Section 460.18(b) of the Rule, insulation sellers that disclose a price in advertising must also disclose the type of insulation, the R-value at a specific thickness, the coverage area for that thickness, and the statement: “The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.”
23. Under Section 460.18(d) of the R-value Rule, insulation sellers that compare one type of insulation to another in advertising must also disclose the R-value at a specific thickness for each insulation.
24. Under Section 460.19(a) of the Rule, insulation sellers that state or imply in advertising, labels, or other promotional materials that insulation can cut fuel bills or fuel use must have a reasonable basis for the claim.

25. Under Section 460.19(b) of the Rule, insulation sellers that state or imply in advertising, labels, or other promotional materials that insulation can cut fuel bills or fuel use must make this statement about savings: “Savings vary. Find out why in the seller’s fact sheet on R-values. Higher R-values mean greater insulating power.”
26. Under Section 460.19(f) of the Rule, insulation sellers must keep records of all data on energy savings claims for at least three years.
27. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the R-value Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

DEFENDANT’S VIOLATIONS OF THE R-VALUE RULE

COUNT II – Failure to Base Claims on Proper Tests

28. In numerous instances within the past five (5) years, in connection with the distribution, promotion, and sale of liquid coating home insulation, Defendant has displayed in labels, fact sheets, advertisements and other promotional materials R-values that were not based upon the test procedures required by Section 460.5(a) of the Rule, thereby violating Section 460.5 of the Rule.

COUNT III – Failure to Distribute Fact Sheets

29. In numerous instances within the past five (5) years, in connection with the distribution, promotion, and sale of home insulation, Defendant has sold such insulation products to customers but did not make available to customers fact sheets for the insulation products as required by Section 460.14 of the Rule, thereby violating Section 460.14 of the Rule.

COUNT IV – Failure to Make Disclosures under Section 460.18

30. In numerous instances within the past five (5) years, in connection with the distribution, promotion, and sale of liquid coating home insulation, Defendant has disseminated:

- (A) advertising that gave an R-value but that failed to make disclosures set forth in Section 460.18(a) regarding type, thickness, and R-value significance, thereby violating Section 460.18 of the Rule;
- (B) advertising that gave a price but that failed to make disclosures set forth in Section 460.18(b) regarding type, thickness, R-value significance, and coverage area, thereby violating Section 460.18 of the Rule; or
- (C) advertising comparing Defendant's liquid coating products to another type of insulation without basing the comparison on the same coverage areas and without giving the R-value at a specific thickness for each insulation as required by Section 460.18(d) of the Rule, thereby violating Section 460.18 of the Rule.

COUNT V – Failure to Make Disclosures and Retain Records under Section 460.19

31. In numerous instances within the past five (5) years, in connection with the distribution, promotion, and sale of home insulation, Defendant has disseminated advertising for such insulation that stated or implied that such products can cut customers' fuel bills or fuel use but did not:

- (A) have a reasonable basis for such savings claim as required by Section 460.19(a) of the Rule, thereby violating Section 460.19 of the Rule;
- (B) make the disclosure required by Section 460.19(b) of the Rule, thereby violating Section 460.19 of the Rule; or
- (C) keep records of all data for each savings claim for at least three years as required by Section 460.19(f) of the Rule, thereby violating Section 460.19 of the Rule.

CIVIL PENALTIES

- 32. Defendant has violated the provisions of the R-value Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
- 33. During the past five (5) years, each dissemination of an advertisement with an R-value Rule violation, each sale without an available fact sheet, and each savings claim made without proper record retention by Defendant, as described in Paragraphs 28 through 31, above, constitutes a separate violation for purposes of computing civil penalties.

CONSUMER INJURY

- 34. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendant's unlawful acts or practices. In addition, Defendant has been unjustly enriched as a result of his unlawful 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 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the R-value Rule.
36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including but not limited to rescission or reformation of contracts, restitution, the refund of moneys paid, and the disgorgement of ill-gotten gains by Defendant, to prevent and remedy any violations of any provision of law enforced by the FTC.
37. Section 19 of the FTC Act, 15 U.S.C. 57b, authorizes the Court to award such relief as is necessary to redress the injury to consumers or others resulting from Defendant's violations of the R-value Rule.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b, and pursuant to its own equitable powers:

- (A) Enter a permanent injunction to prevent future violations of the FTC Act and the R-value Rule by Defendant;
- (B) Award Plaintiff monetary civil penalties from Defendant for each violation of the R-value Rule;

- (C) Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendant's violations of the FTC Act and R-value Rule, 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.

The United States demands a trial by jury on all counts so triable.

Dated: 2/26/09

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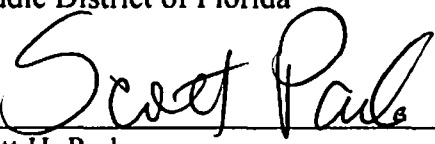
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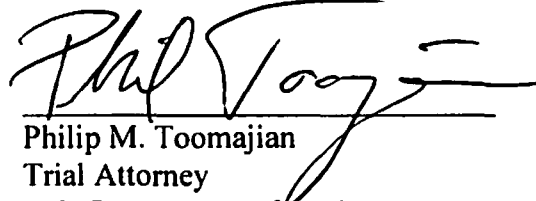
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