

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
NORTHWESTERN OHIO FOAM)
PACKAGING, INC., a corporation,)
and)
)
WALLY RADJENOVIC, individually)
and as an officer of the corporation,)
)
Defendants.)
)
)
)

CIVIL ACTION NO. 3:06cv2407

**CONSENT DECREE AND ORDER FOR
CIVIL PENALTIES, INJUNCTION,
AND OTHER RELIEF**

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendants, Northwestern Ohio Foam Packaging, Inc. (“NOFP”) and Wally Radjenovic, have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Northern District of Ohio is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
2. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b.
3. The acts and practices of Defendants were, and are, in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear its own costs and attorneys' fees.
6. Entry of this Order is in the public interest.

DEFINITIONS

7. "Commerce" shall have the same definition as in Section 4 of the FTC Act, 15 U.S.C. § 44.
8. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures

generally accepted in the profession to yield accurate and reliable results.

9. "FTC" or "Commission" means the Federal Trade Commission.
10. "Person" means a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.
11. The terms "and" and "or" in this Consent Decree shall be construed conjunctively or disjunctively, as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.
12. The term "including" in this Consent Decree means "including, without limitation."
13. The term "K-value" is a measure of a material's thermal conductivity.
14. The term "R-value" is a measure of a material's resistance to heat flow.

CIVIL PENALTY

15. **IT IS FURTHER ORDERED that:**
 - (A) Pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), Wally Radjenovic and NOFP, its successors and assigns, jointly and severally, shall pay to Plaintiff a monetary civil penalty of One Hundred Four Thousand Two Hundred and Fifty-Seven Dollars (\$104,257.00).
 - (B) Wally Radjenovic and NOFP, its successors and assigns, must make the payment required by Paragraph 15, within five (5) days after the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

- (C) In the event of any default in payment, in which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

PROHIBITED REPRESENTATIONS

16. **IT IS FURTHER ORDERED** that NOFP, its successors and assigns, and Wally Radjenovic, and their officers, agents, servants, and employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marking, labeling, advertising, promotion, offering for sale, or distribution of any product, in or affecting commerce, are hereby permanently restrained and enjoined from:

- (A) Representing, in any manner, expressly or by implication, including through the use of endorsements or trade names, that a product's K-value describes the percentage of heat flow blocked, impeded, stopped, or eliminated by the product; and
- (B) Making any false or misleading representation, in any manner, expressly or by implication, including through the use of endorsements or trades names, about the R-value, K-value, thermal performance, energy costs, energy consumption, insulation qualities, or energy-related efficacy of any product.

SUBSTANTIATION FOR PRODUCT CLAIMS

17. **IT IS FURTHER ORDERED** that NOFP, its successors and assigns, and Wally

Radjenovic, and their officers, agents, servants, and employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marking, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, about the R-value, K-value, thermal performance, energy costs, energy consumption, insulation qualities, or energy-related efficacy of such product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

THE R-VALUE RULE

18. **IT IS FURTHER ORDERED** that NOFP, its successors and assigns, and Wally Radjenovic, and their officers, agents, servants, and employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marking, labeling, advertising, promotion, offering for sale, sale, distribution or installation of home insulation, in or affecting commerce, are hereby permanently restrained and enjoined from:

- (A) Failing to base R-values given in labels, fact sheets, advertisements, or other promotional materials on tests done under the methods listed in 16 C.F.R. § 460.5;
- (B) Selling any individual specimen of home insulation with an R-value more than

10% below the R-value shown in a label, fact sheet, advertisement, or other promotional material for that insulation, as prohibited by 16 C.F.R. § 460.8;

- (C) Failing to disclose a home insulation product's R-value and failing to provide explanatory statements related to the R-value of the product, as required by 16 C.F.R. § 460.12;
- (D) Failing to provide the affirmative advertising disclosures related to R-values in advertising, as required by 16 C.F.R. § 460.18; and
- (E) 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") or of the Rule as it may hereafter be amended. A copy of the Rule is attached hereto as "Appendix A" and incorporated herein as if fully set forth verbatim.

COMPLIANCE MONITORING

19. **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- (A) Within twenty (20) days of receipt of written notice from a representative of the Commission, NOFP and Wally Radjenovic each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;
- (B) In addition, the Commission is authorized to monitor compliance with this Order

by all other lawful means, including but not limited to the following:

- (1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
 - (2) posing as consumers and suppliers to: NOFP, Wally Radjenovic, NOFP's and Wally Radjenovic's employees, or any other entity managed or controlled in whole or in part by NOFP and Wally Radjenovic, without the necessity of identification or prior notice;
- (C) NOFP and Wally Radjenovic shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

COMPLIANCE REPORTING BY DEFENDANTS

20. **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- (A) For a period of three (3) years from the date of entry of this Order,

- (1) Wally Radjenovic shall notify the Commission of the following:
 - (a) Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - (b) Any changes in his employment status (including self-employment) related to the subject matter of this Order, and any change in his ownership in any business entity engaged in conduct related to the subject matter of this Order, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - (c) Any changes in his name or use of any aliases or fictitious names.
- (2) NOFP and Wally Radjenovic shall notify the Commission of any changes in corporate structure of NOFP or any business entity that NOFP and Wally Radjenovic directly or indirectly control, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30)

days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

(B) One hundred eighty (180) days after the date of entry of this Order, NOFP and Wally Radjenovic each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

(1) For Wally Radjenovic:

- (a) His then-current residence address, mailing addresses, and telephone numbers;
- (b) For employment and businesses related to the subject matter of this Order, his then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business; and
- (c) Any other changes required to be reported under subparagraph A of Paragraph 20.

(2) For all Defendants:

- (a) A copy of each acknowledgment of receipt of this Order, obtained

pursuant to Paragraph 22; and

- (b) Any other changes required to be reported under subparagraph A of Paragraph 20.
- (C) For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: Northwestern Ohio Foam Packaging, Inc.

- (D) For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with NOFP and Wally Radjenovic.

RECORD KEEPING PROVISIONS

21. **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, NOFP and Wally Radjenovic, in connection with the manufacturing, marking, labeling, advertising, promotion, offering for sale, sale, distribution or installation of any product subject to Paragraphs 16 through 18 of this Order, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- (A) Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

- (B) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- (C) Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- (D) Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- (E) Copies of all labels, fact sheets, advertisements, or other marketing materials; and
- (F) All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph 22, and all reports submitted to the FTC pursuant to Paragraph 20.

DISTRIBUTION OF ORDER BY DEFENDANTS

22. **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- (A) NOFP must deliver a copy of this Order to all of its principals, officers, directors, and managers. NOFP also must deliver copies of this Order to all of its employees, agents, representatives, and distributors who engage in conduct related

to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- (B) **Wally Radjenovic as Control Person:** For any business that engages in conduct related to the subject matter of this Order and that Wally Radjenovic controls, directly or indirectly, or in which Wally Radjenovic has a majority ownership interest, Wally Radjenovic must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Wally Radjenovic must also deliver copies of this Order to all employees, agents, representatives, and distributors of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- (C) **Wally Radjenovic as employee or non-control person:** For any business where Wally Radjenovic is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Wally Radjenovic must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- (D) NOFP and Wally Radjenovic must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to Paragraph 22.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

23. **IT IS FURTHER ORDERED** that each Defendant, within ten (10) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

24. **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

Dated this 16th day of October, 2006

s/ Jack Zouhary

United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

FOR THE UNITED STATES OF AMERICA:

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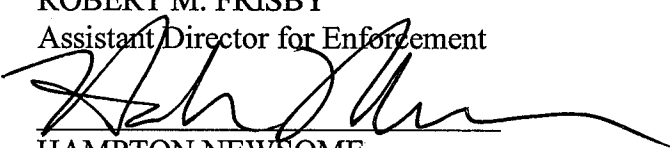

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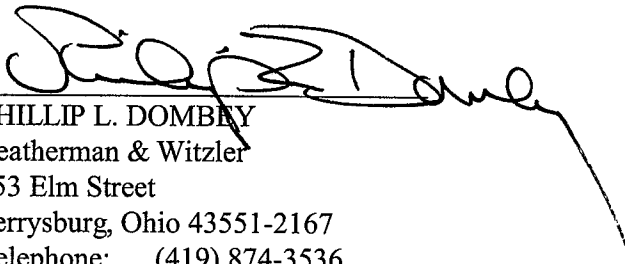
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By: 
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