



1. Respondent THV Holdings LLC (“THV Holdings”) is a Delaware limited liability company with its principal office or place of business at 5611 Fern Valley Road, Louisville, Kentucky 40228.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## **ORDER**

### **DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Clearly and prominently” means

A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;

B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

2. “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. “Competent and reliable scientific evidence” shall mean tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are 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 a representation is true.
5. “Covered product or service” means any fenestration product, any component thereof, and any product or any service for which respondent makes any claim about energy savings, energy costs, energy consumption, U-factor, SHGC, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy.
6. “Fenestration product” means any window, sliding glass door, or skylight.
7. “K-value” is a measure of a material’s thermal conductivity.
8. Unless otherwise specified, “respondent” shall mean THV Holdings LLC, its successors and assigns, and its officers, agents, representatives, and employees.
9. “R-value” is a measure of a material’s resistance to heat flow.
10. “SHGC” means solar heat gain coefficient, which is the fraction of incident solar radiation admitted through a window, both directly transmitted and absorbed and subsequently released inward.
11. “U-factor” is a measure of the rate of heat loss.

## I.

**IT IS ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not make any representation, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names that:

- A. Consumers who replace their windows with respondent’s windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or
- B. Respondent guarantees or pledges that consumers who replace their windows with respondent’s windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs;

unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction.

Provided, however, that if respondent represents that consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs under specified circumstances, or if respondent guarantees or pledges up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs under specified circumstances, it must disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge and it must substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (*e.g.*, when replacing a window of a specific composition in a building having a specific level of insulation in a specific region).

## II.

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not make any representation, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names:

- A. About the ability of respondent's windows to pay for themselves in energy savings alone within any specific number of years or other time period, when consumers replace their windows with respondent's windows;
- B. That any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or
- C. About energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, SHGC, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy of any covered product or service;

unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that such representation is true.

### III.

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product 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. For the purposes of this Part, “means and instrumentalities” shall mean any information, including, but not necessarily limited to, any advertising, labeling, telemarketing scripts, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product or service, in or affecting commerce.

### IV.

**IT IS FURTHER ORDERED** that respondent THV Holdings, and its successors and assigns, within thirty (30) days of the issuance of this order, must:

- A. Establish and implement a training program for all principals, officers, directors, managers, employees, agents, and representatives who direct or engage in the promotion or sale of any covered product or service;
- B. Designate a manager to coordinate and oversee the implementation of this training program;
- C. Require all current principals, officers, directors, managers, employees, agents, and representatives who direct or engage in the promotion or sale of any covered product or service to complete the training program within sixty (60) days of the order’s issuance, and require all future principals, officers, directors, managers, employees, agents, and representatives to complete the training program before directing or engaging in the promotion or sale of any covered product or service;
- D. Ensure that the training program addresses:
  - (i) the trainee’s duty not to use or make any representation prohibited under this order;
  - (ii) all representations specifically approved by the respondent concerning energy savings, reduction in heating and cooling costs, and any other energy-related attribute of any covered product or service; and
  - (iii) the trainee’s duty not to use or make any representation concerning energy savings, reduction in heating and cooling costs, or any other energy-related attribute of any covered product or service unless the respondent has authorized the representation after the order’s issuance;

- E. Secure from each participant in this training program, at the conclusion of training, a signed statement acknowledging that he or she has completed the program;
- F. Maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments obtained pursuant to this Part, as well as a copy of all materials used in training pursuant to this Part; and
- G. Regularly evaluate and adjust its training program in light of any material changes to respondent's promotional materials, operations, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of the training program required pursuant to this Part.

**V.**

**IT IS FURTHER ORDERED** that respondent THV Holdings, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

**VI.**

**IT IS FURTHER ORDERED** that respondent THV Holdings, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

## VII.

**IT IS FURTHER ORDERED** that respondent THV Holdings, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto: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: "THV Holdings LLC, File No. 112 3057, Docket No. C-4361."

## VIII.

**IT IS FURTHER ORDERED** that respondent THV Holdings, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

## IX.

This order will terminate on May 16, 2032, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is

filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen not participating.

Donald S Clark  
Secretary

SEAL  
ISSUED: May 16, 2012