

promotional materials referenced in Paragraph 2, including but not limited to the attached Exhibits A through E. These materials contain the following statements:

A. Renew Website (Exhibit A, excerpt from <http://www.renewplastics.com>)

“When you build with EVOLVE recycled plastic lumber, you demonstrate your commitment to the environment and sustainable living. EVOLVE recycled plastic lumber products are 100% plastic and generally contain over 90% recycled high density polyethylene (ReHDPE) material.” (*Id.* at 1)

“[Evolve is] 100% recyclable[.]” (*Id.* at 1, 3)

“EVOLVE is a plastic composite material that consists of at least 90% recycled Type 2 High Density Polyethylene (HDPE) with the remainder of the material being foaming agents and color with UV inhibitors.” (*Id.* at 4)

“The composite mixture of the end product [EVOLVE lumber] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials.” (*Id.* at 7)

B. Trimax Website (Exhibit B, excerpt from <http://www.trimaxbp.com>)

“Trimax Structural Lumber is a patented formulation of fiberfill and recycled milk jugs.” (*Id.* at 1)

“Trimax Structural Lumber is a high-performance construction material consisting of a patented formula of recycled plastics, fiberglass, and select additives. The plastic raw material utilized in Structural Lumber is derived from post-consumer bottle waste such as milk and detergent bottles.” (*Id.* at 2)

C. Trimax Promotional Material (Exhibit C, Doc. No. 04_01_2010)

“The product [Trimax] is recyclable[.]” (*Id.* at 1)

D. Evolve Speed Bump Brochure (Exhibit D, Doc. No. 02_10_2009)

“The composite mixture of the end product [EVOLVE speed bump] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials.” (*Id.* at 1)

E. ICC-ES Evaluation Report for Evolve (Exhibit E, Doc. No. 07_01_2009)

“EVOLVE . . . is made of a plastic composite material that consists of 90 percent recycled high-density polyethylene (HDPE), with the remaining 10 percent being foaming agents and color with ultraviolet inhibitors.” (*Id.* at 1)

5. From September 15, 2012 to March 17, 2013, Evolve contained, at most, 58% recycled plastic.

6. During the period from March 2011 to March 2013, the recycled plastic in Trimax, on average, contained less than 12% post-consumer recycled content.

7. By representing that a product is recyclable, respondent implies to reasonable consumers that facilities that will recycle the item are available to a substantial majority of consumers or communities where the item is sold.

8. Local recycling centers do not recycle Evolve and Trimax due to their non-plastic content and size and weight greater than that of household items typically recycled in such centers. The cost to consumers of shipping Evolve and Trimax to Respondent's factory for re-use in the manufacturing process generally exceeds the amount Respondent will pay consumers for returning the item. Facilities that will recycle Evolve and Trimax are thus not available to a substantial majority of consumers or communities where these products are sold.

Count I
False or Misleading Claims

9. Through the means described in Paragraph 4, Respondent has represented, directly or indirectly, expressly or by implication, that:

- A. Evolve generally contains over 90% recycled plastic;
- B. Evolve is at least 90% recycled plastic;
- C. Evolve is 90% recycled plastic;
- D. The recycled plastic in Trimax is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and
- E. Evolve and Trimax are recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

10. In truth and in fact:

- A. From September 15, 2012 to March 17, 2013, Evolve did not generally contain over 90% recycled plastic;
- B. From September 15, 2012 to March 17, 2013, Evolve was not at least 90% recycled plastic;
- C. From September 15, 2012 to March 17, 2013, Evolve was not 90% recycled plastic;
- D. The recycled plastic in Trimax is not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

E. Evolve and Trimax are not recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

11. Therefore, the representations set forth in Paragraph 9 are false or misleading.

**Count II
Unsubstantiated Claims**

12. Through the means described in Paragraph 4, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made.

13. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made. Therefore, the representation set forth in Paragraph 12 was, and is, false or misleading.

**Count III
Means and Instrumentalities**

14. In connection with the advertising, promotion, offering for sale, or sale of Evolve and Trimax, Respondent has distributed promotional materials making the representations set forth in Paragraph 4 to retailers and independent distributors. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

Violations of Section 5

15. Respondent's false or misleading representations constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this _____ day of _____, 2014, has issued this Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: