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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GREGORY ARTHUR, on behalf of
himself, all others similarly situated, and the
general public,

Plaintiff,

v.

UNITED INDUSTRIES CORPORATION,
a Delaware Corporation,

Defendant.

Case No.: 2:17-cv-06983-CAS-SK

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1 Plaintiff GREGORY ARTHUR (“Plaintiff”), on behalf of himself, all others
2 similarly situated, and the general public, by and through his undersigned counsel, hereby
3 brings this action against UNITED INDUSTRIES CORPORATION (“UIC”), and alleges
4 the following upon his own personal knowledge or, where he lacks personal knowledge,
5 upon information and belief, including the investigation of his counsel.

6 **JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
8 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds
9 the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member
10 of the class of plaintiffs is a citizen of a state different from UIC. In addition, more than
11 two-thirds of the members of the class reside in states other than the state in which UIC
12 is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction
13 under 28 U.S.C. § 1332(d) do not apply. The Court also has supplemental jurisdiction
14 over plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

15 2. The Court has personal jurisdiction over UIC pursuant to Cal. Code Civ. P.
16 § 410.10, as a result of UIC’s substantial, continuous and systematic contacts with the
17 state and because UIC has purposely availed itself of the benefits and privileges of
18 conducting business activities within the state.

19 3. Venue is proper in the Central District of California pursuant to 28 U.S.C. §
20 1391(b) and (c), because UIC resides (i.e., is subject to personal jurisdiction) in this
21 district, and a substantial part of the events or omissions giving rise to the claims occurred
22 in this district.

23 **SUMMARY OF CASE**

24 4. UIC is the manufacturer of a herbicide known as Spectracide® Weed and
25 Grass Killer. Among other UIC products, UIC manufactures, markets, and sells
26 Spectracide® Weed and Grass Killer Concentrate (“Spectracide Concentrate”). Unlike
27 “Ready-to-Use” Spectracide, the Spectracide Concentrates are intended to be diluted with
28

1 water prior to use, so that the diluted product will have the same weed-killing power as
2 Ready-to-Use Spectracide®.

3 5. During at least the preceding four years, UIC advertised the Spectracide®
4 Concentrates as being capable of making a certain number of gallons. For example,
5 prominently at the top of the container in bold red numbers on a yellow background, the
6 32-fluid ounce size advertises it “Makes Up to 10 Gallons.” as pictured below.



1 6. These advertisements were false, however, because the Spectracide
2 Concentrates were in fact only capable of making a fraction of the number of gallons
3 represented when diluted to the same strength as “Ready-to use” Spectracide® according
4 to UIC’s own instructions. For example, the 32-fluid ounce size makes only 6.6 gallons
5 of Spectracide® when used for “general weed control.”

6 7. Plaintiff brings this action to enjoin UIC from continuing to falsely advertise
7 the Spectracide Concentrates in this manner, and to recover damages for himself and
8 other purchasers.

9 **PARTIES**

10 8. Plaintiff is a resident of Tujunga, California.

11 9. Defendant United Industries Corporation is a Delaware Corporation that
12 maintains its principal place of business at 1 Rider Trail Plaza Drive Suite 300 Earth City
13 Missouri 63045.

14 **FACTS**

15 10. UIC manufactures, markets and sells Spectracide Concentrate in 16-, 32-
16 and 64-fluid ounce bottles, as pictured below.



1 11. The principal display panel of each of the Spectracide Concentrates
 2 prominently claims that that product “Makes Up to” a stated number of gallons, as
 3 follows:

4 Spectracide Weed and Grass Killer 5 Concentrate 16 Fluid Ounce.	“Makes Up to 5 Gallons”
6 Spectracide Weed and Grass Killer 7 Concentrate 32 Fluid Ounce.	“Makes Up to 10 Gallons”
8 Spectracide Weed and Grass Killer 9 Concentrate 32 Fluid Ounce.	“Makes Up to 20 Gallons”

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 15 12. Directly under the Spectracide name, each Spectracide® Concentrate label
 16 states “WEED & GRASS KILLER.” Further, directly under the Spectracide® name and
 17 inside of a red rectangle, each Spectracide® Concentrate label also claims the product
 18 “Kills the Root!”

19 13. Given the price of the Spectracide® Concentrates in comparison to Ready-
 20 to-Use Spectracide®, together with the purported number of gallons each Spectracide®
 21 Concentrate makes, UCI markets the Spectracide® Concentrates as better values than its
 22 Ready-to-Use products.

23 14. A glossy several-page pamphlet is taped over the back label of each
 24 Spectracide® Concentrate bottle, with its front page showing a graphic providing
 25 information under three headings, “Where to Use,” “What it Does,” and “When to use.”
 26 The back of the bottle of the Spectracide® Concentrate 32 Fluid Ounce taped pamphlet
 27 is depicted on the following page:
 28



15. As depicted above, the back label also has a heading that states “Amount to Use.” Under the “Amount to Use” heading, the Spectracide 32 Fluid Ounce bottle states that “For Best Results: 7 fl oz (14 Tbsp) per gallon of water;” for “general weed control (annuals): 5 fl oz (10 Tbsp) per gallon of water;” and for “Newly emerged weeds: 3 fl oz (6 Tbsp) per gallon of water.” The back label also states “Makes Up to 20 Gallons.”

16. The inside of the several-page pamphlet also has a section titled “mixing instructions.” The “mixing instructions” for the Spectracide® Concentrate 32 Fluid Ounce bottle is depicted on the following page:

STOP. Read Entire Label Before Use.

Environmental Hazards • This pesticide is toxic to aquatic invertebrates. To protect the environment, do not allow pesticide to enter or run off into storm drains, drainage ditches, gutters or surface waters. Applying this product in calm weather when rain is not predicted for the next 24 hours will help to ensure that wind or rain does not blow or wash pesticide off the treatment area. Rinsing application equipment over the treated area will help avoid runoff to water bodies or drainage systems.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. *For outdoor residential use only.*

 **Do not allow people or pets to enter the treated area until sprays have dried.**

APPLICATION RESTRICTIONS

Do not apply this product in a way that will contact any person or pet, either directly or through drift. Keep people and pets out of the area during application.

USER SAFETY RECOMMENDATIONS

Clothing and protective equipment exposed to this product should be washed in detergent and hot water. Such items should be kept and washed separately from other laundry.

MIXING INSTRUCTIONS

Tank Sprayer (plastic, aluminum or stainless steel)

- Add appropriate amount of concentrate to 1 gal of water.
- Spot treat or spray evenly over 300 sq ft.

Dial-Type Hose-End Sprayer

- Set sprayer to the "fl oz/gallon" level specified in the directions.
- Use only enough product for the area to be treated.
- Close sprayer, attach to hose and apply.

Concentrate Plus Water Type Sprayer

- Determine the amount of concentrate required.
- Pour concentrate into sprayer jar to the required "fl oz" level.
- Add the required amount of water to the "gallons" level.
- Replace sprayer top on jar and apply.

Step 1: Use a clean sprayer. Carefully measure and mix the amount of product and water as directed. Food utensils such as teaspoons and measuring cups must not be used for food purposes after use with pesticides.

Step 2: Spray as directed. Thorough coverage is important. Flush sprayer with clean water after each use.

AMOUNT TO USE:

To kill newly emerged weeds: 3 fl oz (6 Tbsp) per gallon of water treats 300 sq ft.

For general weed control: 5 fl oz (10 Tbsp) per gallon of water treats 300 sq ft.

For best results: 7 fl oz (14 Tbsp) per gallon of water treats 300 sq ft.

1 Tbsp = 3 tsp 1 fl oz = 2 Tbsp

17. As depicted above, the "mixing instructions" for the Spectracide® Concentrate 32-fluid ounce bottle has a sub-heading titled "Amount to Use" that provides the following instructions:

To kill newly emerged weeds: 3 fl oz (6 Tbsp) per gallon of water treats 300 sq ft.
For general weed control: 5 fl oz (10 Tbsp) per gallon of water treats 300 sq ft.
For best results: 7 fl oz (14 Tbsp) per gallon of water treats 300 sq ft.

1 Tbsp= 3 tsp 1 fl oz = 2 Tbsp

1 18. Given the dilutions set forth on the back panel of each Spectracide®
 2 Concentrate, the specified number of gallons that UIC represents the Spectracide®
 3 Concentrates are capable of making is *only a fraction* what they are actually capable of
 4 making when mixed with water according to UIC’s own instructions “for general weed
 5 control.” Thus, the Spectracide® Concentrates actually make less than the amount UIC
 6 claims “for general weed control,” as demonstrated in the table below.

Product	“Makes up to” gallon claim	Back label instruction “for general weed control” (Amount to mix with 1 gallon of water)	Amount made following instructions
Spectracide® Concentrate 16-fluid ounce	“Makes up to 5 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	3.3 Gallons
Spectracide® Concentrate 32-fluid ounce	“Makes up to 10 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	6.6 Gallons
Spectracide® Concentrate 64-fluid ounce	“Makes up to 20 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	13.2 Gallons

19. UIC fails to disclose that the advertised “makes up to” amount can only be
 20 achieved by following the mixing instruction for “newly emerged weeds.” However,
 21 reasonable consumers like plaintiff would expect that the advertised “makes up to”
 22 amount would be for the product’s intended purpose, which is “general weed control.”
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 24

1 20. A reasonable purchaser – for example, an ordinary homeowner interested in
2 removing weeds along a fence, on a driveway, or around trees or flower beds – does not
3 have the professional understanding of what constitutes a “newly emerged weed,” and
4 does not have the technical expertise to discern when it would be appropriate to use less
5 concentrate per this instruction. To the contrary, a reasonable consumer would instead
6 rely on UIC’s representation that “for general weed control” “5 fl oz (10 Tbps) per gallon
7 of water treats 300 sq ft.”

8 21. Reasonable consumers read and understand “up to” representations – like
9 the “Makes Up to” a specific number of “Gallons” representations on the UIC
10 Concentrates – as providing, under normal and reasonable conditions for use, the
11 maximum results promised. Indeed, the U.S. Federal Trade Commission has explicitly
12 determined this to be the case, stating that its “view” is “that advertisers using these
13 claims should be able to substantiate that consumers are likely to achieve the maximum
14 results promised under normal circumstances.” *See Exhibits 1 & 2.*

15 22. As demonstrated by the pamphlet itself, including its cover, use of the
16 product only on “newly emerged weeds” is not normal use. Rather, normal use is as
17 represented on the pamphlet’s cover, and of course on the front of the bottle: as a “WEED
18 AND GRASS KILLER,” that “Kills The Root!” and is to be used “on patios, walkways,
19 and flowerbeds.”

20 23. Moreover, the front label of the Spectracide® Concentrate products claim to
21 kill “chickweed,” “plantain,” “annual blue grass,” “dandelion,” and “clover.” An
22 enlarged image of the Spectracide® Concentrate 64-fluid ounce bottle is depicted on the
23 following page:
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24. Reasonable consumers should not be expected to look beyond misleading representations on the front of the label to discover the truth from the mixing instructions in small print on the back pamphlet of the product. This is especially true where, as here, the products at issue are concentrated forms of a Ready-to-Use product. In other words, reasonable consumers understand that they will obtain the same degree of efficacy, indeed the same formulation and therefore the same concentration of active ingredient, as UIC’s Ready-to-Use Concentrate product, the only difference being that for a higher price paid, the consumer receives a better value: more product at the same concentration for less money.

1 25. Indeed, this is what UIC intends a consumer to understand about the
2 Spectracide Concentrates, this is a fundamental aspect of UIC’s marketing of these
3 concentrate products, this is what consumers reasonably rely on in purchasing these
4 concentrate products, and this is what consumers reasonably expect upon purchasing and
5 using these concentrate products.

6 **PLAINTIFF’S RELIANCE AND INJURY**

7 26. Plaintiff Gregory Arthur purchased Spectracide® Concentrate products on
8 multiple occasions, from Wal-Mart, Home Depot, and/or Lowes stores located near his
9 home in the San Fernando Valley, California during the Class Period.

10 27. In purchasing Spectracide® Concentrate products, Plaintiff relied on the
11 prominent labeling claim near the top of the front of the bottle stating that the product
12 “makes up to” a specified amount of gallons of the product which he took to mean would,
13 in fact, make up to the advertised amount of gallons when used as directed for general
14 weed control.

15 28. When purchasing Spectracide® Concentrate, plaintiff was seeking a product
16 that was effective at killing all unwanted weeds and grass, and which was more affordable
17 than the Spectracide Ready-to-Use products, and understood that he was purchasing a
18 concentrate with a substantially better dollar-per-gallon value than the Ready-to-Use
19 alternative (i.e., the value that would be had if the product supplied the maximum number
20 of gallons). Moreover, plaintiff was seeking a product that would yield the number of
21 gallons represented, and, at the dilution that resulted in that amount of gallons, would kill
22 all unwanted weeds and grass, including a product that “Kills the Root!”

23 29. These representations, upon all of which plaintiff relied in purchasing these
24 products, however, were false and misleading, and had the capacity, tendency, and
25 likelihood to confuse or confound plaintiff and other consumers acting reasonably. This
26 is because, as described in detail herein, the Spectracide® Concentrates do not yield the
27 volume, in gallons, as promised on the label, if following the instructions prominently
28 stated on the product’s back panel (i.e., on the instruction pamphlet’s cover).

1 30. These representations were also false and misleading because the
2 Spectracide® Concentrates yield the volume, in gallons, of a product that is not as
3 effective at killing all types of weed and grass, such as the Ready-to-Use Spectracide®
4 products, and, diluted to the maximum volume represented, may not be effective at all,
5 especially for certain applications.

6 31. The Spectracide® Concentrates cost more than similar products without
7 misleading labeling, and would have cost less absent the false and misleading statements
8 complained of herein.

9 32. Plaintiff paid more for Spectracide® Concentrate, and would only have been
10 willing to pay less, or unwilling to purchase it at all, absent the false and misleading
11 labeling complained of herein.

12 33. For these reasons, Spectracide® Concentrate was worth less than what
13 plaintiff paid for it, and may have been worth nothing if diluted to yield, by volume, the
14 number of gallons promised on the label.

15 34. By use of its misleading labeling, UIC created increased marketplace
16 demand for the Spectracide Concentrates, and increased its market share, relative to what
17 its demand and share would have been had UIC labeled the Spectracide® Concentrate
18 products truthfully.

19 35. Plaintiff lost money as a result of UIC's deceptive claims and practices in
20 that he did not receive what he paid for when purchasing Spectracide® Concentrate.

21 36. Plaintiff detrimentally altered his position and suffered damages in an
22 amount equal to the amount he paid for Spectracide® Concentrate, or at least some
23 portion thereof.

24 37. If plaintiff could be assured that claims regarding the amount yielded when
25 mixing according to instructions was accurate, and that the product was effective at
26 killing all weeds and grass as a result, and was not otherwise false or misleading, he
27 would consider purchasing the product in the future.

28

CLASS ACTION ALLEGATIONS

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2 38. While reserving the right to redefine or amend the class definition prior to
3 seeking class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks
4 to represent a class of all persons in California who, on or after September 21, 2013 (the
5 “Class Period”), purchased the Spectracide Concentrates for personal or household use
6 (the “Class” or “California Class”).

7 39. The members in the proposed Class are so numerous that individual joinder
8 of all members is impracticable, and the disposition of the claims of all Class members
9 in a single action will provide substantial benefits to the parties and Court.

10 40. Questions of law and fact common to plaintiffs and the Class include:

- 11 a. whether by mixing according to the instructions on the back label of the
12 Spectracide Concentrates, the products would result in the “Makes Up To”
13 amount of gallons stated on the principal display panel and in the first bullet point
14 under the heading “MIXING INSTRUCTIONS” in the taped, sealed pamphlet;
- 15 b. whether the claimed “Makes up to” amount of gallons was material to
16 purchasers;
- 17 c. Whether a reasonable consumer believes that “Makes Up To” actually means the
18 product will make that amount when used under normal, reasonable conditions;
- 19 d. Whether a reasonable consumer would remove the sealed pamphlet before
20 purchasing any Spectracide® Concentrate products;
- 21 e. Whether a reasonable consumer would understand what “newly developed
22 weeds” means;
- 23 f. Whether by diluting the Spectracide Concentrates to actually obtain the “Makes
24 Up To” amount of gallons claimed, the products are less effective than
25 Spectracide®’s Ready-to-Use products;
- 26 g. Whether by diluting the Spectracide® Concentrates to actually obtain the “Makes
27 Up To” amount of gallons claimed, the products are ineffective;
- 28 h. Whether UIC’s conduct violates public policy;

- 1 i. The proper amount of damages, including punitive damages;
- 2 j. The proper amount of restitution;
- 3 k. The proper scope of injunctive relief, including corrective advertising and recall
- 4 from the marketplace; and
- 5 l. The proper amount of attorneys' fees.

6 41. These common questions of law and fact predominate over questions that
7 affect only individual Class members.

8 42. Plaintiff's claims are typical of Class members' claims because they are
9 based on the same underlying facts, events, and circumstances relating to UIC's conduct.
10 Specifically, all Class members, including Plaintiff, were subjected to the same
11 misleading and deceptive conduct when they purchased the Spectracide® Concentrates,
12 and suffered economic injury because Spectracide® Concentrates are misrepresented.
13 Absent UIC's business practice of deceptively and unlawfully labeling the Spectracide®
14 Concentrates, Plaintiff and other Class members would not have purchased the
15 Spectracide® Concentrates, or would have paid less for the products.

16 43. Plaintiff will fairly and adequately represent and protect the interests of the
17 Class, have no interests incompatible with the interests of the Class, and have retained
18 counsel competent and experienced in class action litigation, and specifically in litigation
19 involving false and misleading advertising.

20 44. Class treatment is superior to other options for resolution of the controversy
21 because the relief sought for each Class member is small, such that, absent representative
22 litigation, it would be infeasible for Class members to redress the wrongs done to them.

23 45. UIC has acted on grounds applicable to the Class, thereby making
24 appropriate final injunctive and declaratory relief concerning the Class and Subclass as a
25 whole.

26 46. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ.
27 P. 23(a), 23(b)(2), and 23(b)(3).

28

1 47. In addition, it may be appropriate, pursuant to Fed. R. Civ. P. 23(c)(4), to
2 maintain this action as a class action with respect to particular issues.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

6 **CAL. CIV. CODE §§ 1750 ET SEQ.**

7 **(BY THE CALIFORNIA CLASS)**

8 48. Plaintiff realleges and incorporates the allegations elsewhere in the
9 Complaint as if set forth in full herein.

10 49. The CLRA prohibits deceptive practices in connection with the conduct of
11 a business that provides goods, property, or services primarily for personal, family, or
12 household purposes.

13 50. UIC's false and misleading labeling and other policies, acts, and practices
14 described herein were designed to, and did, induce the purchase and use of UIC's
15 Spectracide® Concentrates for personal, family, or household purposes by Plaintiff and
16 other Class members, and violated and continue to violate at least the following sections
17 of the CLRA:

- 18 a. § 1770(a)(5): Representing that goods or services have characteristics,
19 ingredients, uses, benefits, or quantities which they do not have;
- 20 b. § 1770(a)(7): Representing that goods or services are of a particular
21 standard, quality, or grade, or that goods are of a particular style or model,
22 if they are of another;
- 23 c. § 1770(a)(9): Advertising goods with intent not to sell them as advertised;
24 and
- 25 d. § 1770(a)(16): Representing the subject of a transaction has been supplied
26 in accordance with a previous representation when it has not.

27 51. UIC profited from its sales of the falsely, deceptively, and unlawfully
28 advertised Spectracide® Concentrates to unwary consumers.

1 misleading marketing claims that the products “Make Up To” a certain volume, by
2 gallons, of product that is efficacious at killing all weeds and grass.

3 60. UIC’s business practices as alleged herein constitute unfair, deceptive,
4 untrue, and misleading advertising pursuant to the FAL because UIC has advertised the
5 Spectracide® Concentrates in a manner that is untrue and misleading, which UIC knew
6 or reasonably should have known.

7 61. UIC profited from its sales of the falsely and deceptively advertised
8 Spectracide Concentrates to unwary consumers.

9 62. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff and the
10 Class are entitled to injunctive and equitable relief and restitution.

11 **THIRD CAUSE OF ACTION**
12 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
13 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**
14 **(BY THE CALIFORNIA CLASS)**

15 63. Plaintiff realleges and incorporates the allegations elsewhere in the
16 Complaint as if set forth in full herein.

17 64. The UCL prohibits any “unlawful, unfair or fraudulent business act or
18 practice.” Cal. Bus. & Prof. Code § 17200.

19 65. The acts, omissions, misrepresentations, practices, and non-disclosures of
20 UIC as alleged herein constitute business acts and practices.

21 **FRAUDULENT**

22 66. A statement or practice is fraudulent under the UCL if it is likely to deceive
23 the public, applying a reasonable consumer test.

24 67. As set forth herein, UIC’s claims relating to the Spectracide® Concentrate
25 products are likely to deceive reasonable consumers and the public.

26 **UNLAWFUL**

27 68. The acts alleged herein are “unlawful” under the UCL in that they violate at
28 least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and

- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*

UNFAIR

69. UIC’s conduct with respect to the labeling, advertising, and sale of the Spectracide® Concentrates was unfair because UIC’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

70. UIC’s conduct with respect to the labeling, advertising, and sale of Spectracide® Concentrates was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law.

71. UIC’s conduct with respect to the labeling, advertising, and sale of Spectracide® Concentrates was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

* * *

72. UIC profited from its sale of the falsely, deceptively, and unlawfully advertised Spectracide Concentrate to unwary consumers.

73. Plaintiff and the Class members are likely to be damaged by UIC’s deceptive trade practices, as UIC continues to disseminate, and is otherwise free to continue to disseminate misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

74. UIC’s conduct caused and continues to cause substantial injury to plaintiff and the other Class Members, who have suffered injury in fact as a result of UIC’s fraudulent, unlawful, and unfair conduct.

75. In accordance with Bus. & Prof. Code § 17203, Plaintiff, on behalf of himself, the Class, and the general public, seeks an order enjoining UIC from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Date: November 27, 2017

LAW OFFICES OF RONALD A. MARRON

By: /s/ Ronald A. Marron

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EXHIBIT 1



FEDERAL TRADE COMMISSION PROTECTING AMERICA'S CONSUMERS

FTC Report: Many Consumers Believe "Up To" Claims Promise Maximum Results



Share This Page

FOR YOUR INFORMATION

June 29, 2012

TAGS: [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Advertising and Marketing Basics](#) | [Advertising and Marketing](#) | [Environmental Marketing](#)

The Federal Trade Commission today released an FTC-commissioned [study](#) indicating that when marketers use the phrase "up to" in claims about their products, many consumers are likely to believe that they will achieve the maximum "up to" results. The study describes what a test group of consumers thought about ads for replacement home windows that purportedly would provide "up to 47%" savings in energy costs.

The FTC believes the report will help guide advertisers to avoid the use of misleading "up to" claims. It reinforces the FTC's view that advertisers using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances.

The report summarizes the results of a test conducted in conjunction with investigations of five companies that, in February, [settled FTC charges that they made unsupported claims about their windows' energy efficiency](#) and how much they would reduce consumers' heating and cooling bills. The cases are part of the agency's [efforts to ensure that environmental marketing is truthful and based on scientific evidence](#).

The Commission vote approving release of the report was 5-0. It is available on the FTC's website and as a link to this press release. (FTC File No. 1023171; the staff contact is Serena Viswanathan, Bureau of Consumer Protection, 202-326-3244)

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online [Complaint Assistant](#) or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's website provides [free information on a variety of consumer topics](#). Like the FTC on [Facebook](#), follow us on [Twitter](#), and [subscribe to press releases](#) for the latest FTC news and resources.

(Up To Claims)

Contact Information

MEDIA CONTACT:
Office of Public Affairs
202-326-2180



ftc.gov

EXHIBIT 2

**Effects of a Bristol Windows Advertisement with an “Up To”
Savings Claim on Consumer Take-Away and Beliefs**

Report submitted to Federal Trade Commission

**Manoj Hastak, Ph.D.
Dennis Murphy, Ph.D.**

May 2012

Effects of a Bristol Windows Advertisement with an “Up To” Savings Claim on Consumer Take-Away and Beliefs

Introduction

A research study was designed to investigate consumer take-away (i.e., ad communication) and beliefs/opinions upon exposure to a print advertisement for Bristol Windows with an “up to” savings claim. The specific claim of interest was “PROVEN TO SAVE UP TO 47% ON YOUR HEATING AND COOLING BILLS!” Some of the questions addressed in the study were:

Ad Communication

- (1) Does the ad say or suggest to a significant number of people that they would save about 47% (as opposed to up to 47%) on their heating and cooling bills with Bristol Windows? In other words, do a significant number of people take away an unqualified 47% savings claim from the ad?
- (2) Does the ad say or suggest to a significant number of people that a substantial proportion (e.g., 50% or more) of individuals who install Bristol Windows can expect to save about 47% on their heating and cooling bills?
- (3) Are the effects of the ad listed under (1) and (2) influenced by the inclusion of an “up to” qualifier in the ad? In particular, would the effects listed under (1) and (2) be stronger if the “up to” qualifier were eliminated?
- (4) Are the effects listed under (1) and (2) influenced by the inclusion of a disclosure indicating that the average Bristol Windows owner saves considerably less than the 47% savings mentioned in the ad?

Beliefs/Opinions

- (5) Do a significant number of people believe that a substantial proportion (e.g., 50% or

more) of individuals who install Bristol Windows can expect to save about 47% on their heating and cooling bills?

(6) Is the effect on beliefs listed under (5) influenced by the inclusion of an “up to” qualifier in the ad? In particular, would the effect listed under (5) be stronger if the “up to” qualifier were eliminated?

(7) Is the effect on beliefs listed under (5) influenced by the inclusion of a disclosure indicating that the average Bristol Windows owner saves considerably less than the 47% savings mentioned in the ad?

(8) Do a significant number of people believe that the Bristol Company has done tests to support the claim of “up to 47%” savings in heating and cooling bills?

The data were collected for the FTC by Synovate¹. Detailed tabulations of responses to all questions are available in the report submitted by Synovate to the FTC.

Method

The study used a mall-intercept design. Three hundred and sixty (360) computer-assisted personal interviews were conducted in five geographically diverse markets located in different census divisions across all four regions: White Plains, NY; Chicago Ridge, IL; Charlotte, NC; Muskogee, OK; and Puyallup, WA. Respondents saw one of three versions of an advertisement for Bristol Windows (see next section) and then responded to a series of open-ended and closed-ended questions about the advertised product. Neither the interviewers nor the respondents were aware of the identity of the client or the purpose of the study. Respondents were paid \$5 for their participation in the study.

Advertisements

¹Synovate was recently acquired by Ipsos.

Three versions were created from an actual print advertisement for Bristol Windows for the study (see Appendix A):

- (1) Version (1) (“up to” version) was an existing Bristol Windows ad with some text removed to reduce clutter. The lower half of this ad displayed the following claim in large, uppercase letters: “PROVEN TO SAVE UP TO 47% ON YOUR HEATING AND COOLING BILLS!” (emphasis in the original).
- (2) Version (2) (“non-up to” version) was identical to version (1) except that the words “UP TO” were removed from the claim displayed in the lower half of the ad.
- (3) Version (3) (“disclosure” version) was identical to version (1) except that the following sentence was presented in a box at the bottom of the ad: “The average Bristol Windows owner saves about 25% on heating and cooling bills.”

Screening Procedure

A series of screening questions was used to ensure that the respondents were in the target market for the product and the tested advertisements (see Questions A through I in the interview protocol provided in Appendix B). To participate in the survey, respondents had to (a) be age 21 or older, (b) own a house or apartment, and (c) participate in making decisions regarding purchasing home improvement products or services. Respondents were excluded if they had participated in a market research survey other than a political poll in the last three months. They were also excluded if they or anyone in their household worked in marketing research, advertising or public relations, for a store in the mall where the data were collected, or for a store or company that made or sold home improvement products or services. Finally, respondents were excluded if they wore eyeglasses or contact lenses for reading but did not have their

corrective eye wear with them at the time of the interview, or if they were not comfortable completing a survey in English.

Age and gender quotas were established to ensure reasonable diversity in the respondent sample. Specifically, between 40% and 60% of the respondents for each ad version were required to be in the 21-49 and 50 and older age groups. Additionally, between 40% and 60% of the respondents for each ad version were required to be male and female.

Main Study Procedure

The study questionnaire is included in Appendix B. Respondents were randomly assigned to one of the three versions of the Bristol Windows ad (the “up to” version, “non-up to” version, or “disclosure” version). They were asked to look at the ad as they normally would and return it to the interviewer when they were done. The advertisement was then removed from sight. Next, respondents were asked a series of open-ended and closed-ended questions pertaining to ad communication and beliefs/opinions. These questions are explained in the results section. Before asking any questions, respondents were told: “If you don't know the answer to any of my questions, please say so rather than guess.”

Pretest

Before fielding the survey, Synovate conducted a pretest under the supervision of the authors by completing a small number of interviews in a mall-intercept facility in the Washington DC area. The goal was to ensure that the study questions were clear to respondents. Minor revisions were made to the questionnaire based on the pretest.

Coding

Researchers at Synovate, under the supervision of the authors, developed a coding scheme for the open-ended question Q2. Synovate researchers coded the open-ended responses.

Results

After they had seen one of the three versions of the Bristol Windows advertisement, respondents were first asked to identify the advertised product as well as the brand name (Q1/Q1a/Q1b/Q1c/Q1d). Respondents who correctly identified Bristol Windows as the brand name and product in an unaided or aided manner were asked the ensuing questions. Respondents who were unable to do so were eliminated from the study. Overall, 344/360 respondents (95.6%) correctly identified the brand name and advertised product. There were no significant differences across the three ad versions on this measure.

The remaining questions in the study focused first on ad communication (Q2 through Q4b) and later on beliefs (Q5 through Q7) about Bristol Windows.

Ad Communication

Respondents were next asked an open-ended question about the ad they had just seen:

Q2: What did the ad say or suggest about Bristol Windows?

A complete tabulation of responses is available in the report submitted by Synovate to the FTC. The table below presents distribution of mentions of (1) “47%” savings” (stated in the “non-up to” ad version), “up to 47% savings” (stated in the “up to” and “disclosure” ad versions) and “25% savings” (stated in the “disclosure” ad version):

TABLE 1²
 Select Responses to Q2
 (Q2: What did the ad say or suggest about Bristol Windows?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
-- 47% off/ save 47%/ save 47% on bills	36.0%	47.8% (c)	27.0% (b)
-- save up to 47% on bills	21.9% (b)	3.5% (a, c)	24.3% (b)
-- average saving is 25%/ save 25% on bills	0% (c)	0% (c)	15.7% (a, b)

These results can be summarized as follows:

- (1) Over a third (36%) of respondents exposed to the “up to” version said that the ad stated or implied savings of 47% without mentioning the “up to” qualifier. Interestingly, fewer respondents (21.9%) said that the ad indicated savings of up to 47%, i.e., mentioned the qualifier.
- (2) While a somewhat larger proportion of respondents exposed to the “non-up to” version said that the ad stated or implied savings of 47% compared to respondents exposed to the “up to” version (47.8% versus 36.0%), this difference is not significant at $p < .05$ (two-tailed).
- (3) While a somewhat smaller proportion of respondents exposed to the “disclosure” version said that the ad stated or implied savings of 47% (without mentioning the qualifier) compared to respondents exposed to the “up to” version (27% versus 36%), this difference is not statistically significant at $p < .05$ (two-tailed).
- (4) Less than one in five (15.7%) respondents exposed to the “disclosure” version said that

² In this table as well as in subsequent tables, a letter in parenthesis within a cell indicates that that cell percentage was significantly different (at $p < .05$, two-tailed test) from the corresponding cell percentage in the column designated by the letter.

the ad stated or implied savings of 25%. As might be expected, none of the respondents exposed to the “up to” or “non-up to” ad versions mentioned 25% savings.

Next, respondents were asked two questions to ensure that the ads communicated a quantitative savings claim:

Q3: Did or didn't the ad say or suggest that Bristol Windows will save you money on your heating and cooling bills?

Respondents were shown a card with three options: “yes, it did,” “no, it did not,” and “don't know or not sure.” Note that all three versions of the ad made an express claim about savings on heating and cooling bills. Thus, Q3 is a “filter” question designed to eliminate respondents who missed this prominent claim due to inattention or for other (unknown) reasons. Respondents who replied “no, it did not” or “don't know/not sure” were eliminated from the study. Results are presented in the table below:

TABLE 2
Responses to Q3
(Q3: Did or didn't the ad say or suggest that Bristol Windows will save you money on your heating and cooling bills?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
% saying “yes, it did”	93.9%	89.6%	94.8%

These results show that a majority of respondents took a “savings” claim after seeing one of the ads. Also, there was not a significant difference in the percentage of respondents taking this claim in response to the three ad versions.

Respondents who answered “yes” to Q3 were then asked the following question:

Q4: Did or didn't the ad say or suggest anything about how much you would save on your heating and cooling bills with Bristol Windows?

Again, respondents were shown a card with three options: “yes, it did,” “no, it did not” and “don’t know or not sure.” Since all three versions of the ad made an express claim about the magnitude of savings on heating and cooling bills, this is also a “filter” question. Results are shown in the table below:

TABLE 3
Responses to Q4
(Q4: Did or didn’t the ad say or suggest anything about how much you would save on your heating and cooling bills with Bristol Windows?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
% saying “yes, it did”	80.7%	74.8%	84.3%

These results show that a majority of respondents took a magnitude “savings” claim after seeing one of the ads. Also, there was not a significant difference in the percentage of respondents taking this claim in response to the three ad versions.

Respondents who replied “no” or “don’t know/not sure” to Q4 were skipped out of answering Q4a, Q4b, and Q5 since these questions focused on further probing respondent take away of a quantitative savings claim. Respondents who answered “yes” to Q4 were asked the following open-ended question:

Q4a: What did the ad say or suggest about how much you would save on your heating and cooling bills with Bristol Windows?

Although respondents provided open-ended responses to this question, the interviewer coded these responses into several pre-determined categories: “47%,” “up to 47%,” “25%/average 25%,” “other,” and “don’t know/ not sure.” Respondents could be coded as having responded in more than one category if needed. The distribution of responses is shown in the table below:

TABLE 4

Responses to Q4a

(Q4a: What did the ad say or suggest about how much you would save on your heating and cooling bills with Bristol Windows?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
-- 47%	45.6%	58.3% (c)	36.5% (b)
-- up to 47%	26.3% (b)	8.7% (a, c)	29.6% (b)
-- 25% / average 25%	0.9% (c)	0.9% (c)	26.1% (a, b)

These responses to Q4a show a pattern that is largely similar to the pattern obtained for responses to the first open-ended question (Q2) that were summarized in Table 1 and discussed earlier. Specifically:

- (1) Over two-fifths (45.6%) of respondents exposed to the “up to” version said that the ad stated or implied savings of 47% without mentioning the “up to” qualifier. In contrast, fewer respondents exposed to this ad version (26.3%) said that the ad indicated savings of up to 47%, i.e., mentioned the qualifier.
- (2) While a somewhat larger proportion of respondents exposed to the “non-up to” version said that the ad stated or implied savings of 47% (without mentioning the qualifier) compared to respondents exposed to the “up to” version (58.3% versus 45.6%), this difference is not significant at $p < .05$ (two-tailed).
- (3) While a somewhat smaller proportion of respondents exposed to the “disclosure” version said that the ad stated or implied savings of 47% (without mentioning the qualifier) compared to respondents exposed to the “up to” version (36.5% versus 45.6%), this difference is also not significant at $p < .05$ (two-tailed).

(4) About one in four respondents (26.1%) exposed to the “disclosure” version said that the ad stated or implied savings of 25%. As might be expected, virtually none of the respondents exposed to the “up to” or “non-up to” mentioned 25% savings (less than 1% mentions in each group).

Next, respondents who said either “47%” or “up to 47%” in response to Q4a were asked Q4b, while the remaining respondents were skipped to Q6a. Q4b asked:

Q4b: Based on what the ad said or suggested, how many users of Bristol Windows can expect to save about 47% on their heating and cooling bills. Is it none, very few, some, about half, most, almost all, all, or don’t know or not sure?

Respondents were shown a card with all the response options. Key responses are presented in Table 5:

TABLE 5

Select Responses to Q4b

(Q4b: Based on what the ad said or suggested, how many users of Bristol Windows can expect to save about 47% on their heating and cooling bills. Is it none, very few, some, about half, most, almost all, all, or don’t know or not sure?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
-- All/ Almost all/ Most/ About half	48.2%	40.9%	46.1%
-- All/ Almost all/ Most	42.1%	38.3%	36.5%
-- All/ Almost all	28.1%	27.0%	21.7%

The table shows that:

- (1) Almost half (48.2%) of all respondents exposed to the “up to” version of the ad indicated that half or more of Bristol Windows users could expect to save about 47% on their heating and cooling bills based on what the ad said or suggested.
- (2) The results were similar for respondents exposed to the “non-up to” version and the

“disclosure” version of the ad (40.9% and 46.1% respectively). There were no statistically significant differences between the groups.

- (3) A similar pattern of results across the three groups was obtained for responses in the all/almost all/most categories (combined) and for responses in the all/almost all categories (combined). In each case, there were no statistically significant differences between the groups.

Beliefs/Opinions

Next, respondents who had been asked Q4b were told:

So far, I have asked you some questions about what the ad said or suggested. Now I'd like to ask you some questions concerning your personal opinion about Bristol Windows.

Then, they were asked Q5:

Q5: In your personal opinion, how many users of Bristol Windows can expect to save about 47% on their heating and cooling bills? Is it none, very few, some, about half, most, almost all, all, or don't know or not sure?

Note that Q4b and Q5 are identical except that Q4b opens with “Based on what the ad said or suggested...” whereas Q5 opens with “In your personal opinion...” In other words, Q4b assesses whether respondents see the ad as saying or suggesting anything about the typical experience of Bristol Windows users whereas Q5 assesses respondent’s personal beliefs or opinions about the typical experience of users. Responses to Q5 are shown in Table 6.

TABLE 6

Select Responses to Q5

(Q5: In your personal opinion, how many users of Bristol Windows can expect to save about 47% on their heating and cooling bills? Is it none, very few, some, about half, most, almost all, all, or don't know or not sure?)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
-- All/ Almost all/ Most/ About half	43.0%	45.2%	42.6%
-- All/ Almost all/ Most	36.0%	37.4%	26.1%
-- All/ Almost all	26.3% (c)	23.5% (c)	13.0% (a, b)

These results show a pattern that is largely similar to the results obtained for Q4b (Table 5), with one exception (noted below). Specifically:

- (1) Over two-fifths (43.0%) of all respondents exposed to the “up to” version of the ad indicated that in their personal opinion half or more of Bristol Windows users could expect to save about 47% on their heating and cooling bills.
- (2) The results were similar for respondents exposed to the “non-up to” version and the “disclosure” version of the ad (45.2% and 42.6% respectively). There were no statistically significant differences between the groups.
- (3) A similar pattern of results across the three groups was obtained for responses in the all/almost all/most categories (combined), and there was no statistically significant differences between the groups. However, significantly more people exposed to the “up to” and “non-up to” ad versions gave responses in the all/almost all categories (combined) when compared to respondents exposed to the “disclosure” ad version (26.3% and 23.5% vs. 13.0%). Thus, when looking only at responses in the all/almost all categories (combined), the disclosure significantly weakened ad impact on beliefs about

Bristol Windows users achieving 47% savings in their energy bills.

Next, all respondents (including those who were skipped out of answering Q4a, Q4b and Q5) were asked:

Q6/Q6a: *In your personal opinion, how much savings, on average, do you think users of Bristol Windows would see on their heating and cooling bills? Please give me your best estimate.*³

Respondents who did not give a percentage or gave more than one percentage were asked to give a single percentage. While responses spanned a large range, many respondents mentioned either 25% savings (mentioned in the “disclosure” ad version), 47% savings (mentioned in all three ad versions), or were in the 45%-50% range (i.e., “around” 47%). Table 7 shows the distribution of these three responses as well as the mean of percentage savings reported across the three ad versions:

TABLE 7

Select Responses to Q6/Q6a

(Q6/Q6a: In your personal opinion, how much savings, on average, do you think users of Bristol Windows would see on their heating and cooling bills? Please give me your best estimate.)

	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
-- response in the 45% - 50% range	40.4% (c)	39.1% (c)	26.1% (a, b)
-- 47%	26.3%	26.1%	17.4%
-- 25%	6.2% (c)	6.9% (c)	26.1% (a, b)
-- mean of percentage savings reported	37.1%	38.2%	36.2%

These results can be summarized as follows:

- (1) About two-fifths of all respondents exposed to the “up to” and “non-up to” versions of

³Respondents who had responded to Q4b and Q5 were asked Q6. Respondents who had been skipped out after answering either Q4 or Q4a were first read the short paragraph that had preceded Q5 (see page 12) and then asked Q6a which is identical to Q6.

the ad for Bristol Windows (40.4% and 39.1% respectively) indicated that they believed customers would see savings in the range of 45%-50% on their heating and cooling bills. The corresponding percentage for respondents exposed to the “disclosure” version of the ad was significantly lower (26.1%).

- (2) About one-fourth of all respondents exposed to the “disclosure” version of the ad for Bristol Windows (26.1%) indicated that they believe customers would see 25% savings on their heating and cooling bills. The corresponding percentages for respondents exposed to the “up to” and “non-up to” versions of the ad (without the disclosure) were significantly lower (6.2% and 6.9%). This is not surprising given that the “25% savings” information was only presented in the “disclosure” ad version.
- (3) The mean values for reported savings were virtually identical across the three ad versions (38.2%, 37.1%, and 36.2%). Thus, although significantly fewer respondents in the “disclosure” condition mentioned savings in the 45-50% range and significantly more of these respondents mentioned savings of 25% when compared to the other two groups, the disclosure appears to have had virtually no effect on the mean value of savings reported by all of the respondents in this group.

Finally, respondents were asked the following question:

Q7: Now I'm going to read you some statements about Bristol Windows. All, some, or none of these statements may be true. After I read each statement, please tell me if you believe it is true, or you do not believe it is true or you don't know or are not sure.

Respondents were shown a card with the response options:

- 1) YES, I BELIEVE THAT STATEMENT IS TRUE
- 2) NO, I DO NOT BELIEVE THAT STATEMENT IS TRUE
- 3) DON'T KNOW OR NOT SURE

Respondents were then read four statements in randomized order:

- 7a. The “Buy 2 Get 1 Free” offer for Bristol Windows is only valid for a limited time.
 7b. The Bristol company has done tests to support their claim that you will save on your heating and cooling bills.
 7c. Bristol windows come with free installation.
 7d. Bristol windows are burglar proof.

Responses to Q7b are of focal interest in this study. Q7a is a decoy statement introduced to help mask the purpose of the study. Q7c and Q7d are control statements designed to capture “yea saying.”

Table 8 shows the percentage of “yes” responses to each of these statements for all respondents as well as separately for respondents in each of the three treatment conditions:

TABLE 8
 Responses to Q7
 (% saying “yes”)

	All Respondents (n=344)	“Up To” Version (n=114) (a)	“Non-Up To” Version (n=115) (b)	“Disclosure” Version (n=115) (c)
7a. The “Buy 2 Get 1 Free” offer for Bristol Windows is only valid for a limited time	64.0%	69.3% (b)	56.5% (a)	66.1%
7b. The Bristol company has done tests to support their claim that you can save on heating and cooling bills.	60.8%	60.5%	61.7%	60.0%
7c. Bristol windows come with free installation	20.1%	19.3%	21.7%	19.1%
7d. Bristol windows are burglar proof	9.9%	8.8%	7.8%	13.0%
Average of the two control statements (7c and 7d)	15.0%	14.1%	14.8%	16.1%
Responses to Q7b after subtracting the average of responses to Q7c and Q7d	45.8%	46.4%	46.9%	43.9%

These results can be summarized as follows:

- (1) About three-fifths of all respondents (60.8%) said “yes” to Q7b; i.e., indicated that they believed the Bristol company has done tests to support their savings claim. There were

virtually no differences among the three groups on this measure (range: 60.0% to 61.7%).

- (2) To control for “yea” saying, the responses to Q7b were adjusted by subtracting the average response for the two control questions (Q7c and Q7d). These adjusted responses indicate that after controlling for “yea” saying, over two-fifths of all respondents (45.8%) believed the Bristol company had done tests to support their savings claim. There were virtually no differences among the three groups on this adjusted measure (range: 43.9% to 46.9%).

Conclusion

The study results support the following conclusions in relation to the eight research questions that were presented earlier:

Ad Communication

- (1) In two open-ended questions (Q2 – the opening question and Q4a – a more focused follow-up question), between 36% and 45.6% of all respondents exposed to the “up to” version of the ad said that the ad stated or implied savings of 47% on heating and cooling bills without mentioning the “up to” qualifier. (See Tables 1 and 4).
- (2) Almost half (48.2%) of respondents exposed to the “up to” version of the ad indicated that half or more of Bristol Windows users could expect to save about 47% on their heating and cooling bills based on what the ad said or suggested. (See Table 5).
- (3) Similar results as outlined in (1) and (2) were obtained for the group of respondents who were exposed to a “non-up to” version of the same ad. Furthermore, statistical comparisons failed to reject the null hypotheses that results were the same for the two groups on key responses to Q2, Q4a, and Q4b. (See Tables 1, 4, and 5 and associated discussion). In other words, these data do not support the hypothesis that the inclusion of

an “up to” qualifier would weaken the ad effects outlined in (1) and (2).

- (4) Similar results as outlined in (1) and (2) were obtained for the group of respondents who were exposed to a “disclosure” version of the same ad. Furthermore, statistical comparisons between the groups failed to reject the null hypotheses that results were the same for the two groups on key responses to Q2, Q4a, and Q4b. (See Tables 1, 4, and 5 and associated discussion). In other words, these data do not support the hypothesis that the ad effects outlined in (1) and (2) would be weakened by the inclusion of a disclosure indicating that the average Bristol Windows owner saves considerably less than the 47% savings mentioned in the ad.⁴

When considered together, the results summarized in (1), (2), (3) and (4) above indicate that a significant proportion of people in all of the ad treatment conditions saw the ad as communicating that Bristol Windows users would typically realize savings of about 47% on their heating and cooling bills.

Beliefs/Opinions

- (5) Over two-fifths (43%) of respondents exposed to the “up to” version of the ad indicated that in their personal opinion, half or more of Bristol Windows users could expect to save about 47% on their heating and cooling bills. (See Q5 and Table 6). Also, in response to a subsequent open-ended question (Q6/Q6a), about two-fifths (40.4%) of respondents

⁴Respondents in the “disclosure” group were asked at the end of the questioning whether the Bristol Windows ad contained a disclosure or statement in a box at the bottom of the ad. Respondents replying “yes” were then asked what the disclosure or statement said. 26.1% (30/115) both remembered seeing the disclosure and recalled that it mentioned savings of 25%. In response to Q4b, 43% of these respondents stated that half or more of Bristol Windows users could expect to save about 47% on their heating and cooling bills based on what the ad said or suggested. The corresponding percentage among respondents who could not remember seeing the disclosure or could not recall it accurately was 47%. The difference in percentages between these two groups is not statistically significant at $p < .05$. Thus, there is no evidence that the disclosure had an impact on responses in the top four categories (half/most/almost all/all) to Q4b even among those respondents who definitely noticed and remembered the gist of the disclosure. A similar result was obtained for responses in the top three categories (most/almost all/all, 30% vs. 39%) for Q4b. However, a smaller proportion of respondents who recalled the disclosure gave responses in the top two categories (almost all/all) compared to respondents who could not recall it (7% vs. 27%, $p < .05$ two-tailed) suggesting that the disclosure influenced responses on this measure.

exposed to the “up to” version of the ad indicated that in their personal opinion users of Bristol Windows would save 45%-50% on average on their heating and cooling bills.

- (6) Similar results as outlined in (5) were obtained for the group of respondents who were exposed to a “non-up to” version of the same ad (43% vs. 45.2% for Q5, 40.4% vs. 39.1% for Q6/Q6a -- Tables 6 and 7). Furthermore, statistical comparisons failed to reject the null hypotheses that results were the same for the two groups. In other words, these data do not support the hypothesis that the inclusion of an “up to” qualifier would weaken the ad effects on beliefs outlined in (5).
- (7) For Q5, similar results as outlined in (5) were obtained for the group of respondents who were exposed to a “disclosure” version of the same ad (43% vs. 42.6% – see Tables 6).⁵ In contrast, for Q6/Q6a, significantly fewer respondents exposed to the “disclosure” version versus those exposed to the “up to” version of the ad indicated that in their personal opinion users of Bristol Windows would save 45%-50% on average on their heating and cooling bills (26.1% versus 40.4%, $p < .05$ two-tailed). Note, however, that mean values for reported savings in response to Q6/Q6a were virtually identical across the three ad versions (range 36.2% - 38.2%).

When considered together, the results summarized in (5), (6), and (7) above indicate that a significant proportion of people in all of the ad treatment conditions, and particularly those exposed to the “up to” and “non up to” versions of the ad, believed that Bristol Windows users would typically realize savings of about 47% on their heating and cooling bills.

⁵As noted in the discussion following Table 6, ad effects on beliefs were not significantly weakened by the inclusion of a disclosure when focusing on the all/almost all/most/about half response categories (combined) or the all/almost all/most categories (combined), but were significantly weakened when looking at the all/almost all categories (combined).

(8) After controlling for “yea” saying, over two-fifths of all respondents (45.8%) believed that the Bristol Company had done tests to support their savings claim.

APPENDIX A
STUDY ADVERTISEMENTS

Version 1: Save Up To 47%

LIMITED TIME SAVINGS ON ALL BRISTOL WINDOWS

BUY 2
GET 1
FREE



Bristol
THE LIMITED TIME SAVINGS EVENT

PROVEN TO SAVE UP TO 47%
ON YOUR HEATING AND
COOLING BILLS!

Version 2: Save 47%

LIMITED TIME SAVINGS ON ALL BRISTOL WINDOWS

BUY 2
GET 1
FREE



PROVEN TO SAVE 47% ON
YOUR HEATING AND
COOLING BILLS!

Version 3: Save Up To 47% (average owner saves 25%)

LIMITED TIME SAVINGS ON ALL BRISTOL WINDOWS

BUY 2
GET 1
FREE



PROVEN TO SAVE UP TO 47%*
ON YOUR HEATING AND
COOLING BILLS!

*The average Bristol Windows owner saves about 25% on heating and cooling bills.

APPENDIX B
INTERVIEW PROTOCOL

Synovate
 360 Park Avenue South
 New York, NY 10010

October 2010

Respondent I.D. # _____

42C6 “Window” Study
Mall Screener

RESPONDENT’S NAME: _____	
TELEPHONE NUMBER: _____	
INTERVIEWER: _____	DATE: _____
TIME STARTED: _____	TIME ENDED: _____ TOTAL TIME: _____ (MINS.)

<u>CITY</u>	
#1 – White Plains, NY	<input type="checkbox"/>
#2 – Chicago Ridge, IL	<input type="checkbox"/>
#3 – Independence, MO	<input type="checkbox"/>
#4 – Charlotte, NC	<input type="checkbox"/>
#5 – Muskogee, OK	<input type="checkbox"/>
#6 – Puyallup, WA	<input type="checkbox"/>

<u>Gender (QA)</u>	
Male	<input type="checkbox"/>
Female	<input type="checkbox"/>

<u>AGE (QB)</u>	
21-49	<input type="checkbox"/>
50 or over	<input type="checkbox"/>

<u>TALLY PACKAGE SHOWN TO RESPONDENT</u>	
Blue - A	<input type="checkbox"/>
Green - B	<input type="checkbox"/>
Yellow - C	<input type="checkbox"/>

SIGHT SCREEN FOR MALES AND FEMALES AGE 21 AND OLDER

Hello, I am _____ from _____. I assure you we are not selling anything. All we want are your honest opinions. Could you spare us a few minutes to answer some brief questions?

INITIAL REFUSALS
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

A. RECORD GENDER OF RESPONDENT

Male Female

Q.A OVER QUOTA MALE
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Q.A OVER QUOTA FEMALE
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

HAND RESPONDENT CARD S

B. What is your age? (“X” ONE RESPONSE.)

- A. Under 21..... → **TERMINATE AND “X” NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.**
- B. 21-49.....
- C. 50 or over.....
- Refused → **TERMINATE AND “X” NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.**

TAKE BACK CARD S

QB Age
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

C. Do you currently own: (ROTATE) **Yes** **No**

A desktop or laptop computer?

Your home or apartment?

A minivan?

IF “YES” TO “YOUR HOME OR APARTMENT”, CONTINUE. IF NOT, TERMINATE.

QC Ownership
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

D. Which of the following best describes your role in purchasing home improvement products or services for your home or apartment?

- I am the main decision maker 1
- I participate in the decisions 2
- I am not involved..... 3 → **TERMINATE**
- DON'T KNOW OR NOT SURE 9 → **TERMINATE**

QD Decision Role <input type="checkbox"/> 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20
--

E. Do you, or does anyone in your household work....

	YES	NO
In advertising or public relations?	<input type="checkbox"/>	<input type="checkbox"/>
In marketing research?	<input type="checkbox"/>	<input type="checkbox"/>
For a store in this mall?	<input type="checkbox"/>	<input type="checkbox"/>
For a store or company that makes or sells home improvement products or services?	<input type="checkbox"/>	<input type="checkbox"/>
<hr style="border: 1px solid red;"/>		
For a store or company that makes or markets automobiles?	<input type="checkbox"/>	<input type="checkbox"/>

IF YES TO ANY ITEM ABOVE THE LINE, TERMINATE AND "X" NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.

QE Security <input type="checkbox"/> 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20

F. Within the past 3 months, have you participated in any market research survey other than a political poll?

Yes..... No

IF YES, TERMINATE AND "X" NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.

QF Recent Participation <input type="checkbox"/> 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20

G. Do you usually wear glasses or contact lenses for reading or watching television?

Yes 1
No.....2→SKIP TO Q.F

H. Do you have your glasses or contact lenses with you today?

Yes 1
No.....2→ TERMINATE AND "X" NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.

QG/H Vision Correction
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

I. You will need to read some materials in English and respond to questions in English. Do you feel comfortable doing this?

Yes 1
No.....2→ TERMINATE AND "X" NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.

QI English
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

J. I'd like you to accompany me to the interviewing area where we will show you some advertising material and then ask you some questions about it. We will be giving you \$5 to thank you for participating. It will only take a few minutes and I think you will find it interesting.

Yes..... → ESCORT RESPONDENT TO FACILITY

No → TERMINATE AND "X" NEXT NUMBER IN BOX BELOW. ERASE AND RE-USE SCREENER.

TERMINATE Q.J QUALIFIED REFUSAL
01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20
21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40

+ID # _____

Windows Study Questionnaire

Now I'd like to ask you some questions. If you don't know the answer to any of my questions, please say so rather than guess.

1. What product was advertised?

++INTERVIEWER: DO NOT READ THE CODES TO RESPONDENTS++

[PROG Q1: SINGLE RESPONSE]

- 1) WINDOWS (CONTINUE)
- 2) BRISTOL (SKIP TO Q1c)
- 3) BRISTOL WINDOWS (SKIP TO Q2)
- 4) OTHER (SKIP TO Q1d)
- 9) DON'T KNOW/ NOT SURE (SKIP TO Q1d)

1a. What was the brand name of the product that was advertised?

++INTERVIEWER: DO NOT READ THE CODES TO RESPONDENTS++

[PROG Q1a: SINGLE RESPONSE]

- 1) BRISTOL (SKIP TO Q2)
- 2) OTHER (CONTINUE)
- 9) DON'T KNOW/ NOT SURE (CONTINUE)

1b. Was the name of the product:

**([PROG Q1b: SINGLE RESPONSE; RANDOMIZE ORDER FOR RESPONSE
OPTIONS 1, 2, AND 3])**

++INTERVIEWER: READ THE ANSWER CHOICES++

- 1) Bristol Windows (SKIP TO Q2)
- 2) Anderson Windows (TERMINATE and GO TO TEXT AFTER Q8a)
- 3) Johnson Windows (TERMINATE and GO TO TEXT AFTER Q8a)

- 9) DON'T KNOW/ NOT SURE (TERMINATE and GO TO TEXT AFTER Q8a)

1c. Was the name of the product:

**([PROG Q1c: SINGLE RESPONSE; RANDOMIZE ORDER FOR RESPONSE
OPTIONS 1, 2, AND 3])**

++INTERVIEWER: READ THE ANSWER CHOICES++

- 1) Bristol Windows **(SKIP TO Q2)**
- 2) Bristol Doors **(TERMINATE and GO TO TEXT AFTER Q8a)**
- 3) Bristol Blinds **(TERMINATE and GO TO TEXT AFTER Q8a)**

- 9) DON'T KNOW/ NOT SURE **(TERMINATE and GO TO TEXT AFTER Q8a)**

1d. Was the name of the product:

**([PROG Q1d: SINGLE RESPONSE; RANDOMIZE ORDER FOR RESPONSE
OPTIONS 1, 2, AND 3])**

++INTERVIEWER: READ THE ANSWER CHOICES++

- 1) Bristol Windows **(CONTINUE)**
- 2) Anderson Doors **(TERMINATE and GO TO TEXT AFTER Q8a)**
- 3) Johnson Blinds **(TERMINATE and GO TO TEXT AFTER Q8a)**

- 9) DON'T KNOW/ NOT SURE **(TERMINATE and GO TO TEXT AFTER Q8a)**

2. What did the ad say or suggest about Bristol Windows?

**(RECORD VERBATIM, THEN PROBE) Anything else?
(PROBE UNTIL UNPRODUCTIVE. RECORD VERBATIM).**

OPEN END

[PROG: INTRO SCREEN] I am going to ask you some questions that may or may not cover things that you already mentioned.

[INTERVIEWER: SHOW CARD A]

Please select one of the answers shown on this card.

3. Did or didn't the ad say or suggest that Bristol Windows will save you money on your heating and cooling bills?

- 1) YES, IT DID **(CONTINUE)**
- 2) NO, IT DID NOT **(TERMINATE and GO TO TEXT AFTER Q8a)**
- 9) DON'T KNOW OR NOT SURE **(TERMINATE and GO TO TEXT
AFTER Q8a)**

4. Did or didn't the ad say or suggest anything about how much you would save on your heating and cooling bills with Bristol Windows?

- 1) YES, IT DID (CONTINUE)
- 2) NO, IT DID NOT (SKIP TO Q6a)
- 9) DON'T KNOW OR NOT SURE (SKIP TO Q6a)

[INTERVIEWER: REMOVE CARD A

4a. What did the ad say or suggest about how much you would save on your heating and cooling bills with Bristol Windows?

++INTERVIEWER: DO NOT READ THE CODES TO RESPONDENTS++

++INTERVIEWER: Check all responses given by the respondent++

- 1) 25% / AVERAGE 25%
- 2) 47%
- 3) UP TO 47%
- 4) OTHER _____ (RECORD VERBATIM)
- 9) DON'T KNOW OR NOT SURE

[PROG: IF EITHER OPTION "2" OR OPTION "3" IS CHECKED, CONTINUE. IF NOT, SKIP TO Q6a.]

[INTERVIEWER: SHOW CARD B]

For the following question, please select one of the answers shown on this card.

4b. Based on what the ad said or suggested, how many users of Bristol Windows can expect to save about 47% on their heating and cooling bills? Is it none, very few, some, about half, most, almost all, all, or don't know or not sure?

- 1) NONE
- 2) VERY FEW
- 3) SOME
- 4) ABOUT HALF
- 5) MOST
- 6) ALMOST ALL
- 7) ALL
- 9) DON'T KNOW/ NOT SURE

5. So far, I have asked you some questions about what the ad said or suggested.

Now I'd like to ask you some questions concerning your personal opinion about Bristol Windows.

[INTERVIEWER: MAKE SURE YOU ARE STILL SHOWING CARD B]

For the following question, please select one of the answers shown on this card.

In your personal opinion, how many users of Bristol Windows do you think would save about 47% on their heating and cooling bills? Would you say none, very few, some, about half, most, almost all, all, or don't know or not sure?

- 1) NONE
- 2) VERY FEW
- 3) SOME
- 4) ABOUT HALF
- 5) MOST
- 6) ALMOST ALL
- 7) ALL

- 9) DON'T KNOW/ NOT SURE

[INTERVIEWER: REMOVE CARD B]

6. In your personal opinion, how much savings, on average, do you think users of Bristol Windows would see on their heating and cooling bills? Please give me your best estimate. **(RECORD VERBATIM)**

(IF RESPONDENT DOES NOT GIVE A PERCENTAGE SUCH AS 30% OR 50%, SAY: Please give me a percentage that represents your best estimate of the savings.

IF RESPONDENT GIVES MORE THAN ONE NUMBER, SAY: Please give me a single percentage that represents your best estimate of the savings).

_____ %

- 9) DON'T KNOW OR NOT SURE

(SKIP TO Q7)

[PROG: ASK Q6a IF Q4a IS NOT 47% or "Up to 47%".]

- 6a. So far, I have asked you some questions about what the ad said or suggested. Now I'd like to ask you a question concerning your personal opinion about Bristol Windows.

In your personal opinion, how much savings, on average, do you think users of

Bristol Windows would see on their heating and cooling bills? Please give me your best estimate. **(RECORD VERBATIM)**

(IF RESPONDENT DOES NOT GIVE A PERCENTAGE SUCH AS 30% OR 50%, SAY: Please give me a percentage that represents your best estimate of the savings.

IF RESPONDENT GIVES MORE THAN ONE NUMBER, SAY: Please give me a single percentage that represents your best estimate of the savings).

_____ %

9) DON'T KNOW OR NOT SURE

7. Now I'm going to read you some statements about Bristol Windows. All, some, or none of the statements may be true.

[INTERVIEWER: SHOW CARD C]

After I read each statement, please tell me if you believe it is true, or you do not believe it is true, or you don't know or are not sure.

[PROG: RANDOMIZE ORDER OF 7a – 7d]

- a. The "Buy 2 Get 1 Free" offer for Bristol Windows is only valid for a limited time.

- 1) YES, I BELIEVE THAT STATEMENT IS TRUE
- 2) NO, I DO NOT BELIEVE THAT STATEMENT IS TRUE
- 9) DON'T KNOW OR NOT SURE

- b. The Bristol company has done tests to support their claim that you will save on your heating and cooling bills.

- 1) YES, I BELIEVE THAT STATEMENT IS TRUE
- 2) NO, I DO NOT BELIEVE THAT STATEMENT IS TRUE
- 9) DON'T KNOW OR NOT SURE

- c. Bristol Windows come with free installation.

- 1) YES, I BELIEVE THAT STATEMENT IS TRUE
- 2) NO, I DO NOT BELIEVE THAT STATEMENT IS TRUE
- 9) DON'T KNOW OR NOT SURE

- d. Bristol Windows are burglar proof.

- 1) YES, I BELIEVE THAT STATEMENT IS TRUE
- 2) NO, I DO NOT BELIEVE THAT STATEMENT IS TRUE

9) DON'T KNOW OR NOT SURE

INTERVIEWER: REMOVE CARD C

INTERVIEWER: SHOW CARD A

For the following question, please select one of the answers shown on this card.

8. Did or didn't the Bristol Windows ad contain a disclosure or statement in a box at the bottom of the ad?

1) YES, IT DID **(CONTINUE)**
2) NO, IT DID NOT **(TERMINATE and GO TO TEXT AFTER Q8a)**

9) DON'T KNOW OR NOT SURE **(TERMINATE and GO TO TEXT AFTER Q8a)**

8a. What did the disclosure or statement say?

(RECORD VERBATIM)

EXHIBIT 3

LAW OFFICES OF
RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

September 22, 2017

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

UNITED INDUSTRIES CORPORATION

c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

UNITED INDUSTRIES CORPORATION

1 Rider Trail Plaza Drive Suite 300
Earth City, Missouri 63045

RE: Notification and Demand Concerning Spectracide® Concentrate Products

To Whom It May Concern:

Please be advised that The Law Offices of Ronald A. Marron represents Gregory Arthur, a purchaser of Spectracide® Concentrate Products. All further communications intended for our client must be directed through this office. This letter serves as notice and demand for corrective action on behalf of our client, and all other similarly situated, arising from Your: (i) breaches of express and implied warranties (including under the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301, et seq.); the consumer protection laws of the various states, including the California Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.), and all laws requiring pre-suit demand and notice.

United Industries Corporation (“You” or “UIC”) has participated in the manufacturing, marketing, advertising and/or sale of Spectracide® Weed and Grass Killer Concentrate Products, including (1) 16-fluid ounce Spectracide® Concentrate (2) 32-fluid ounce Spectracide® Concentrate, and (3) 64-fluid ounce Spectracide® Concentrate (collectively the “Spectracide® Concentrate Products”).

You represent and warrant that the Spectracide® Concentrate Products “makes up to” a specified amount of gallons of the products when mixed with water. However, the Spectracide® Concentrate only make a fraction of the advertised amount of products when used for “general weed control” as set forth in the table below:

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Product	“Makes up to” gallon claim	Back label instruction “for general weed control” (Amount to mix with 1 gallon of water)	Amount made following instructions
Spectracide® Concentrate 16- fluid ounce	“Makes up to 5 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	3.3 Gallons
Spectracide® Concentrate 32- fluid ounce	“Makes up to 10 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	6.6 Gallons
Spectracide® Concentrate 64- fluid ounce	“Makes up to 20 Gallons”	“5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”	13.2 Gallons

You fail to disclose that the advertised “makes up to” amount can only be achieved by following the mixing instruction for “newly emerged weeds.” However, reasonable consumers like Mr. Arthur and the proposed class members would expect that the advertised “makes up to” amount would be for the product’s intended purpose, which is “general weed control.”

A reasonable purchaser – for example, an ordinary homeowner interested in removing weeds along a fence, on a driveway, or around trees or flower beds – does not have the professional understanding of what constitutes a “newly emerged weed,” and does not have the technical expertise to discern when it would be appropriate to use less concentrate per this instruction. To the contrary, a reasonable consumer would instead rely on UIC’s representation that “for general weed control” “5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”

Reasonable consumers read and understand “up to” representations – like the “Makes Up to” a specific number of “Gallons” representations on the UIC Concentrates – as providing, under normal and reasonable conditions for use, the maximum results promised. Indeed, the U.S. Federal Trade Commission has explicitly determined this to be the case, stating that its “view” is “that advertisers

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using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances.”

As demonstrated by the pamphlet itself, including its cover, use of the product only on “newly emerged weeds” is not normal use. Rather, normal use is as represented on the pamphlet’s cover, and of course on the front of the bottle: as a “WEED AND GRASS KILLER,” that “Kills The Root!” and is to be used “on patios, walkways, and flowerbeds.” Moreover, the front label of the Spectracide® Concentrate products claim to kill “chickweed,” “plantain,” “annual blue grass,” “dandelion,” and “clover.”

Mr. Gregory Arthur purchased Spectracide® Concentrate products on multiple occasions, from Wal-Mart, Home Depot, and/or Lowes stores located near his home in the San Fernando Valley, California during the last four years. In purchasing Spectracide® Concentrate products, Mr. Arthur relied on the prominent labeling claim near the top of the front of the bottle stating that the product “makes up to” a specified amount of gallons of the product which he took to mean would, in fact, make up to the advertised amount of gallons when used as directed for general weed control.

Breach of Warranties and Violations of the Consumers Legal Remedies Act

This letter serves to notify you that the Spectracide® Concentrate Products’ packaging claims as contained in quotes herein created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and state law. Those warranties formed part of the benefit of the bargain and when the Products were not as warranted by YOU, our client suffered economic loss.

Please also be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices are in violation of the Consumers Legal Remedies Act (“CLRA”) and include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(10): Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

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September 22, 2017

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA and other consumer protection statutes, which will be requested in the class action complaint on behalf of our client, and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. *See, e.g., Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR Spectracide® products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron

RONALD A. MARRON

Attorney for Gregory Arthur and the Proposed Class

7015 0640 0003 7912 1774

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee		\$	4
Extra Services & Fees (check box, add fee as appropriate)			
<input type="checkbox"/>	Return Receipt (hardcopy)	\$	
<input type="checkbox"/>	Return Receipt (electronic)	\$	
<input type="checkbox"/>	Certified Mail Restricted Delivery	\$	
<input type="checkbox"/>	Adult Signature Required	\$	
<input type="checkbox"/>	Adult Signature Restricted Delivery	\$	
Postage		\$	
Total Postage and Fees		\$	
Sent To UNITED INDUSTRIES CORPORATION			
Street and Apt. No., or PO Box No. 251 LITTLE FALLS DRIVE			
City, State, ZIP+4® WILMINGTON, DE 19808			



7015 0640 0003 7912 1767

U.S. Postal Service™
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Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

Postmark Here
SENT 9/22

Sent To **UNITED INDUSTRIES CORPORATION**
 Street and Apt. No. or PO Box No. **1 RIDER TRAIL PLAZA DRIVE, STE. 300**
 City, State, ZIP+4® **EARTH CITY, MISSOURI 63045**

COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

Complete items 1, 2, and 3.

Print your name and address on the reverse so that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

UNITED INDUSTRIES CORPORATION

1 Rider Trail Plaza Drive Suite 300
Earth City, Missouri 63045



9590 9402 2377 6249 0929 82

2. Article Number (Transfer from service label)

7015 0640 0003 7912 1767

A. Signature

Jim Hicks

Agent
 Addressee

B. Received by (Printed Name)

JIM HICKS

C. Date of Delivery

9/25/17

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Restricted Delivery

COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

Items 1, 2, and 3.

Your name and address on the reverse that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature

X Sheila Wilks Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? Yes No
If YES, enter delivery address below:

1. Article Addressed to:

UNITED INDUSTRIES CORPORATION
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808



9590 9402 2377 6249 0929 75

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

2. Article Number (Transfer from service label)

7015 0640 0003 7912 1774

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt