



VIA FEDERAL EXPRESS

November 14, 2011

Donald S. Clark
Secretary, Federal Trade Commission
600 Pennsylvania Ave., NW
Room 172
Washington, DC 20580

Dear Secretary Clark,

This letter serves as a formal request to the Federal Trade Commission to initiate enforcement action against Newegg Inc. and BJ's Wholesale Club, Inc., for ongoing violations of the Commission's Appliance Labeling Rule ("the Rule"). 16 C.F.R. Part 305. These violations are described in greater detail below, and catalogued and recorded in the files on the attached compact disc.

The availability of energy efficiency information is a central feature of the Energy Policy and Conservation Act. *See, e.g.*, 42 U.S.C. § 6201(5) (declaring statutory goal of "providing for improved energy efficiency of ... major appliances, and certain other consumer products"); 42 U.S.C. § 6294 (directing FTC to issue labeling rules that enable and encourage consumers to comparison shop for energy-efficient appliances); *see also* 44 Fed. Reg. 66,466 (Nov. 19, 1979). The statute specifically mandates that rules require that energy efficiency information be "displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions." 42 U.S.C. § 6294(c)(3). As more and more consumers shop or browse for products online,¹ it is increasingly important that FTC ensure that online retailers provide the required information.

Earthjustice submits this citizen complaint on behalf of Public Citizen, a national nonprofit consumer advocacy organization. Among other efforts, Public Citizen works to strengthen laws designed to promote energy efficiency and seeks to ensure that consumers are provided with product information required by law so they can make informed choices in the marketplace. The organization believes that full compliance with FTC's labeling rules will save energy and reduce pollution by encouraging the purchase of energy-efficient products, and has been active in seeking to improve compliance among online retailers.

In pursuit of this goal, Earthjustice has contacted fifteen online retailers to call their attention to violations of the Rule and request that they fix the violations within 60 days. These retailers

¹ *See* U.S. Census Bureau, 2009 Annual Retail Trade Survey, "Table 5. U.S. Retail Trade Sales - Total and E-commerce: 2009 and 2008," available at <http://www.census.gov/econ/estats/2009/table5.pdf>, last visited November 14, 2011; U.S. Census Bureau, Quarterly Retail E-Commerce Sales 2nd Quarter 2011, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf, last visited November 14, 2011.

have responded by correcting nearly 2,000 noncompliant listings. As described below, Earthjustice contacted Newegg and BJ's in August of this year. Neither company responded to these letters, and neither brought their website into compliance with the Rule. More detail about each company's violations is provided below.

Newegg

Since at least August 16, 2011, Newegg has been offering for sale appliances covered by the Rule on its website, Newegg.com, without displaying the energy efficiency information required for those products. *See* 16 C.F.R. § 305.20.

In a certified letter postmarked August 19, 2011, and received by Newegg three days later, Earthjustice notified Newegg of 74 noncompliant listings on its site. That letter also requested that the company respond by assuring or demonstrating its compliance with the Rule by October 18. Newegg failed to respond to that letter.

While Newegg has corrected a handful of those listings and deactivated others for products that have gone out of stock, the company has also added listings that fail to comply with the Rule. At the time of this writing, Newegg.com displays at least 67 product listings that fail to include any operating cost information whatsoever. These listings include 34 for refrigerators, 13 for freezers, 7 for dishwashers, 4 for room air conditioners, 3 for clothes washers, and 1 for a television.² In addition, 9 other listings for televisions bury the Energy Guide label toward the bottom of a long page of text or behind a link labeled "Take a Product Tour" and a tab labeled "Documents," in violation of the Rule's requirement that labels for televisions be displayed "clearly and conspicuously, and in close proximity to the television's price." 16 C.F.R. § 320(g)(2).

The enclosed compact disc includes a copy of the original letter Earthjustice sent to Newegg, an Excel file documenting Newegg's violations, and PDF copies of the offending webpages.³ These files exclude noncompliant listings for products that are listed as being sold by third parties.

BJ's

Similar to Newegg, BJ's has been listing appliances for sale on its website, BJs.com, in violation of the Rule since at least August 23, 2011.

² The Rule covers television models that were manufactured on or after the effective date of May 11. Energy Guide labels are available on manufacturer websites or from other retailers for the 14 TV models referenced above and for the 20 models listed among BJ's violations below, indicating that these are post-May 11 models.

³ PDF copies of pages on Newegg.com were created between October 20, 2011 and October 24, 2011, using a combination of Internet Explorer 8 and the screen capture program Snagit. They include screen captures of the main landing page for each product, and where applicable, the "Details" tab on that page and the "Take a Product Tour" link. These pages have not been edited other than to combine the multiple captures of the same product listing into a single PDF.

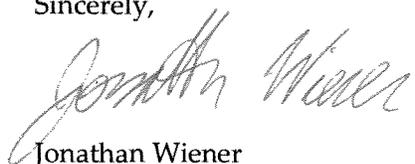
In a certified letter postmarked August 29, 2011, and received by BJ's on September 12, 2011, Earthjustice notified BJ's of 33 such violations on its site. That letter also requested that the company respond by assuring or demonstrating its compliance with the Rule by October 28.

Like Newegg, BJ's failed to respond to that letter. BJ's has also failed to correct a single one of those noncompliant listings, though some have since been deactivated because the products listed are out of stock. At the time of this writing, BJs.com displays at least 25 product listings that fail to provide any operating cost information whatsoever. These include 20 listings for televisions, 4 listings for refrigerator-freezers and 1 listing for a freezer.

The enclosed compact disc includes a copy of the original letter Earthjustice sent to BJ's, an Excel file documenting BJ's violations, and PDF copies of the offending webpages.⁴

For both companies, the attached files demonstrate continued violations of the Rule. As each company has already received detailed warnings about these violations and ample time to correct them, Earthjustice calls upon FTC to promptly initiate enforcement actions. If FTC has any questions about this letter or the information on the enclosed CD, or wishes to meet to discuss this matter, please contact Jonathan Wiener at the number provided below.

Sincerely,



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⁴ PDF copies of pages on BJs.com were created on November 10, 2011, using a combination of Internet Explorer 8, the screen capture function on the Windows XP Professional operating system ("Alt+PrtScrn"), and Microsoft Paint. These pages include screen captures of the main landing page for each listing, as well as all information within the scrolling window under the "Description" tab on each such page. Where applicable, they also include screen captures of the "Specifications" tab for each listing, and all information within the scrolling window under that tab. These pages have not been edited other than to combine the multiple captures of the same product listing into a single PDF.