EXHIBIT B

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STEVES' REVISED PROPOSED JURY INSTRUCTIONS

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I. PRETRIAL INSTRUCTIONS

There are no disputed pretrial instructions. The only proposed pretrial instruction the parties are submitting is an agreed instruction.

II. GENERAL INSTRUCTIONS AT END OF TRIAL

Ins. No. 14 – Credibility of Witnesses – Inconsistent Statement

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements of a witness not a party to the action are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

Where, however, the witness is a party to the case, and by such statement, or other conduct, admits some fact or facts, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact or facts so admitted by such party, as well as for the purpose of judging the credibility of the party as a witness.

Ins. No. 18 – Number of Witnesses

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.[1]

[1] 3A *Fed. Jury Prac. & Instr.,* § 104.54 (5th Ed. 2001)(modified).

III. OVERVIEW OF CLAIMS

Ins. No. 20 – List of Claims

You must resolve the following claims that Steves and Sons brings in this lawsuit:

- Count 1: Violation of Section 7 of the Clayton Act;
- Count 2: Breach of Contract;
- Count 3: Breach of Warranty;

Ins. No. 21 – Burden of Proof

Steves and Sons has the burden of proof in this case by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proved that point by a preponderance of the evidence, and you must find against the party on that point.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless I tell you otherwise, consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them.[2]

[2] Del. P.J.I. Civ. § 4.1 (2000) (citing *Reynolds v. Reynolds*, Del. Supr., 237 A.2d 708, 711 (1967)(defining preponderance of the evidence); *McCartney v. Peoples Ry. Co.*, Del. Super., 78 A. 771, 772 (1911)(same); *Oberly v. Howard Hughes Medical Inst.*, Del. Ch., 472 A.2d 366, 390 (1984)(same). *See also* 3 Devitt & Blackmar, Federal Jury Practice and Instructions, §72.01 (4th ed. 1987)).

IV. CLAYTON ACT CLAIM – COUNT 1

Ins. No. 22 – Section 7 of the Clayton Act

In Count 1, Plaintiff Steves & Sons alleges that Defendant JELD-WEN's acquisition of CMI violated Section 7 of the Clayton Act. Section 7 is directed toward the preservation of competition. It prohibits one company from acquiring or merging with a second company if that merger or acquisition is likely to substantially lessen competition or tend to create a monopoly.

In order to establish that the CMI acquisition violated Section 7, Steves must show that the effect of the acquisition either (1) likely has been, or (2) may be in the future, to substantially lessen competition or tend to create a monopoly in a relevant market.

These concepts are defined in the next few instructions. [3]

[3] 15 U.S.C. § 18; Horizontal Merger Guidelines § 1; *Brown Shoe Co. v. United States*, 370 U.S. 294, 313-15 (1962); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 363 (1963); *California v. American Stores Co.*, 495 U.S. 271, 286-87 (1990); *ProMedica Health Sys., Inc. v. FTC*, 749 F.3d 559, 571 (6th Cir. 2014); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713 (D.C. Cir. 2001).

Ins. No. 23 – Relevant Market

A relevant market has two parts. The first is called a "product market." A product market refers to products that are reasonable substitutes or are reasonably interchangeable with each other from the buyer's point of view.

The second part of a relevant market is called a "geographic market." A geographic market is the area in which JELD-WEN faces competition from other companies that compete in the relevant product market and to which customers like Steves can reasonably turn for purchases.

Steves contends that the relevant market in this case is interior molded doorskins used in the United States. JELD-WEN contends that Steves has not proven that interior molded doorskins used in the United States is the relevant market.[4]

[4] 15 U.S.C. § 18; Horizontal Merger Guidelines § 4; ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 106-113 (simplified instruction).

Ins. No. 24 – Lessening of Competition or Tendency to Create a Monopoly

Section 7 prohibits mergers that have already substantially lessened competition or tended to create a monopoly at the time of the lawsuit, but it also prohibits mergers that are likely to do so in the future. In order to prevail on its Clayton Act Section 7 claim, Steves must establish ***either*** (1) that JELD-WEN's acquisition of CMI has already substantially lessened competition or tended to create a monopoly in the relevant market, ***or*** (2) that it is likely to do so in the future. Steves need not establish both of these things, although it may do so.

An important indicator of whether the acquisition has substantially lessened competition or tended to create a monopoly, or is likely to do so in the future, is market concentration. "Market concentration" refers to how many companies compete in the relevant market and what their market shares are. An acquisition of a competitor in a market with few competitors who have significant market shares is more likely to substantially lessen competition or tend to create a monopoly than an acquisition of a competitor in a market with many competitors who have small market shares.

Other factors you may consider in determining whether the CMI acquisition violated Section 7 include the following:

- Whether the CMI acquisition has caused an increase in prices paid by companies that buy products in the relevant market, or is likely to do so in the future.
- Whether the CMI acquisition has caused a reduction in product quality in the relevant market, or is likely to do so in the future.
- Whether the CMI acquisition has led to an increase in coordinated activity between the companies remaining in the relevant market (here, JELD-WEN and Masonite)

that harms companies that buy products in the relevant market, or is likely to do so in the future.

- Whether the CMI acquisition has led to extraordinary efficiencies that benefit customers (for example, in the form of lower prices, increased quality, or enhanced service), and which are verifiable rather than speculative, could not have been achieved without the acquisition, and counteract the potential of the acquisition to harm customers in the relevant market.
- Whether new suppliers will be able to timely and easily enter the relevant market in a way that would be likely to prevent future harm to competition that might otherwise result from the CMI acquisition. This factor is not relevant to your determination of whether the CMI acquisition has *already* substantially lessened competition or tended to create a monopoly; rather, it is relevant only to your determination of whether the acquisition is likely to do so in the future.[5]

[5] 15 U.S.C. § 18; Horizontal Merger Guidelines §§ 2, 9; *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 363 (1963); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001); *FTC v. Univ. Health Inc.*, 938 F.2d 1206, 1281 (11th Cir. 1991); *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327 (3d Cir. 2016); *St. Alphonsus Med. Ctr.–Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 783 (9th Cir. 2015); *United States v. Anthem, Inc.*, 855 F.3d 345, 364 (D.C. Cir. 2017); *FTC v. Swedish Match*, 131 F. Supp. 2d 151, 170-71 (D.D.C. 2000); *FTC. v. Cardinal Health*, 12 F. Supp. 2d 34, 56 (D.D.C 1998).

Ins. No. 25 – Injury and Causation

If you find that JELD-WEN's acquisition of CMI violated Section 7 of the Clayton Act, you must next determine whether Steves is entitled to recover monetary damages from JELD-WEN. In order to recover damages on its Section 7 claim, Steves must show that it has suffered injury to its business or property caused by the negative effects on competition resulting from the CMI acquisition.[6]

[6] ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 300-02 (simplified instruction).

Ins. No. 26 – Damages

If you find that the CMI acquisition violated Section 7 and that this violation caused injury to Steves, then you must determine the amount of damages, if any, Steves is entitled to recover. If you find that the CMI acquisition did not violate Section 7, or that the acquisition did not injure Steves, you should not consider the issue of damages.

Steves is entitled to be fairly compensated for all damages to its business or property that were a direct result or likely consequence of the conduct that you have found to be unlawful.

Antitrust damages are only compensatory, meaning their purpose is to put an injured plaintiff as near as possible in the position in which it would have been had the alleged antitrust violation not occurred. The law does not permit you to award damages to punish a wrongdoer—what we sometimes refer to as punitive damages—or to deter particular conduct in the future. Furthermore, you are not permitted to award Steves an amount for attorneys' fees or the costs of maintaining this lawsuit.[7]

[7] ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 304-05 (simplified instruction).

Ins. No. 27 – Calculation of Damages

You are permitted to make reasonable estimates in calculating damages. You are not required to calculate damages with mathematical certainty or precision. However, the amount of damages must be supported by evidence and be based on reasonable estimates, not guesswork or speculation.[8]

[8] ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 307-09 (simplified instruction).

Ins. No. 28 – Damages: Future Lost Profits

Steves also claims that it has been harmed because it would have earned additional profits in the future had it not been for JELD-WEN's alleged violation of Section 7. If you find that the CMI acquisition caused injury to Steves, you now must calculate the future profits, if any, that Steves has lost, or that Steves predictably will lose in the future, as a result.

To calculate future lost profits, you must make a reasonable estimate of (1) the amount of profits, if any, that Steves would have earned in future years, and (2) the length of time for which it would have earned those profits. In making this calculation, you are not required to calculate future lost profits with absolute mathematical certainty or precision, but you must not engage in guesswork or speculation.[9]

[9] ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 317-18 (simplified instruction).

Ins. No. 29 – Speculation About Other Forms Of Relief

Your role as the jury in resolving Steves' Clayton Act Section 7 claim is limited to (1) determining whether the CMI acquisition violated Section 7, and (2) determining what damages, if any, Steves is entitled to recover as a result of that violation. It is not your role as the jury to speculate about what other remedies or relief, if any, the court might order or might be appropriate if you find that the CMI acquisition violated Section 7. You should not consider the possibility of other remedies or relief, and any speculation regarding other remedies or relief should play no role in your deliberations.[10]

[10] *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 481 (1977); *Calnetics Corp. v. Volkswagen of Am., Inc.*, 532 F.2d 674, 680 (9th Cir. 1976); *Computer Assocs. Int'l, Inc. v. Am. Fundware, Inc.*, 831 F. Supp. 1516, 1530 (D. Colo. 1993); *Ciena Corp. v. Corvis Corp.*, 352 F. Supp. 2d 526, 529 (D. Del. 2005).

Ins. No. 30 – Timeliness of Lawsuit

The statute of limitations for Steves' claim under Section 7 of the Clayton Act is four years. That means, in order for its lawsuit to be timely, Steves had to file this suit within four years of the date of JELD-WEN's acquisition of CMI. Because the CMI acquisition closed on October 24, 2012, and Steves filed this lawsuit on June 29, 2016, I instruct you that Steves' lawsuit was filed within the four-year statute of limitations. For purposes of determining whether Steves' lawsuit is timely, it is irrelevant whether you believe Steves could or should have filed this lawsuit earlier than it did.[11]

[11] ABA Model Jury Instructions in Civil Antitrust Cases (2016), at 331; 15 U.S.C. § 15b; *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 137 S. Ct. 954, 961 (2017); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1977; *Z Techs. Corp. v. Lubrizol Corp.*, 753 F.3d 594, 604 (6th Cir. 2014); *Complete Ent'mt Resources LLC v. Live Nation Ent'mt, Inc.*, 2016 WL 3457177, at *1-2 (C.D. Cal. May 11, 2016).

V. BREACH OF CONTRACT AND WARRANTY – COUNTS 2 AND 3

Ins. No. 37 –Existence And Validity Of Supply Agreement

In this case, there is no dispute that the May 1, 2012 Doorskin Product Agreement executed between Steves and JELD-WEN is a valid contract. Accordingly, in this case, you will take it as a proven fact that the Supply Agreement between Steves and Sons and JELD-WEN imposes contractual obligations.

Ins. No. 39 – Express Warranty

Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

Steves and Sons has alleged that JELD-WEN made an express warranty in the Supply Agreement that its product was "of a quality satisfactory to Steves, meeting JELD-WEN's specifications, fit for the intended purpose, and subject to JELD-WEN's standard written warranty applicable to the Product."

Steves and Sons has further alleged that JELD-WEN supplied it with doorskins that did not meet this express warranty.[12] Whether JELD-WEN supplied doorskins to Steves that did not meet this express warranty is a question for you to decide.

[12] Del. P.J.I. Civ § 9.12 (2000); DEL. CODE ANN. tit. 6, " 2-313, 2A-210 (1999); *Bell Sports, Inc. v. Yarusso*, Del. Supr., 759 A.2d 582, 592 (2000); *Pack & Process, Inc. v. Celotex Corp.*, Del. Super., 503 A.2d 646, 658-69 (1985); *Southern States Coop. v. Townsend Grain & Feed Co.*, D. Del., 163 Bankr. 709 (1994).

Ins. No. 41 – Use Of Product After Defect Is Known To Plaintiff

Steves contends that JELD-WEN should reimburse it for the full price of doors that it manufactured and sold to its customers that were later returned because of defects in the doorskins. JELD-WEN contends that Steves should not be reimbursed if it manufactured such doors with knowledge that the doorskins were defective.

If a buyer of a product, after accepting it, discovers a defect that substantially impairs its value, the buyer may seek relief by promptly revoking acceptance of the goods and demanding either a refund of the purchase price or the prompt cure of the defect by replacement or repair. But if the buyer continues to use the product without giving the seller reasonable opportunity to cure the defect or refund the purchase price, then the buyer may not revoke acceptance of the product.

A buyer is permitted, however, to work with a seller in attempting to have the defect repaired but may still revoke acceptance within a reasonable time if there is not a satisfactory cure of the defect. You must determine if acceptance has been revoked within a reasonable time under the circumstances.

The value of a product is substantially impaired when a defect substantially interferes with the normal operation or enjoyment of a product or the normal purpose for which it was bought. Mere annoyance over minor defects that do not inhibit the normal, intended use of the product is not a substantial impairment. But the cumulative effect of minor defects, none of which by itself would substantially impair value, can be sufficient cause to justify revocation of acceptance.[13]

[13] Del. P.J.I. Civ. § 9.23 (2000). This instruction is adapted from JELD-WEN's proposed instruction 30, Dkt. No. 803 at 52, modified to reflect Steves' objection to that instruction, Dkt. No. 839 at 21 and the Court's instruction, Tr. of Jan. 22, 2018, at 3:14, to omit finding instructions.

Ins. No. 42 – Requirement Of Notification Of Breach

To recover for a breach of warranty, Steves must notify JELD-WEN of the breach within a reasonable time after it discovers or should have discovered the breach. A buyer notifies a seller by taking reasonable steps to inform the seller under ordinary circumstances, regardless of whether the seller actually comes to know of the alleged breach. No particular words or forms are required. Notice need not be written. Conversations, conferences, and correspondence that call JELD-WEN's attention to the defect in the product can constitute notice of JELD-WEN's breach. Moreover, while notice is generally required, if the evidence proves that JELD-WEN would have refused to cure a breach or compensate Steves for a breach even if Steves gave notice, then Steves would be excused from the requirement that it provide notice within a reasonable time.[14]

[14] Del. P.J.I. Civ. § 9.24 (2000). This instruction is adapted from JELD-WEN's proposed instruction 31, Dkt. No. 803 at 53, modified to reflect Steves' objection to that instruction, Dkt. No. 839 at 22. *See Reserves Dev. LLC v. R.T. Prop., LLC*, 2011 Del. Super. LEXIS 421, *23 (Del. Super. Sept. 21, 2011).

Ins. No. 43 – Damages – Breach of Contract Or Warranty – General

A party that is harmed by a breach of contract or warranty is entitled to damages in an amount calculated to compensate it for the harm caused by the breach. The compensation should place the injured party in the same position it would have been in if the contract or warranty had been performed.[15]

You should award Steves the full amount of damages necessary to compensate it for any breach of contract or warranty by JELD-WEN. As I instructed you above, it is not your job to ensure that Steves does not receive a double recovery for the same injury on its antitrust, contract, and warranty claims. It is my job to ensure this does not occur, based on the information you will provide me.

[15] Del. P.J.I. Civ § 22.24 (2000); *E.I. DuPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 446 (Del. 1996); *Pierce v. Int'l Insurance Co. of Illinois*, 671 A.2d 1361, 1367 (Del. 1996); *Oliver B. Cannon & Son, Inc. v. Dorr-Oliver, Inc.*, 394 A.2d 1160, 1163-64 (Del. 1978) (loss of profits); *American General Corp. v. Continental Airlines*, 622 A.2d 1, 11 (Del. Ch. 1992), *aff'd*, 620 A.2d 856 (Del. 1992); *Farny v. Bestfield Builders, Inc.*, 391 A.2d 212, 214 (Del. Super. Ct. 1978); *Gutheridge v. Pen-Mod, Inc.*, 239 A.2d 709, 714 (Del. Super Ct. 1967) (nominal damages); *J.J. White, Inc. v. Metropolitan Merchandise Mart*, 107 A.2d 892, 894 (Del. Super. Ct. 1954).

VI. FINAL INSTRUCTIONS

[SEE AGREED INSTRUCTIONS]