

Issue: Ownership of Product Numbers FL13534 and FL13535

Mr. Michael B. Stevens, Esq., requested an Emergency Motion for Injunctive Relief filed on behalf of Coastal Windows and Doors. This manufacturer claims to be the owner of the materials presented for approval for the above referenced applications. The Department has received information from Sabana Windows, Inc. indicating that they are the owners of the materials presented for approval for the above referenced applications. Therefore, there are “competing and conflicting” positions concerning ownership of the documentation presented for product approval.

Background:

(1) MahoganyVisions, LLC has submitted documentation from their legal counsel supporting their claim that they are the owners of the materials posted.

May 4, 2010 Letter – by Mr. Michael B. Stevens, Esq., representing “Mahogany Visions, LLC “Mahogany” requested an Emergency Motion for Injunctive Relief filed on behalf of Coastal Windows and Doors. This manufacturer claims to be the owner of the materials presented for approval for the above referenced applications.

- Litigation between Coastal Windows & Doors, Inc. “Coastal” and Sabana Windows, Corp “Sabana” regarding the purchase of high-end impact windows and doors for a job in Palm Beach, Florida: Coastal was the buyer and installer and Sabana was the distributor.
- Technical documentation for approval at the local level- Miami-Dade County Notice of Acceptance.
- Court entered Final Judgment against Sabana in the amount of \$120,000 and against Jimmy Abravaya “Sabana’s agent” in the amount of \$84,000.
- January 6, 2010 Miami-Dade Sheriff’s Office put up for auctions the rights to the Sabana NOAs and their attached and incorporated documents to the highest bidder. At the end, Mahogany won the auction with its \$10,000 bid.
- April 2010, “New” “Madena” company applied for two approvals “FL 13534 and FL 3535”.

(2) Sabana Windows, Inc. has submitted documentation from their legal counsel supporting their claim that they are the owners of the materials posted.

May 6, 2010 Letter – by Allison Friedman, P.A. representing Madena Nacional, S.A. a/k/a Sabana Windows, Inc. “Sabana Window, Inc.” and claiming ownership of the submitted materials.

- Sabana Windows, Inc. is a window and door manufacturer located in Honduras.
- Sabana Windows, Inc. entered into a distribution agreement with Sabana Windows Corp.
- No intellectual property, product or brand records..etc. are the property of Sabana Windows Corp.
- June 30, 2009, Coastal Windows & Doors, Inc. “Coastal” obtained a Final Judgment against Sabana Windows Corp. in Palm Beach County.
- NOAs were obtained by Sabana Windows, Inc.
- Sabana Windows, Inc. was never included as a defendant in the action and Coastal has no Judgment against Sabana Windows, Inc.

(3) March 01 – Madena submitted FL 13534 & 13535.

- Method of compliance – Evaluation report from a Florida Registered Engineer.
- Evaluation report: Manufacturer – Madena S.A.; Product Category/Subcategory: Window/Casement & Window/Fixed; Technical documentation: test reports used as the documentation for the NOAs stated above are also used as technical documentation for the evaluation reports submitted.
- Public comment: by Gascon – Confirm ownership of reference tests in evaluation belong to applicant.
- April 2010 – Commission meeting, both products were given conditional approval - Provide document in English that indicates the ownership of the test report by applicant.

(4) Rule 9B-72-090, F.A.C. states; Product Approval by the Commission.

(1) Approval of a product or system of construction for state acceptance shall be performed by the Commission through the following steps:

(a) A product manufacturer or owner of a proprietary system or method of construction, or its designee (applicant) shall apply to the Commission for approval by filing an application in accordance with subsection 9B-72.130(2), F.A.C., validated in accordance with Rule 9B-72.080, F.A.C., and submitting fees pursuant to subsection 9B-72.090(2), F.A.C. Application shall be made through the Building Codes Information System on the Internet, www.floridabuilding.org, and payment shall be by credit card or electronic check.

(b) The applicant submits all documentation required and fees in accordance with Rule 9B-72.070 and subsection 9B-72.090(2), F.A.C., respectively.

(c) Upon Commission acceptance of the required documentation pursuant to Rule 9B-72.070, F.A.C., and validation of compliance with the Code pursuant to Rule 9B-72.080, F.A.C., the Commission may approve the product for use statewide in accordance with its approval and limitations of use unless credible evidence is provided questioning the validity of the documentation submitted in support of the application for approval.

(d) Approval shall be valid until such time as the product changes decreasing the product’s performance, the standards or provisions of the Code affecting the product change, or the approval is otherwise suspended, revoked, or superseded by a Commission approved revision to the approval. Changes

to the Code shall not be construed as voiding the approval of products previously installed in existing buildings provided such products met building code requirements at the time the product was installed.

(e) When a new edition of the Code does not require a material or substantive change for an approved product, the manufacturer of the approved product shall affirm that his or her approved product meets the new edition of the Code. As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from an approved evaluation or validation entity that the product complies with the subsequent code version via an attachment uploaded and submitted through the BCIS. Self-affirmation is subject to review and verification by the Program Administrator.

(f) Manufacturer or the manufacturer's designee shall notify the Commission if it makes changes to the product which decrease the product's performance.

(g) Manufacturer shall notify the Commission when the quality assurance requirements of subsection 9B-72.070(3), F.A.C., are no longer in place.