

Complaint

IN THE MATTER OF

PPG ARCHITECTURAL FINISHES, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4385; File No. 112 3160
Complaint, March 5, 2013 – Decision, March 5, 2013

This consent order addresses allegations of deceptive business practices by PPG Architectural Finishes, Inc. (“PPG”). The complaint alleges that PPG misled consumers by claiming its Pure Performance interior paints are free of potentially harmful chemicals known as volatile organic compounds, or VOCs. The order prohibits PPG from claiming that its paints contain “zero” VOCs unless the representation is true and can be substantiated by competent and reliable scientific evidence. It also bars respondent from providing others with any advertising, labeling, or promotional materials for any product alleging to contain “zero” VOCs. Additionally, the order requires PPG to send a letter to its retailers, specifically directing such retailers to remove all *Pure Performance* ads containing “zero VOC” claims and to affix Commission-approved labels to existing *Pure Performance* paint cans. The order further requires PPG to keep copies of all advertisements and other materials relating to its “zero VOC” claims for the next five years and to make these materials available for inspection by the Commission.

Participants

For the *Commission*: Sandhya Brown and Zachary Hunter.

For the *Respondent*: John P. Feldman, Reed Smith LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that PPG Architectural Finishes, Inc. (“PPG” or “respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 1 PPG Place, Pittsburgh, PA 15272. Respondent is a subsidiary of PPG Industries, Inc., a Pennsylvania corporation with its principal office or place of business at the same address. Respondent does business under its own name as

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well as the names “PPG,” “Pittsburgh Paints,” “Porter Paints,” and “Olympic.”

2. Respondent manufactures, advertises, offers for sale, sells, and distributes paint products, including PPG Pure Performance paints. Respondent distributes these paint products to its own stores, independent distributors, and retailers.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Typically, a paint retailer will tint a base paint with colorant in order to produce the paint color desired by the customer. Retailers of Pure Performance paints typically provide customers with the option of tinting the base paint to a PPG-formulated color prior to purchase and at no additional charge.

5. Both base paints and colorants may contain volatile organic compounds (“VOCs”). Tinting can significantly increase the VOC level of a paint.

6. Respondent has disseminated or has caused the dissemination of promotional materials for its Pure Performance paints, including print advertisements, website advertisements, and point-of-sale materials to its own stores, independent distributors, and retailers. See, e.g., Exhibits A through E. Respondent, as well as its stores, independent distributors, and retailers, have disseminated or have caused the dissemination of these promotional materials to consumers.

7. In numerous instances, respondent has represented that Pure Performance paints contain “Zero VOCs,” including but not limited to the following statements or depictions:

A. PPG Printed Promotional Material:

**ENVIRONMENTALLY
PREFERRED PAINT**

- ZERO VOC

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- VERY LOW ODOR—PAINT
TODAY, OCCUPY TONIGHT
- DURABLE, WASHABLE,
BEAUTIFUL
- PAINT “GREEN”
IN ANY COLOR

Exhibit A.

B. PPG Printed Promotional Material:***pure performance*®****ENVIRONMENTALLY GENTLE**

.....

ZERO VOCs

Contains no volatile organic
compounds (VOC), eliminating
detrimental impact on air quality

.....

SUPERIOR PERFORMANCE**PAINT “GREEN” IN ANY COLOR**

Available in over 1,800 clean, vibrant colors
from the Voice of Color® design system

Exhibit B.

C. PPG’s Website:***pure
performance*®**

It’s a concept that few manufacturers have managed to pull off. We,
however, managed it beautifully. A paint that’s environmentally gentle
yet still offers superior performance. Pure Performance®, with zero
VOC and low odor, its exceptional quality transforms any interior
space.

.....

Description

Certified as a top quality paint by
the Master Painters® Institute
(MPI), Pure Performance® is safe

for all painting projects and
guarantees professional results
every time you use it.

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- Zero Volatile Organic Compounds (VOC)

Available Colors

Tints to all 1,890 colors in The Voice of Color® System. More info

THE VOICE OF COLOR®
PPG PITTSBURGH PAINTS

....

Exhibit C (www.ppgpittsburghpaints.com).

D. Script of 60-Second Radio Advertisement:

Did you know it's possible to paint your room today and occupy it tonight – with no unpleasant or lingering odors? It is possible when you choose Pure Performance by PPG. Pure Performance is THE environmentally preferred paint – with very low odor and ZERO VOCs. And it offers superior hiding, washability, and stain removal. With Pure Performance you don't have to sacrifice being "green" for premium quality... which is why so many hospitals, schools and healthcare facilities demand Pure Performance for their jobs. And Pure Performance is available in nearly 2000 colors in the Voice of Color palette, not just the handful of colors offered by some other environmental paints. For better products, better service, better color tools and better results, head to your PPG Pittsburgh Paints dealer today and ask for the environmentally preferred paint that doesn't sacrifice quality – ask for Pure Performance by PPG. Available at... 10- second tag (customizable by dealer).

Exhibit D (emphasis and ellipses in original).

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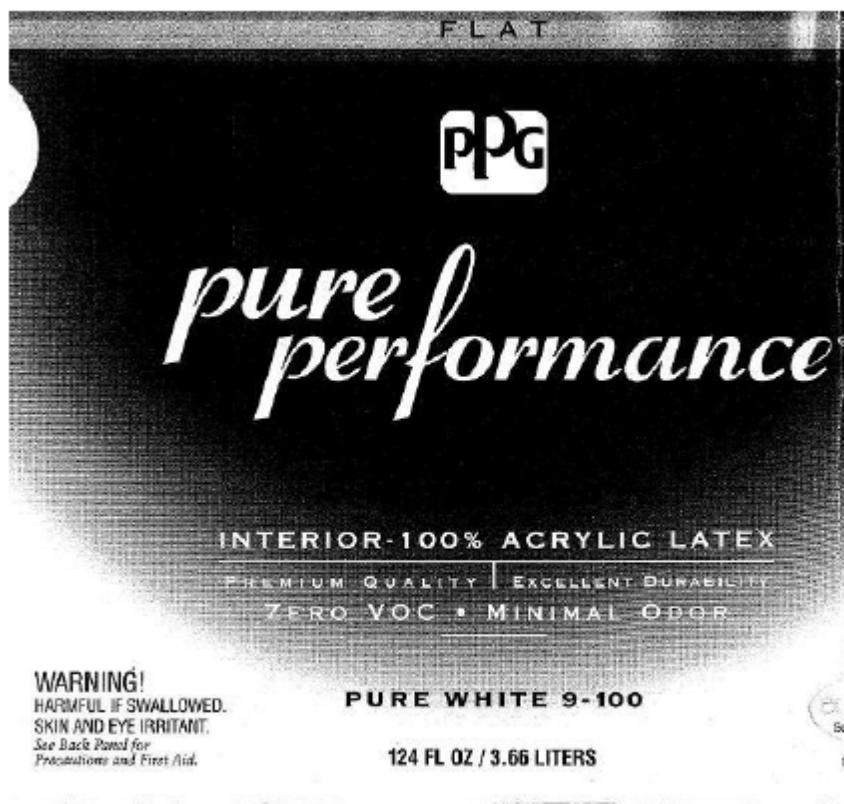
E. Pure Performance Paint Can Label:

Exhibit E.

8. Consumers likely interpret a representation that a paint contains “Zero VOCs” to mean that the quantitative measure of the VOC level is zero grams per liter, or that the VOC level is “trace” (or effectively zero) where: (a) VOCs have not been intentionally added to the paint; (b) the presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs; and (c) the presence of VOCs at that level does not result in concentrations higher than would be found at background levels in the ambient air.

9. In numerous instances, Pure Performance paints contain more than a trace level of VOCs after tinting.

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COUNT I (False or Misleading Representation)

10. Through the means described in Paragraphs 6 and 7, respondent has represented, expressly or by implication, that all Pure Performance paints, including paints with color added, contain zero VOCs.

11. In truth and in fact, in numerous instances, Pure Performance paints do not contain zero VOCs after color is added. Therefore, the representation set forth in Paragraph 10 is false or misleading.

COUNT II (Unsubstantiated Representation)

12. Through the means described in Paragraphs 6 and 7, in numerous instances, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 10, at the time the representation was made.

13. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 10, at the time the representation was made. Therefore, the representation set forth in Paragraph 12 is false or misleading.

COUNT III (Means and Instrumentalities)

14. Respondent has distributed the promotional materials described in Paragraphs 6 and 7 to independent distributors and retailers. In so doing, respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

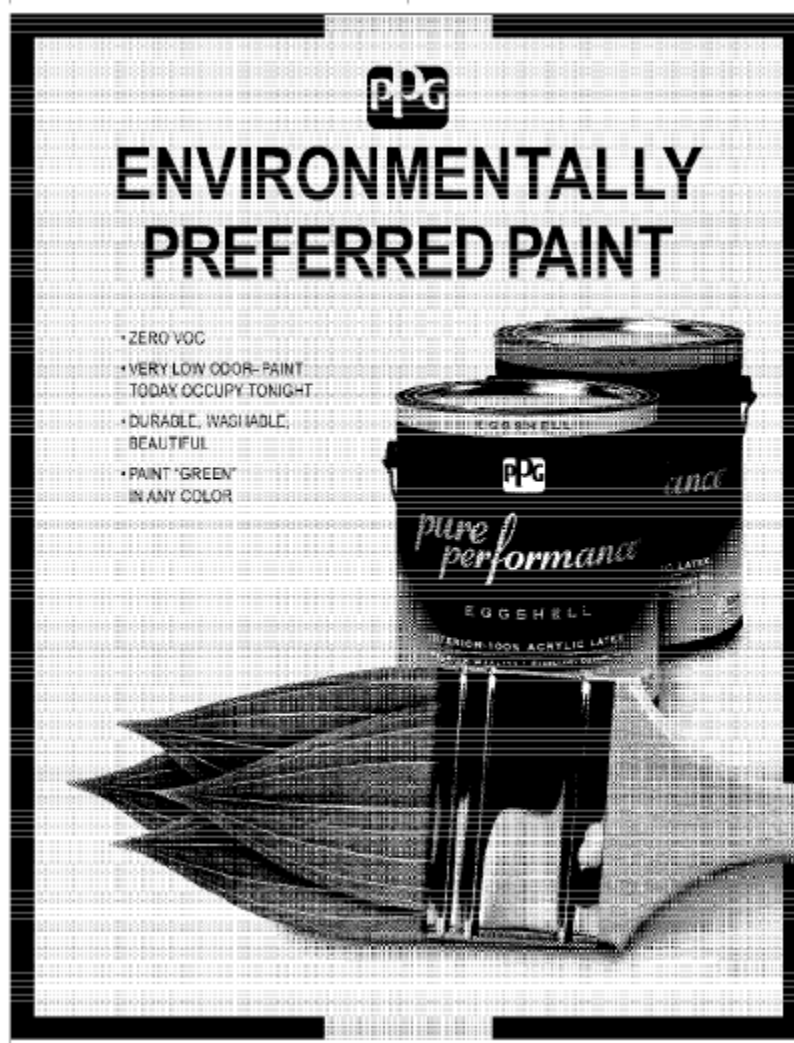
15. Respondent's practices, as alleged in this complaint, constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this fifth day of March 2013, has issued this complaint against respondent.

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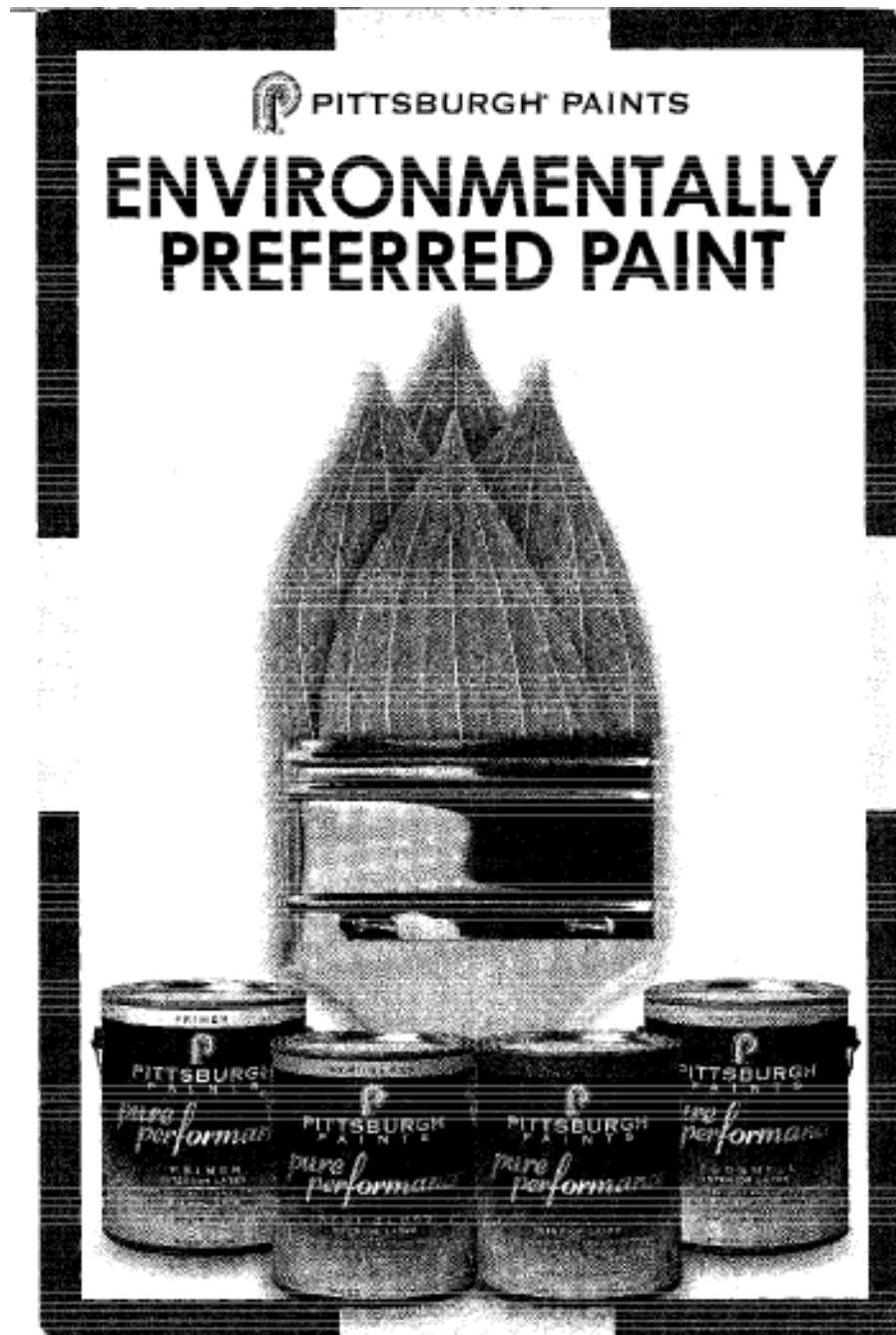
By the Commission, Commissioners Leibowitz and Wright
not participating.

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EXHIBIT A

Complaint

EXHIBIT B



Complaint

EXHIBIT B



pure performance

ENVIRONMENTALLY GENTLE

PAINT THAT DELIVERS SUPERIOR PERFORMANCE

GREEN SEAL CERTIFIED
The first paint to receive the Green Seal Class A Certification for meeting environmental standards.

ZERO VOCs
Contains no volatile organic compounds (VOCs), eliminating detrimental impact on air quality.

SUPERIOR PERFORMANCE

PAINT THAT IS ENVIRONMENTALLY GENTLE

EXCEPTIONAL QUALITY
Durable, high-fading, washable finish ensures long-lasting beauty.

PAINT "GREEN" IN ANY COLOR
Available in over 1,600 clean, vibrant colors from the "Voice of Color" design system.

USED IN "GREEN" BUILDINGS
Architects choose Pure Performance for use on "Green Buildings" nationwide.

VERY LOW ODOR
Paint today and occupy the room tonight.

EASY TO USE
Our topcoats are 100% acrylic, easy to apply and clean up with warm soapy water.

RESISTS MOLD AND MILDEW
Antimicrobial properties resist mold and mildew on the paint film.

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EXHIBIT B

4 GREAT FINISHES TO CHOOSE FROM

Pure Performance® is certified as a top quality paint by the Master Painters® Institute, an independent coatings testing organization recognized across North America.

FLAT

A durable, flat finish with excellent hiding and washability. Will help hide minor imperfections and irregular surfaces.

MPI certified in Category 143 (Gloss 1)



EGGSHELL

A rich and elegant, yet durable, finish that provides excellent hiding and washability.

MPI certified in Category 144 (Gloss 2)



SEMI-GLOSS

Ideal for use in areas where a tough, durable and scrubbable finish is desired. Good for use in kitchens and bathrooms.

MPI certified in Category 147 (Gloss 3)



PRIMER/SEALER

The best possible start to your project. Provides excellent surface sealing and adhesion.



SATISFACTION GUARANTEED

Our tradition of quality and performance since 1900 guarantees your satisfaction with Pittsburgh® Paints products. If at any point you are not completely satisfied with this product's performance, Pittsburgh Paints will furnish a replacement product or refund the purchase price - your choice. See label for complete warranty information.

Pittsburgh® Paints uses 100% recycled plastic in its Pure Performance cans.



PITTSBURGH® PAINTS

PPG Architectural Finishes, Inc.
One PPG Place • Pittsburgh, PA 15277
PPG Canada, Inc. Architectural Finishes
4 Kenview Blvd. • Brampton, ON L6T 5E4
www.pittsburghpaints.com

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EXHIBIT C



pure performance

It's a concept that few manufacturers have managed to pull off. We, however, managed it beautifully. A paint that's environmentally gentle yet still offers superior performance. Pure Performance[®], with zero VOC and very low odor, its exceptional quality transforms any interior space.



DISCOVER MORE ABOUT
PURE PERFORMANCE[®]

Description

Certified as a top quality paint by the Master Painters[®] Institute (MPI), Pure Performance[®] is safe for all painting projects and guarantees professional results every time you use it.

- Zero Volatile Organic Compounds (VOC)
- Very low odor
- Can earn LEED credits
- Excellent hiding power
- Easy stain removal, washable
- Excellent touch-up
- Mold and mildew resistant on the paint film
- Soap and water clean-up

Available Colors

Tints to all 1,800 colors in The Voice of Color[®] System. More info

THE VOICE OF COLOR[®]

PPG PITTSBURGH PAINTS



http://www.ppgpittsburghpaints.com/our_products/interior_paints/pure_performance/index.htm

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EXHIBIT D

PURE PERFORMANCE® BY PPG
60-SECOND SPOT

ANNOUNCER:

Did you know it's possible to paint your room today and occupy it tonight – with no unpleasant or lingering odors? It is possible when you choose *Pure Performance* by PPG. *Pure Performance* is THE environmentally preferred paint – with very low odor and ZERO VOCs. And it offers superior hiding, washability, and stain removal. With *Pure Performance* you don't have to sacrifice being "green" for premium quality... which is why so many hospitals, schools and healthcare facilities demand *Pure Performance* for their jobs. And *Pure Performance* is available in nearly 2000 colors in the *Voice of Color* palette, not just the handful of colors offered by some other environmental paints. For better products, better service, better color tools and better results, head to your PPG *Pittsburgh* Paints dealer today and ask for the environmentally preferred paint that doesn't sacrifice quality – ask for *Pure Performance* by PPG. Available at... 10-second tag (customizable by dealer)

EXHIBIT E



Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its counsel, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent PPG Architectural Finishes, Inc. ("PPG") is a Delaware corporation with its principal office or place of business at 1 PPG Place, Pittsburgh, PA 15272. Respondent is a subsidiary of PPG Industries, Inc., a Pennsylvania corporation with its principal office or place of business at the same address.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondent” shall mean PPG Architectural Finishes, Inc., also doing business as PPG, Pittsburgh Paints, Porter Paints, and Olympic, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Clearly and prominently” shall mean as follows:
 - A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 - B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and

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cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

- C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
 4. “Competent and reliable scientific evidence” shall mean tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.
 5. “Covered product” shall mean any architectural coating applied to stationary structures, portable structures, and their appurtenances.
 6. “Tinting” shall mean achieving a particular color through the use of any foreseeably available colorant. Provided however, that if respondent clearly and prominently discloses that a representation regarding a covered product applies only if the product is tinted with specified colorant(s), the definition of “tinting” shall be limited to the use of those colorants.

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7. “Trace” level of VOCs shall mean:
 - A. VOCs have not been intentionally added to the product;
 - B. The presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs, including but not limited to, harm to the environment or human health; and
 - C. The presence of VOCs at that level does not result in concentrations higher than would be found at background levels in the ambient air.
8. “Volatile Organic Compound” (“VOC”) shall mean any compound of carbon that participates in atmospheric photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. § 51.100(s).

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that the VOC level of a paint is zero, unless:

- A. After tinting, the VOC level is zero grams per liter (“g/L”), or respondent possesses and relies upon competent and reliable scientific evidence that the paint contains no more than a trace level of VOCs;
- B. After tinting, the VOC level is less than 50 g/L, and respondent clearly and prominently discloses, either within or in close proximity to the representation, that

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the representation applies only to the base paint and that the VOC level may increase, depending on the color choice; or

- C. Respondent clearly and prominently discloses, either within or in close proximity to the representation, that the representation applies only to the base paint and that the VOC level may increase “significantly” or “up to [insert: the highest possible VOC level after tinting],” depending on the color choice.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

- A. The VOC level of such product; or
- B. Any other environmental benefit or attribute of such product,

unless the representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part, “means and instrumentalities” shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported

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substantiation materials, for use by trade customers in their marketing of any covered product.

IV.

IT IS FURTHER ORDERED that respondent shall deliver as soon as practicable, but in no event later than sixty (60) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A, showing the date of delivery, to all of respondent's dealers and distributors, and all other entities to which respondent provided point-of-sale advertising, including product labels, for the product identified in Attachment A. The notice required by this paragraph shall not include any document or enclosures other than those referenced in the notice and may be sent to the principal place of business of each entity.

V.

IT IS FURTHER ORDERED that respondent PPG Architectural Finishes, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

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VI.

IT IS FURTHER ORDERED that respondent PPG Architectural Finishes, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within sixty (60) days after the date of service of this order, and to future personnel within sixty (60) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

VII.

IT IS FURTHER ORDERED that respondent PPG Architectural Finishes, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "PPG Architectural Finishes, Inc., File No. C-4385."

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VIII.

IT IS FURTHER ORDERED that respondent PPG Architectural Finishes, Inc., and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

IX.

This order will terminate March 5, 2033, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioners Leibowitz and Wright not participating.

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ATTACHMENT A

[ON PPG LETTERHEAD]

**IMPORTANT NOTICE ABOUT PPG PURE
PERFORMANCE ADVERTISING AND MARKETING
MATERIALS**

[insert addressee name]

[insert addressee address]

Dear Dealer or Distributor,

In response to a settlement with the Federal Trade Commission, PPG Architectural Finishes, Inc. (PPG) has agreed not to make claims that its paints contain zero VOCs (volatile organic compounds), unless the VOC level is zero after tinting or PPG clearly and prominently discloses that the VOC claim applies only to the base paint and that the VOC level may increase (or, if 50 g/L or more, increase “significantly” or “up to [the highest possible VOC level after tinting]”), depending on the consumer’s color choice. This is because the FTC has alleged that PPG marketed its Pure Performance paints as “zero VOC” but did not communicate that the VOC level increased when the base paints were tinted with colorants containing VOCs. Therefore, PPG requests that you immediately stop using your existing Pure Performance advertising and marketing materials that describe the paint as containing “no VOCs” or “zero VOCs.” PPG will make revised marketing materials available to you shortly.

Furthermore, we have included stickers that should be affixed to each can of Pure Performance paint in your possession if those cans utilize the old Pure Performance labels. This should be done immediately. Please find the enclosed instruction sheet which will provide you with directions as to how to apply the stickers correctly.

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Should you have any questions about compliance with this notification, please contact [insert contact person]. In addition, further information about the settlement can be obtained by visiting www.ftc.gov and searching for “PPG.”

Sincerely,

Scott Sinetar
President
PPG Architectural Finishes, Inc.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from PPG Architectural Finishes, Inc. (“PPG”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves PPG’s marketing and sale of “zero VOC” paints. According to the FTC complaint, PPG represented that its *Pure Performance* paints, including paints with color added, contain zero VOCs. But the complaint alleges that, in numerous instances, the paint does not contain zero VOCs after the addition of color. It also alleges that PPG did not possess and rely upon a reasonable basis substantiating these representations when it made them. Finally, it alleges that, by providing independent distributors and retailers with promotional materials making the above representations, PPG provided these third parties with the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that PPG engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed order contains three provisions designed to prevent PPG from engaging in similar acts and practices in the future. Part I addresses the marketing of zero VOC paints. It prohibits PPG from claiming that its paints (including paints manufactured under its PPG, Pittsburgh Paints, Porter Paints, and Olympic brands) contain “zero VOCs” unless: (1) after tinting, the VOC level is zero grams per liter (“g/L”) or PPG possesses competent and reliable scientific evidence that the paint contains no more than a trace level of VOCs; or (2) PPG clearly and prominently discloses that the claim applies only to the base paint and that, depending on the color choice, the VOC level may increase. In situations where a paint’s post-tint VOC level is 50 g/L or more, the order requires PPG to disclose that the VOC

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level increases “significantly” or “up to [the highest possible VOC level after tinting].”¹

Part II addresses VOC and environmental benefit or attribute claims made about paints and other architectural coatings. It prohibits such representations unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.

Part III prohibits PPG from providing to others the means and instrumentalities with which to make any claim prohibited by Part I or II. It defines “means and instrumentalities” as any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Part IV requires PPG to send a letter to its retailers, requiring them to remove all *Pure Performance* ads with zero VOC claims and affix a sticker to existing *Pure Performance* paint can labels.

Finally, Parts V through VIII require PPG to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order’s terms in any way.

¹ The order does not require PPG to characterize an increase of less than 50 g/L as “significant” because paints with this level of VOCs are considered by air quality regulators and environmental certification groups to be low in VOCs.

Complaint

IN THE MATTER OF

THE SHERWIN-WILLIAMS COMPANYCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4386; File No. 112 3198
Complaint, March 5, 2013 – Decision, March 5, 2013

This consent order addresses allegations of deceptive business practices by The Sherwin-Williams Company (“Sherwin-Williams”). The complaint alleges that Sherwin-Williams misled consumers by claiming its *Dutch Boy Refresh* interior paints are free of potentially harmful chemicals known as volatile organic compounds, or VOCs. The order prohibits Sherwin-Williams from claiming that its paints contain “zero” VOCs unless the representation is true and can be substantiated by competent and reliable scientific evidence. It also bars respondent from providing others with any advertising, labeling, or promotional materials for any product alleging to contain “zero” VOCs. Additionally, the order requires Sherwin-Williams to send a letter to its retailers, specifically directing such retailers to remove all *Dutch Boy Refresh* ads containing “zero VOC” claims and to affix Commission-approved labels to existing *Dutch Boy Refresh* paint cans. The order further requires Sherwin-Williams to keep copies of all advertisements and other materials relating to its “zero VOC” claims for the next five years and to make these materials available for inspection by the Commission.

Participants

For the *Commission*: *Sandhya Brown and Zachary Hunter.*

For the *Respondent*: *August T. Horvath, Lewis Rose and Dana B. Rosenfeld, Kelley Drye & Warren LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Sherwin-Williams Company (“respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Ohio corporation with its principal office or place of business at 101 West Prospect Avenue, Cleveland, OH 44115. Respondent does business under its own name as well as