

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

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the names “Sherwin-Williams,” “Dutch Boy,” “Krylon,” “Minwax,” and “Thompson’s WaterSeal.”

2. Respondent manufactures, advertises, offers for sale, sells, and distributes paint products, including *Dutch Boy Refresh* 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 *Dutch Boy Refresh* paints typically provide customers with the option of tinting the base paint to a *Dutch Boy*-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 *Dutch Boy Refresh* paints, including print advertisements, website advertisements, and point-of-sale materials to its independent distributors and retailers. See, e.g., Exhibits A through H. Respondent, its independent distributors, and retailers have disseminated or have caused the dissemination of these promotional materials to consumers.

7. In numerous instances, including but not limited to the promotional materials shown in Exhibits A through H, respondent has represented that *Dutch Boy Refresh* paints contain “Zero VOCs.”

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

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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, *Dutch Boy Refresh* paints contain more than a trace level of VOCs after tinting.

10. In certain promotional materials (including in fine print at the bottom of the signs in Exhibits B and D and on the back of the paint can in Exhibit F), and in contrast to respondent's zero VOC representations, respondent inconspicuously has stated that "Some colors may not be Zero VOC after tinting with conventional colorants."

11. In reality, the vast majority of *Dutch Boy*-formulated colors of paint are not zero VOC after tinting *Dutch Boy Refresh* base paints with respondent's colorants. Therefore, any reasonable consumer who saw the inconspicuous disclosure described in Paragraph 10 would likely be deceived about the VOC content of *Dutch Boy Refresh* paints.

COUNT I (False or Misleading Representation)

12. Through the means described in Paragraphs 6 and 7, respondent has represented, expressly or by implication, that all *Dutch Boy Refresh* paints, including paints with color added, contain zero VOCs.

13. In truth and in fact, in numerous instances, *Dutch Boy Refresh* paints do not contain zero VOCs after color is added. Therefore, the representation set forth in Paragraph 12 is false or misleading.

COUNT II (Unsubstantiated Representation)

14. 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 12, at the time the representation was made.

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15. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 12, at the time the representation was made. Therefore, the representation set forth in Paragraph 14 is false or misleading.

COUNT III (Means and Instrumentalities)

16. 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.

17. 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.

By the Commission, Commissioners Leibowitz and Wright not participating.

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EXHIBIT A

Home | Find a Dealer | Art & Inspiration | Inspiration | White To Blue |
our products | colors | inspiration gallery | store your perfect | simple innovations

Refresh® Paint Home | Inspiration Floor | Demo | How to Refresh | Product Information | Green Partner | FAQ | WHITE TO BLUE

Introducing Refresh. Adds Beauty. Reduces Household Odors.

The first and only paint with **Arm & Hammer®** Odor Eliminating Technology and 0 VOC. By painting with Refresh, not only will you be using a premium paint, but you will also be using the largest area of your home to reduce odors day after day. Now that's multi-tasking!

- How It Works?
- Where To Use It?
- White To Blue



Testimonials

Green art

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EXHIBIT C



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EXHIBIT D

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EXHIBIT E



Dutch Boy Refresh
Quality paint from the brand you trust.

The Dutch Boy Group brings you great quality and durability with Refresh paint. Together with Arm & Hammer technology, Refresh paint contributes to the reduction of odors and the creation of a more beautiful environment. It's ideal for virtually every room in your house.

- Scratchable, durable finish
- Arm & Hammer odor eliminating technology
- Exceptional application self-priming
- Mildew-resistant coating
- Available in Flat, Eggshell, Satin and Semi-Gloss sheens
- Zero VOCs**/low odor
- GREENGUARD Indoor Air Quality Certified* Product
- Limited Lifetime Warranty

The color of your room should turn heads. Not the odor.
How does it work?
Refresh paint contains proven odor eliminating technology. Through natural airflow, the odor vapor molecules come in contact with the walls and are captured and locked within the paint film. Scrubbing the painted surface will not release the odors.

The paint with low environmental impact.
The Dutch Boy Group is committed to lowering the impact we have on our environment. That's why we created Refresh paint, the first top-quality paint with Arm & Hammer Odor Eliminating Technology and Zero VOCs** — which means you can also enjoy your room immediately after painting.

Did you know ... VOC stands for "Volatile organic compounds." These are vapors released from paint as it dries and are thought to contribute to smog and poor air quality. Refresh paint is formulated without VOCs — so it stops cancer to having less environmental impact.

Beautiful colors available in every shade of "green."
You want products that minimize the impact on the environment. And you want to trust that the products have been approved by a credible party. That's where the GREENGUARD Environmental Institute comes in. An industry independent, third-party program, it ensures the products it tests meet or exceed acceptable indoor air standards and it is recognized by architects, designers, purchasing organizations and consumers. Dutch Boy Refresh has been tested and certified by GREENGUARD*.

dutchboy.com/refresh

GREENGUARD
Environmental Institute

Green
Certified

**Through specific solvent and additive control, Dutch Boy Refresh paint is formulated to have a lower environmental impact and is a superior choice to other paint products. VOCs are listed on the label. To learn more, visit dutchboy.com.

Green Guard Environmental Institute (GCI) is an independent, third-party program that ensures the products it tests meet or exceed acceptable indoor air standards and it is recognized by architects, designers, purchasing organizations and consumers. Dutch Boy Refresh has been tested and certified by GREENGUARD.

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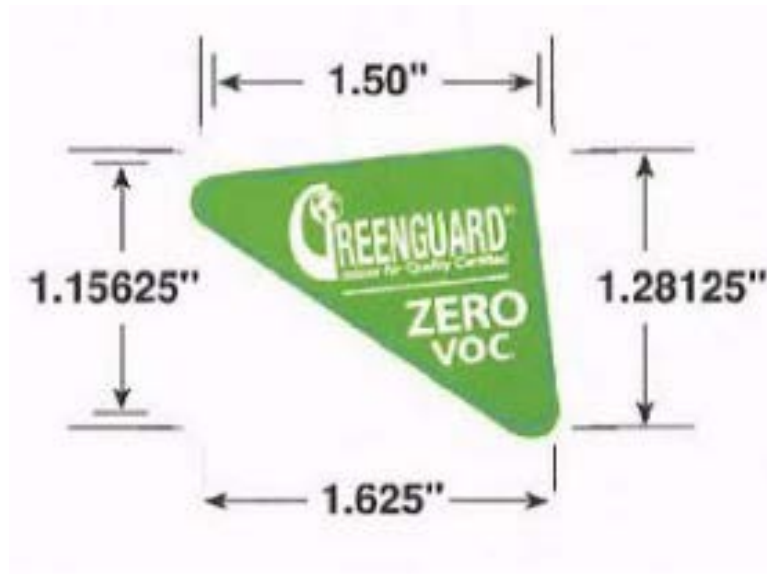
EXHIBIT F



EXHIBIT G



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EXHIBIT H

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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 is an Ohio corporation with its principal office or place of business at 101 West Prospect Avenue, Cleveland, OH 44115.

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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 The Sherwin-Williams Company, also doing business as Sherwin-Williams, Dutch Boy, Krylon, Minwax, and Thompson’s WaterSeal, 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 cadence sufficient for an ordinary consumer to hear

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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 the representation applies only to the base paint and

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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 thirty (30) 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 The Sherwin-Williams Company, 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 The Sherwin-Williams Company, 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 thirty (30) days after the date of service of this order, and to future personnel within thirty (30) 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 The Sherwin-Williams Company, 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: "The Sherwin-Williams Company, File No. C-4386."

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VIII.

IT IS FURTHER ORDERED that respondent The Sherwin-Williams Company, and its successors and assigns, within sixty (60) 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 SHERWIN-WILLIAMS LETTERHEAD]

**IMPORTANT NOTICE ABOUT DUTCH BOY REFRESH
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name]
[insert addressee address]

Dear Dealer or Distributor,

In response to a settlement with the Federal Trade Commission, The Sherwin-Williams Company (Sherwin-Williams) has agreed not to make claims that its paints contain zero VOCs (volatile organic compounds), unless the VOC level is zero after tinting or Sherwin-Williams 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, in numerous instances, Dutch Boy Refresh paints contain VOCs after tinting. Therefore, Sherwin-Williams requests that you immediately stop using your existing Dutch Boy Refresh advertising and marketing materials that describe the paint as containing “no VOCs” or “zero VOCs.” Sherwin-Williams will make revised marketing materials available to you shortly.

Furthermore, we have included stickers that should be affixed to each container of Dutch Boy Refresh paint in your possession if those containers utilize the old Dutch Boy Refresh 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 “Sherwin-Williams.”

Sincerely,

Christopher Connor
Chief Executive Officer
The Sherwin-Williams Company

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 The Sherwin-Williams Company (“Sherwin-Williams”).

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 Sherwin-Williams’s marketing and sale of “zero VOC” paints. According to the FTC complaint, Sherwin-Williams represented that its *Dutch Boy Refresh* 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 Sherwin-Williams 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, Sherwin-Williams provided these third parties with the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that Sherwin-Williams engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed order contains three provisions designed to prevent Sherwin-Williams from engaging in similar acts and practices in the future. Part I addresses the marketing of zero VOC paints. It prohibits Sherwin-Williams from claiming that its paints (including paints manufactured under its Sherwin-Williams, Dutch Boy, and Krylon brands) contain “zero VOCs” unless: (1) after tinting, the VOC level is zero grams per liter (“g/L”) or Sherwin-Williams possesses competent and reliable scientific evidence that the paint contains no more than a trace

Analysis to Aid Public Comment

level of VOCs; or (2) Sherwin-Williams 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 Sherwin-Williams to disclose that the VOC 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 Sherwin-Williams 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 Sherwin-Williams to send a letter to its retailers, requiring them to remove all *Dutch Boy Refresh* ads with zero VOC claims and affix a sticker to existing *Dutch Boy Refresh* paint can labels.

Finally, Parts V through VIII require Sherwin-Williams 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

¹ The order does not require Sherwin-Williams 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.

Analysis to Aid Public Comment

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.

Enforcement Policy Statement

**ENFORCEMENT POLICY STATEMENT REGARDING
VOC-FREE CLAIMS FOR ARCHITECTURAL COATINGS**

The Guides for the Use of Environmental Marketing Claims (“Green Guides”), 16 C.F.R. Part 260, set forth the Commission’s current views on environmental marketing to help advertisers avoid making unfair or deceptive claims under Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. Although the Green Guides do not bind the FTC or the public, the Commission can take action under the FTC Act if a marketer makes an environmental claim inconsistent with them.

With regard to free-of claims, the Green Guides, as revised in 2012, advise marketers as follows:

Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if: (1) the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance’s presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product. 16 C.F.R. § 260.9(c) (hereinafter “trace amount test”).

This trace amount test is designed to provide general guidance to marketers without regard to product, substance, or industry. As stated in footnote 4 of § 260.9(c), however, what constitutes a trace contaminant or background level depends on the substance at issue and requires a case-by-case analysis.

The Commission recently analyzed the trace amount test in the context of zero-VOC claims for architectural coatings. In March 2013, the Commission issued final decisions and orders resolving allegations that The Sherwin-Williams Company (“Sherwin-Williams”) and PPG Architectural Finishes, Inc. (“PPG”) had deceptively advertised their paint products as “zero

Enforcement Policy Statement

VOC.”¹ These orders prohibit the companies from representing that the VOC level of a paint is “zero” unless, after tinting, the VOC level is zero grams per liter, or they possess and rely upon competent and reliable scientific evidence that the paint contains no more than a “trace level of VOCs.” The orders include a definition of “trace level of VOCs” derived from 16 C.F.R. § 260.9(c) and adapted specifically to address VOC-free claims for architectural coatings such as paint. Namely, the orders state that “trace level of VOCs” means:

(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.

The orders’ definition of “trace level of VOCs” tailors the Green Guides’ general trace amount test in two key respects. First, the “material harm” prong specifically includes harm to the environment and human health. This refinement acknowledges that consumers find both the environmental and health effects of VOCs material in evaluating VOC-free claims for architectural coatings.

Second, the orders define “trace level” as the background level of VOCs in the ambient air, as opposed to the level at which the VOCs in the paint would be considered “an acknowledged trace contaminant.” The harm consumers associate with VOCs in coatings is caused by emissions following application. Thus measuring the impact on background levels of VOCs in the ambient air aligns with consumer expectations about VOC-free claims for coatings. Additionally, the Commission is aware of no scientific or regulatory body that has recognized a specific trace contaminant level of VOCs in paint or any other architectural

¹ Volatile organic compounds (“VOCs”) are carbon-containing compounds that evaporate at room temperature. Some VOCs can have detrimental effects on the environment and human health.

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coating. Therefore, it is the Commission's view that the first prong of the trace amount test for VOC-free claims for architectural coatings is the amount beyond which VOC emissions would result in concentrations that exceed the background level of VOCs in the ambient air.

Based on its enforcement experience, the Commission finds it in the public interest to apply the tailored definition of "trace level of VOCs" to all VOC-free claims for architectural coatings.² If a marketer makes a VOC-free claim about an architectural coating that contains more than a "trace level of VOCs," as defined by the Sherwin-Williams and PPG orders and discussed above, or lacks substantiation for such claim, the Commission may take action under Section 5 of the FTC Act.

² VOC-free marketing claims include, but are not limited to, "zero VOCs," "0 VOCs," "no VOCs," and "free of VOCs."

Complaint

IN THE MATTER OF

EQUIFAX INFORMATION SERVICES LLC

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 604(C) AND 607(A) OF THE FAIR CREDIT REPORTING ACT AND
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4387; File No. 102 3252
Complaint, March 5, 2013 – Decision, March 5, 2013

This consent order settles allegations that Equifax Information Services LLC, one of the largest consumer reporting agencies in the United States, violated the Fair Credit Reporting Act (“FCRA”) and Section 5 of the FTC Act by improperly selling lists of consumers who were late on their mortgage payments to third parties. The complaint alleges that, from January 1, 2008, through early 2010, Equifax sold more than 17,000 prescreened lists of consumers in financial distress to Direct Lending Source LLC and its affiliates (“Direct Lending”). Direct Lending subsequently resold these lists to third parties who used the data to pitch loan modification and debt relief services to these consumers. The complaint further alleges that Equifax failed to investigate promptly or fully when it learned that Direct Lending was violating Equifax’s internal policies relating to prescreening. The complaint also alleges that Equifax knew or should have known that Direct Lending resold the prescreened list without identifying the end user to Equifax. The order requires Equifax to pay \$392,803 in disgorgement and Direct Lending to pay \$1.2 million in civil penalties and prohibits either company from using or selling prescreened lists without a permissible purpose.

Participants

For the *Commission*: *Katherine Armstrong, Amanda Koulousias, and Katherine White.*

For the *Respondent*: *Tina Fahmy, Cindy Hanson, and Constance Robinson, Kilpatrick Townsend & Stockton LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Equifax Information Services LLC (“Equifax” or “Respondent”) has violated provisions of the Federal Trade Commission Act (“FTC Act”) and the Fair Credit Reporting Act (“FCRA”), and it appearing to the Commission that this proceeding is in the public interest, alleges: