

Complaint

IN THE MATTER OF

OREGON LITHOPRINT, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4645; File No. 161 0230
Complaint, April 24, 2018 – Decision, April 24, 2018

This consent order addresses Oregon Lithoprint Inc.'s email inviting the parent company of *The Newberg Graphic* to join the *News-Register* in instructing mutual clients that they should place foreclosure notices in the newspaper dominant in the area of the foreclosed property. The complaint alleges that the respondent violated Section 5 of the Federal Trade Commission Act by inviting a competitor in the publication of foreclosure notices to divide clients by geographic market. The consent order requires Oregon Lithoprint to cease and desist from communicating with its competitors about the placement of foreclosure notices.

Participants

For the *Commission*: Michael Turner.

For the *Respondent*: Jon E. Bladine, President, *pro se*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Oregon Lithoprint, Inc., has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. Oregon Lithoprint, Inc. (“OLI”) publishes a newspaper, the *News-Register*, which is distributed principally in Yamhill County, Oregon. OLI invited its closest rival in Yamhill County to divide geographic markets for printing foreclosure notices. By

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inviting collusion, OLI endangered competition and violated Section 5 of the FTC Act.

RESPONDENT

2. OLI is a corporation organized, existing, and doing business under and by virtue of the laws of Oregon, with its principal place of business in McMinnville, Oregon 97128.

3. OLI publishes a twice-weekly community newspaper—the *News-Register*. The publisher of the *News-Register*, as well as co-owner of OLI, is Jeb Bladine.

4. The *News-Register* has a circulation of approximately 7000 subscribers in Yamhill County, Oregon. In addition to its paid subscribers, *News-Register* is available for purchase in newsstands in Yamhill County, and it is available for viewing on its website.

JURISDICTION

5. At all times relevant herein, OLI has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. The business practices of OLI, including the acts and practices alleged herein, are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

INVITATION TO COLLUDE

7. Oregon law requires that certain legal actions, including the impending foreclosure of real property, be announced in qualifying newspapers. Foreclosure notices provide significant income for qualifying newspapers.

8. *The Newberg Graphic* (“*The Graphic*”), a community newspaper, is the main competitor to OLI for the publication of foreclosure notices in Yamhill County. *The Graphic* is owned by

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Pamplin Media Group, which manages its various newspapers through its subsidiary, Oregon Publishing.

9. Clear Recon Corporation is a business that places foreclosure notices on behalf of lenders. From 2014 through 2016, Mr. Bladine sought to convince employees of Clear Recon Corporation that Clear Recon should place in the *News-Register* all foreclosure notices for properties located in zip codes where the *News-Register* has the largest circulation among qualifying newspapers.

10. On August 17, 2016, Mr. Bladine learned that Clear Recon intended to place all future foreclosure notices for Yamhill County in *The Graphic* because it charged less for its services than the *News-Register*.

11. On August 29, 2016, Mr. Bladine emailed the president of Oregon Publishing. Mr. Bladine wrote that *News-Register* was “pursuing efforts to convince Clear Recon Corp that foreclosure notices involving properties in our marketplace should be placed in the *News-Register*.”

12. In the August 29 email, Mr. Bladine further explained that “[o]ur efforts are based on the belief that Oregon’s ‘best suited’ law creates a responsibility to consider actual notice to interested parties,” and thus he has “maintained that the belief [sic] that foreclosures should be published in the newspaper predominantly circulated in the community of the property.”

13. Finally, Mr. Bladine used the August 29 email to invite Mr. Garber to divide foreclosure notice orders by geographic area:

As we continue our efforts, I would invite Pamplin Media Group to join News-Register Publishing Co. in a formal request to parties placing foreclosure notices – including private attorney firms – that the notices be placed using the “best suited” language concept as we understand the intent of that legal phrase.

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14. On August 31, 2016, through counsel, Pamplin Media repudiated the invitation and stated its disagreement with Mr. Bladine's interpretation of Oregon law related to the placement of foreclosure notices.

15. On October 25, 2016, Mr. Bladine sent another email to the president of Oregon Publishing explaining that *The Graphic* was getting a new client and thousands of dollars in new revenue because of Mr. Bladine's efforts:

A new client, no doubt representing many thousands of dollars in future revenue, is headed to the Newberg Graphic because we are aggressively pursuing our interpretation of Oregon law – wherever the chips may fall. As we urge publication in the Graphic of related to properties in Dundee, Newberg and St. Paul, we will be equally or more aggressive in responding to situations we believe violate the intent of the law. It is probably too much to expect that others would do likewise.

16. Pamplin Media interpreted this communication as another invitation to allocate customers based on the location of the property, with the newspaper that has the greatest circulation in the zip code where the property is located receiving the foreclosure notice. On November 11, 2016, Pamplin Media explicitly rejected the second invitation.

VIOLATION CHARGED

17. As set forth in Paragraphs 9 through 17 above, OLI invited its competitor to agree to divide the market for publishing foreclosure notices by zip code in violation of Section 5 of the Federal Trade Commission Act, as amended.

18. The acts and practices of OLI, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts and practices of OLI will continue or recur in the absence of appropriate relief.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fourth day of April, 2018, issues its complaint against OLI.

By the Commission.

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The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Oregon Lithoprint, Inc. (“Respondent”), and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”) containing an admission by Respondent of all the jurisdictional facts set forth in the draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that 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 Respondent had violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent 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 comment filed by an interested person, now

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in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Oregon Lithoprint, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Oregon with its principal place of business at 611 NE 3rd Street, McMinnville, Oregon 97128.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Oregon Lithoprint, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Oregon Lithoprint, Inc., including the News-Register Publishing Co., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Communicating” means transmitting, exchanging, transferring, or disseminating information by or through any means, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, and email.

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- D. “Competing Newspaper” means any Newspaper that is distributed on a more than *de minimis* basis in Yamhill County or at least one other county in which Respondent distributes a Newspaper on a more than *de minimis* basis. For clarity, a Newspaper is distributed in any county in which physical copies of the Newspaper are offered for sale, delivered to subscribers, or circulated to readers.
- E. “Competitor” means any Person who owns, publishes, or distributes a Competing Newspaper.
- F. “Foreclosure Notice” means any notice of the foreclosure of real property required by Oregon law to be placed for publication in a qualifying Newspaper.
- G. “Legal Notice” means any notice required by Oregon law to be placed for publication in a qualifying Newspaper and includes Foreclosure Notices.
- H. “Newspaper” means a publication that meets the definition of Newspaper under Oregon Revised Statute 193.010, or its successor.
- I. “Person” includes Respondent and means natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.
- J. “Relating to” or “related to” means in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, describing, discussing, embodying, explaining, identifying, referring to, reflecting, reporting on, stating, dealing with, or in any way pertaining to.

II.

IT IS FURTHER ORDERED that in connection with the publication of any Legal Notice in or affecting commerce, as “commerce” is defined by the Federal Trade Commission Act,

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Respondent shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Entering into, attempting to enter into, or participating in any express or implied agreement or understanding, between or among Respondent and one or more Competitors:
 - 1. To refuse to publish a Legal Notice; or
 - 2. To allocate or divide the market(s) for publishing Legal Notices by types of customers, transactions, types of notices, geographic area, or any other means.
- B. Communicating with any Competitor, either publicly or privately, that such Competitor:
 - 1. Should advise customers to place Foreclosure Notices in the local Newspaper with the widest circulation in the zip code or other geographic area where the property is located; or
 - 2. Should refuse to publish Foreclosure Notices for properties located in a zip code or other geographic area where the Competitor has a smaller distribution than Respondent.
- C. Nothing in the Order shall prohibit Respondent from:
 - 1. Communicating with any governmental body regarding the interpretation of statutes and rules related to Legal Notices or the promulgation of new statutes or rules relating to Legal Notices;
 - 2. Promoting, planning, or participating in any effort by the Oregon Newspaper Publishers Association to communicate with or lobby any governmental body regarding the interpretation of statutes and rules related to Legal Notices or the promulgation

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of new statutes or rules relating to Legal Notices;
and

3. If acting alone, disseminating information regarding Legal Notices through signage, broadly distributed direct mail, or media widely available to the public, including websites, Newspapers, television, and social media.

III.

IT IS FURTHER ORDERED that for five (5) years after the Commission issues this Order:

- A. Respondent will appoint a compliance officer who is responsible for promoting compliance with the terms of this Order. The compliance officer must be an employee, officer or antitrust counsel of Respondent.
- B. Respondent will distribute a copy of this Order to Respondent's officers and directors, and any employee with responsibilities related to Legal Notices:
 1. Within thirty (30) days after the Commission issues the Order; and
 2. At least once a year thereafter.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent will file a verified written report to the Commission ("compliance report"):
 1. Thirty (30) days after the date this Order is issued; and
 2. One (1) year after the date this Order is issued, and annually for the next four (4) years on the anniversary of that date, and

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3. At such other times as the Commission may require.
- B. In each compliance report, Respondent shall describe the manner and form in which Respondent intends to comply, is complying, and has complied with this Order, including by:
1. Providing the name and title of the compliance officer appointed under Paragraph III.A.;
 2. Describing how Respondent complied with Paragraph III.B., including the date Respondent distributed copies of the Order and the name and title of each person who was provided a copy of the Order; and
 3. Providing a summary of activities that fall within Paragraph II.C. of the Order that were undertaken since submission of the most recent prior compliance report.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Oregon Lithoprint, Inc.;
- B. Any proposed acquisition of, or merger or consolidation involving, Oregon Lithoprint, Inc.; or
- C. Any other change in Respondent, including assignment or the creation, sale, or dissolution of subsidiaries, including any Newspapers or the News-Register Publishing Co., if such change may affect compliance obligations arising out of this Order.

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VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and five (5) days' notice to Respondent, made to its principal place of business as identified in this Order, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Section 2.7(a)(1) and (2) of the Commission's Rules, 16 C.F.R. § 2.7(a)(1),(2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on April 24, 2028.

By the Commission.

Analysis to Aid Public Comment

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

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing consent order (“Consent Agreement”) from Oregon Lithoprint Inc. (“OLI”). The Commission’s Complaint alleges that OLI violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by inviting a competitor in the publication of foreclosure notices to divide clients by geographic market.

Under the terms of the proposed Consent Agreement, OLI is required to cease and desist from communicating with its competitors about the placement of foreclosure notices. It is also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets or to allocate customers.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

I. The Complaint

The allegations of the Complaint are summarized below:

OLI owns the *News-Register*, a twice-weekly community newspaper based in Yamhill, Oregon. Among other things, the *News-Register* charges clients to publish a type of legal notice

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known as a foreclosure notice. Under Oregon law, parties foreclosing on real property must place a notice of foreclosure in a qualifying newspaper in the county within which the property is located.

The *News-Register*'s only competitor in Yamhill County is *The Newberg Graphic*, a weekly community newspaper. *The Newberg Graphic* also publishes foreclosure notices, and it charges considerably less than the *News-Register* for the service. The *News-Register* has more subscribers and a wider circulation within Yamhill County than *The Newberg Graphic*.

In August 2016, the publisher of the *News-Register* learned that a client intended to place foreclosure notices only in *The Newberg Graphic* from that point on because *The Newberg Graphic* was less expensive than the *News-Register*. In response, on August 29, 2016, the publisher emailed a manager at the parent company of *The Newberg Graphic* and explained the publisher's view that, under state law, foreclosure notices should be placed in the newspaper with the largest circulation in the area that the property is located. The publisher concluded his email by inviting the competitor to join the *News-Register* in instructing mutual clients that they should place foreclosure notices in the newspaper dominant in the area of the foreclosed property. The parent company of the *The Newberg Graphic* rejected the invitation and reported it to the Federal Trade Commission.

Several months later, in October 2016, the publisher of the *News-Register* emailed the competitor again to state that the *News-Register* had told a client to use *The Newberg Graphic* because the property in question was located in its area, and that the client was in fact going to use *The Newberg Graphic* to publish the notice. He ended the email stating "[i]t is probably too much to expect that others would do likewise."

The parent company of the *The Newberg Graphic* interpreted this second email as another invitation to collude, rejected the invitation, and reported it to the Federal Trade Commission.

Analysis to Aid Public Comment

II. Analysis

OLI's August 29, 2016, email to its competitor is an explicit attempt to arrange an agreement between the two companies to divide foreclosure notices by geography. It is an invitation to collude. The October 2016 email is also an invitation to collude: OLI proposed a market allocation scheme and expressed a hope that its competitor would join that conduct. The Commission has long held that invitations to collude violate Section 5 of the FTC Act.

In a 2015 statement, the Commission explained that unfair methods of competition under Section 5 “must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications.”¹ Potential violations are evaluated under a “framework similar to the rule of reason.”² Competitive effects analysis under the rule of reason depends upon the nature of the conduct that is under review.³

An invitation to collude is “potentially harmful and . . . serves no legitimate business purpose.”⁴ For this reason, the Commission

¹ Fed. Trade Comm’n, Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (Aug. 13, 2015) (Section 5 Unfair Methods of Competition Policy Statement), *available at* https://www.ftc.gov/system/files/documents/public_statements/735201/150813_section5enforcement.pdf. Acting Chairman Ohlhausen dissented from the issuance of the Section 5 Unfair Methods of Competition Policy Statement. *See* <https://www.ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-ohlhausen-ftc-act-section-5-policy>.

² Section 5 Unfair Methods of Competition Policy Statement.

³ *See, e.g., California Dental Ass’n v. FTC*, 526 U.S. 756, 781 (1999) (“What is required . . . is an inquiry meet for the case, looking to the circumstances, details, and logic of a restraint.”).

⁴ *In re Valassis Commc’ns., Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); *see also* Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015), *available at* https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf.

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treats such conduct as “inherently suspect” (that is, presumptively anticompetitive).⁵ Accordingly, an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power.⁶

The Commission has long held that an invitation to collude violates Section 5 of the FTC Act even where there is no proof that the competitor accepted the invitation.⁷ This is for several reasons. First, unaccepted solicitations may facilitate coordination between competitors because they reveal information about the solicitor’s intentions or preferences. Second, it can be difficult to discern whether a competitor has accepted a solicitation. Third, finding a violation may deter conduct that has no legitimate business purpose.⁸

⁵ See, e.g., *In re North Carolina Bd. of Dental Examiners*, 152 F.T.C. 640, 668 (2011) (noting that conduct is inherently suspect if it can be “reasonably characterized as ‘giv[ing] rise to an intuitively obviously inference of anticompetitive effect.’” (citation omitted)).

⁶ See, e.g., *In re Realcomp II, Ltd.*, 148 F.T.C. ___, No. 9320, 2009 FTC LEXIS 250 at *51 (Oct. 30, 2009) (Comm’n Op.) (explaining that if conduct is “inherently suspect” in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it “without proof of market power or actual effects”).

⁷ See, e.g., *In re Valassis Commc’ns, Inc.*, 141 F.T.C. 247 (2006); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re Precision Moulding*, 122 F.T.C. 104 (1996). See also *In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20–21 (F.T.C. Aug. 9, 2012) (“an invitation to collude is ‘the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5’”) (citing the Statement of Chairman Liebowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int’l, Inc.*, 150 F.T.C. 1, 53 (2010)). This conclusion has been endorsed by leading antitrust scholars. See P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission’s Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST Spring 2000, at 69. In a case brought under a state’s version of Section 5, the First Circuit expressed support for the Commission’s application of Section 5 to invitations to collude. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

⁸ *In re Valassis Comm’c, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment).

Analysis to Aid Public Comment

III. The Proposed Consent Order

The Proposed Order contains the following substantive provisions:

Section II, Paragraph A of the Proposed Order enjoins OLI from entering or attempting to enter any agreement to refuse to publish legal notices or allocate customers for the publication of legal notices.

Section II, Paragraph B prohibits OLI from publically or privately communicating with a competitor that the competitor should advise customers to place foreclosure notices in the newspaper with the widest circulation in the area in which the property is located, or refuse to publish notices for properties located in a competitor's primary distribution area.

Section II, Paragraph C, contains three provisos. The first allows OLI to communicate with any governmental body regarding the proper interpretation of state law related to legal notices. The second allows OLI to participate with any effort of the Oregon newspaper association to lobby any governmental body regarding legal notices. The third allows OLI to disseminate information regarding legal notices to the public.

Sections III-VI of the Proposed Order impose certain standard reporting and compliance requirements on OLI.

The Proposed Order will expire in 10 years.

Complaint

IN THE MATTER OF

BENJAMIN MOORE & CO., INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4646; File No. 162 3079
Complaint, April 24, 2018 – Decision, April 24, 2018

This consent order addresses Benjamin Moore & Co., Inc.'s marketing, sale, and distribution of purportedly "emission-free" paints. The complaint alleges that respondent made unsubstantiated representations that Natura paints: (1) are emission-free; (2) are emission-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers. The consent order prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace levels.

Participants

For the *Commission*: Robert M. Frisby, Megan Gray, Katherine Johnson, and Alejandro Rosenberg.

For the *Respondent*: Mark Godler, Kaye Scholer LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Benjamin Moore & Co., Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Benjamin Moore & Co., Inc. is a New Jersey corporation, with its principal office or place of business at 101 Paragon Drive, Montvale, New Jersey 07645.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including Natura paints.