

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.

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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.

Benjamin Moore’s Natura Paints

4. Respondent distributes Natura paints through a network of authorized, independent retailers, as well as through its own stores and website.

5. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for Natura paints to consumers, including the attached Exhibits A-G. These materials include the following statements and depictions:

a.

ON SCREEN

A group of painters enter quietly into a room filled with cribs. While a baby sleeps in a crib, they begin to paint a mural on a wall.

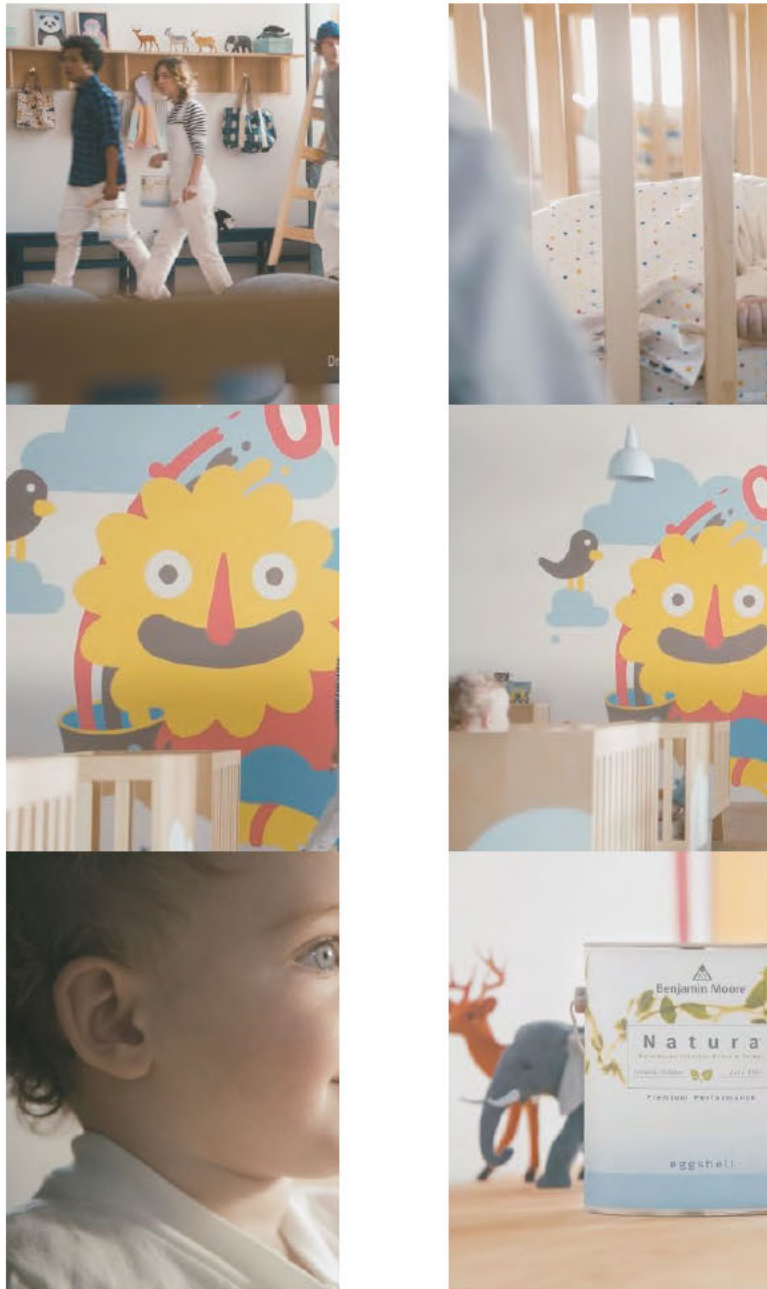
Painters exit and the baby wakes up, smiling and standing in the crib.

VOICEOVER

If you want a paint with no harsh fumes; if you want a paint without harmful chemicals; if you want a paint that is safer for your family and the environment, only this can. Natura by Benjamin Moore.

(Exhibit A, Benjamin Moore Natura 30-second advertisement).

Complaint



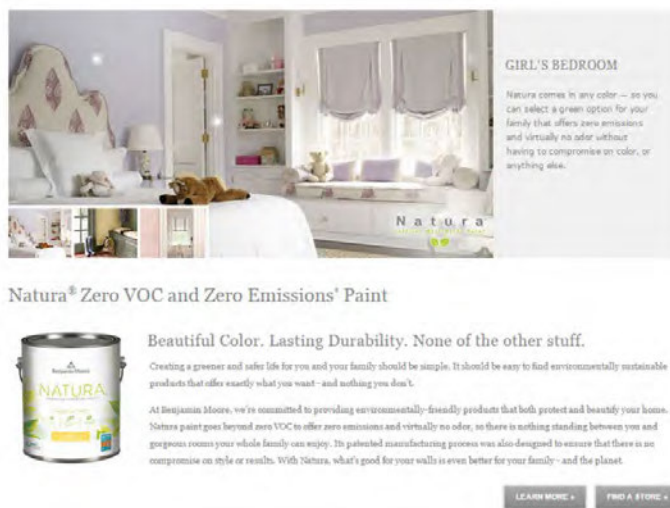
(Exhibit A, screenshots from Benjamin Moore Natura 30-second advertisement).

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(Exhibit B, print brochure).

b.

(Exhibit C, www.benjaminmoore.com/natura).**Benjamin Moore's Green Promise Seal**

6. Respondent distributes paint products bearing the “Green Promise” seal, including Natura paints. These products contain the following depictions:

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a.

(Exhibit D, www.benjaminmoore.com).

b.



(Exhibit E, Natura paint can label).

Count I
Unsubstantiated Claims

7. In connection with the advertising, promotion, offering for sale, or sale of Natura paints, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Natura paints are emission-free.
- b. Natura paints are emission-free during or immediately after painting.

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- c. Natura paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies, asthmatics, and allergy sufferers.
- d. Natura paints 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, asthmatics, and allergy sufferers.

8. The representations set forth in Paragraph 7 were not substantiated at the time the representations were made.

Count II**Deceptive Failure to Disclose—Material Connection with
Green Promise**

9. In connection with the advertising, promotion, offering for sale, or sale of its paints, such as through the use of its Green Promise seal, Respondent has represented, directly or indirectly, expressly or by implication, that these paints have been endorsed or certified by an independent third party.

10. Respondent has failed to disclose or adequately disclose that Respondent has a material connection to Green Promise, such as the fact the Green Promise seal is Respondent's own designation. This fact would be material to consumers in their purchase or use decisions regarding Respondent's paints.

11. Respondent's failure to disclose or adequately disclose the material information described in Paragraph 10, in light of the representation set forth in Paragraph 9, is a deceptive act or practice.

Count III**Means and Instrumentalities**

12. Respondent has distributed promotional materials, including the statements and depictions contained in Exhibits A through G to independent distributors and retailers. In so doing,

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Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

Violations of Section 5

13. The acts and practices of Respondent as alleged in this complaint constitute unfair or 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 twenty-fourth day of April, 2018, has issued this Complaint against Respondent.

By the Commission.

Exhibit A

**CD Containing Benjamin Moore 30-Second Natura
Commercial**

Exhibit B

AVAILABLE FINISHES

- Zero VOCs*
- Zero emissions with no harsh fumes*
- Self-priming on most surfaces
- Great for splinter resistant for nurseries
- Excellent adhesion with a durable finish
- Available in over 3000 colors

TECHNICAL DATA

Finish	Cover	Product Type	Formulation	Application	Dry Time	Notes
Eggshell	100% Arylic Latex	40.2	375-425	1 gal. per sq. ft. (100% Arylic Latex)	2-4 hours	100% Arylic Latex
Satin	100% Arylic Latex	40.2	375-425	1 gal. per sq. ft. (100% Arylic Latex)	2-4 hours	100% Arylic Latex
Semi-Gloss	100% Arylic Latex	40.2	375-425	1 gal. per sq. ft. (100% Arylic Latex)	2-4 hours	100% Arylic Latex

*Benjamin Moore's zero VOCs and zero emissions claims are based on the product's VOC and emissions content as determined by the U.S. Green Building Council's (USGBC) GreenGuard Gold certification program.

The U.S. Green Building Council (USGBC) has awarded Benjamin Moore's Natura paint the GreenGuard Gold certification, the highest level of certification for low VOC and zero emissions products.

Benjamin Moore's zero VOCs and zero emissions claims are based on the product's VOC and emissions content as determined by the U.S. Green Building Council's (USGBC) GreenGuard Gold certification program. For more information, visit www.benjaminmoore.com/green.

NATURA

PERMANENT INTERIOR PAINT

SAFER FOR HOMES, BUILDINGS AND THE ENVIRONMENT.

Benjamin Moore®
"Find life in color"

GOING BEYOND JUST GREEN

NATURA IS GREEN WITHOUT COMPROMISE®

With zero VOCs, zero emissions and no harsh fumes*, Natura can have a positive impact on air quality. This is a truly environmentally friendly paint without sacrifice to performance or color integrity.

INDEPENDENTLY TESTED & CERTIFIED

Natura is Benjamin Moore's most decorated product. Whether you are painting a home, school or a building, you can be confident in knowing you've used the best for your environmentally sensitive project needs.

2015 Product of the Year award
This award is given to the consumer's products for their quality and innovation by TNS, a global consumer research company. Natura was selected as the highest rated paint category.

Certified Green & Healthy
This certification is awarded to products that are safe for people with asthma and allergies. Natura is a certified green & healthy product.

GreenGuard Gold
This certification is awarded to products that are safe for people with asthma and allergies. Natura is a certified green & healthy product.

GreenGuard Gold
This certification is awarded to products that are safe for people with asthma and allergies. Natura is a certified green & healthy product.

Leadership in Energy & Environmental Design (LEED)
The U.S. Green Building Council's (USGBC) rating system for green building. Benjamin Moore's Natura paint is a LEED certified product.

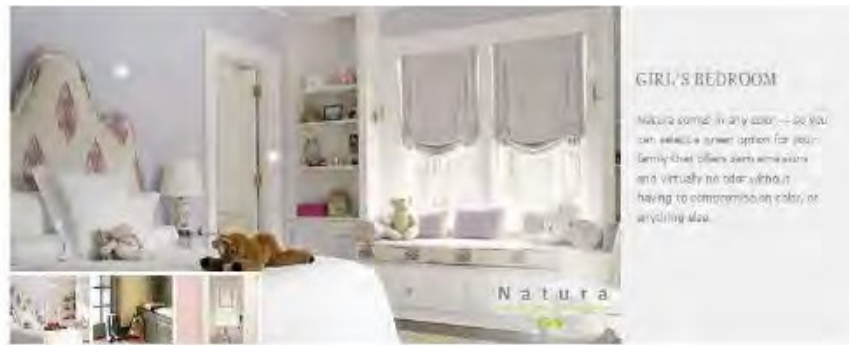
Qualification for LEED & LEED v2009
The U.S. Green Building Council's (USGBC) rating system for green building. Benjamin Moore's Natura paint is a LEED certified product.

MPI Green Performance™
Mortgage Investment Performance Index (MPI) is a performance based standard and tool for measuring the environmental performance of buildings.

CRPS Collaborative for High Performance Schools
Provides the accreditation for high performance schools. Benjamin Moore's Natura paint is a CRPS certified product.

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Exhibit C



Natura® Zero VOC and Zero Emissions* Paint



Beautiful Color. Lasting Durability. None of the other stuff.

Creating a greener and safer life for you and your family should be simple. It should be easy to find environmentally sustainable products that offer exactly what you want — and nothing you don't.

At Benjamin Moore, we're committed to providing environmentally-friendly products that both protect and beautify your home. Natura paint goes beyond zero VOC to offer zero emissions and virtually no odor, so there is nothing standing between you and gorgeous rooms your whole family can enjoy. Its patented manufacturing process was also designed to ensure that there is no compromise on style or results. With Natura, what's good for your walls is even better for your family — and the planet.

[LEARN MORE >](#)
[FIND A RETAILER >](#)

"Green Without Compromise®" — what Natura offers

- **Patented manufacturing process** — Natura is produced on a dedicated manufacturing line to ensure virtually no odor and low emissions.
- **Zero VOCs, zero emissions & virtually odorless** — allows you to return to using your space quickly.
- **Unlimited color selection** — going green doesn't mean giving up your options — you can get any Benjamin Moore color in Natura paint.
- **Paint and primer together** — in fact, any application that requires less product overall.
- **Provides a durable, washable film** — so you can wash and scrub it as needed, and your walls will still look beautiful for years to come.



The Green Good Housekeeping Seal helps consumers choose products that demonstrate environmental responsibility on a wide range of criteria.

In order for a product to earn the Green Good Seal, the product must first earn the primary Good Housekeeping Seal, which signifies that the product has been reviewed by the experts at the Good Housekeeping Institute. It is then evaluated on a wide range of environmental criteria, including reduction of energy and water use in manufacturing, ingredient and product safety, packaging, distribution and the brand's corporate social responsibility. Natura was the first and is currently the only paint to earn the Green Good Housekeeping Seal in the Paints and Coatings category.

Among the features of Natura that stood out in the evaluation process were the absence of VOCs in Natura's base paint and tint colors and its patented manufacturing process — requiring less energy usage and producing less waste.



Products carrying the Green Promise designation indicate the Benjamin Moore assurance that the product is environmentally friendly and meets — and even exceeds — the strictest industry standards and regulations, while maintaining the premium level of performance you expect from Benjamin Moore.

Complaint

Exhibit D**Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero...** Page 1 of 4

customer service: 855-734-6882 [Log In](#) [William B](#)

[For Architects & Designers](#) [For Contractors](#)

[For Your Home](#) [Painting Ideas](#) [Explore Color](#) [Find Products](#) [Learn More](#) [Select a Store](#) [Shop Now](#) [Store Locator](#) [Register Now](#)

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**Natura® Zero-VOC and Zero Emissions*
Paint**

Natura Waterborne Interior Paint continues Benjamin Moore's commitment to providing the most environmentally friendly paint. Natura goes beyond zero VOC to offer zero emissions, making it a safer paint for your family and the environment, all without compromise to performance or color selection. Natura is truly "Green Without Compromises."

 **green promise™**

 **SAVE** |  **PRINT** |  **SHARE**

AVAILABLE IN



**Natura Waterborne Interior
Paint - Flat Finish**

Flat(512)

DOWNLOAD (PDF) :
[MSDS 512 \(English\)](#) | [MSDS 512 \(Español\)](#)
[TDS 512 \(English\)](#)

FEATURES :

- Virtually odorless
- Zero VOC and zero emissions*
- Quick return to service
- Now Certified **asthma & allergy friendly™**
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,000 people by TRS
Interior Paint Category: Natura

* Zero VOC according to EPA Method 24. No VOC emissions detected according to CDPH/DHS standard method v1.1, 2010

ADDITIONAL INFO :

<http://www.benjaminmoore.com/en-us/for-your-home/paint-prod...> 10/9/2015

Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 2 of 4

Available Colors : All Colors, Ready Mix White

Glosses (or Glazes) : Flat

Cleanups : Soap and Water

Resin Type : Acrylic Latex

Recommended Use : Interior



Natura Waterborne Interior Paint - Eggshell Finish

Eggshell(513)

DOWNLOAD (PDF) :

SDS 513-1X (English)	SDS 513-1X (Español)
SDS 513-2X (English)	SDS 513-2X (Español)
SDS 513-4X (English)	SDS 513-4X (Español)
SDS 513-01 (English)	SDS 513-01 (Español)

TDS 513 (English)

Eggshell

FEATURES :

- Virtually odorless
- Zero VOC and zero emissions*
- Quick return to service
- Now Certified **asthma & allergy friendly****
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation.
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,000 people by TRS

Interior Paint Category: Natura

* Zero VOC according to EPA Method 24. No VOC emissions detected according to CDPH/DHS/standard method v1.1, 2010.

ADDITIONAL INFO :

Available Colors : All Colors, Ready Mix White

Glosses (or Glazes) : Eggshell

Cleanups : Soap and Water

Resin Type : Acrylic Latex

Recommended Use : Interior

Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 3 of 4



Natura Waterborne Interior Paint - Semi-Gloss Finish

Semi-Gloss(S14)

DOWNLOAD (PDF) :

MSDS S14 (English) | MSDS S14 (Español)

TDS S14 (English)

Semi-Gloss

FEATURES :

- Virtually odorless
- Zero VOC and zero emissions*
- Quick return to service
- Now Certified **asthma & allergy friendly****
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation.
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,000 people by TRS

Interior Paint Category: Natura

* Zero VOC according to EPA Method 24. No VOC emissions detected according to CDRH/DHS standard method v1.1, 2010.

ADDITIONAL INFO :

Available Colors : All Colors, Ready Mix White

Sheens (or Gloss) : Semi-Gloss

Cleanup : Soap And Water

Resin Type : Acrylic Latex

Recommended Use : Interior

<http://www.benjaminmoore.com/en-us/for-your-home/paint-prod...> 10/9/2015

Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 4 of 4

INNOVATIONS LIKE NO OTHER



OUR PHILOSOPHY OF CAN

Benjamin Moore's paint cans are designed to be functional, beautiful, and easy to use. We believe in creating a positive experience for our customers, from the moment they open the can to the moment they see the results of their paint project.



PROBLEM SOLVING PAINT

We find ways to make complex problems easier to solve. Whether it's removing household stains, getting up to the eaves, or making things more beautiful, we're all about solving problems.



PUT TO THE TEST

Benjamin Moore's paint is designed to be tested. We believe in creating a positive experience for our customers, from the moment they open the can to the moment they see the results of their paint project.

Note: On-screen and printed color representations may vary from actual paint colors.

Sign up for exclusive offers, promotions and news:

Company Info About Us Contact Us Careers Press Site Help Site Map For Dealers FAQs Become a Dealer	Tools Search Color Gallery Personal Color Viewer® Paint Calculator Store Locator My Favorites	Ordering Info Shipping Policy Returns Policy Track My Order Shop Now Store Help	Product Product Catalog Interior Paint Chooser Green Promise® Paint Calculator	Connect With Us Facebook Twitter Pinterest YouTube Google+ Instagram
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101 Pentagon Drive, Northvale, NJ 07645 | Privacy | Terms and Conditions | Best Viewed | Unsubscribe | CA Supply Chain Act

<http://www.benjaminmoore.com/en-us/for-your-home/paint-prod...> 10/9/2015

Exhibit E



Complaint

Exhibit F

NATURA

PREMIUM INTERIOR PAINT

GREEN WITHOUT COMPROMISE™

Natura® continues Benjamin Moore's commitment to innovation by providing our most decorated and environmentally friendly paint. Natura® is safer for your family and the environment while still providing a durable, beautiful finish.

- Zero VOCs* and zero emissions** with no harsh fumes***
- Self-priming on most surfaces
- Dries fast for quicker return to service
- Excellent adhesion with a durable finish

Customer Profile:

- Consumers who seek an environmentally-friendly paint, and are unwilling to compromise on performance or color integrity
- Consumers looking for a paint that is more suitable for people with allergies
- Residential contractors needing a high performing green, zero VOC* paint to meet their clients' needs
- Architects, designers, and specifiers seeking a premium quality product which meets LEED®, MPI and CHPS standards

Available Sheens: Flat, Eggshell and Semi-Gloss
Available Colors: Available in four bases. Can be tinted in thousands of colors.
Cleanup: Soap and water
Recommended Use: Natura® is ideal for residential or commercial applications where a zero-VOC* paint with low emissions is desired. It's perfect for residential homes, hospitals, healthcare facilities, LEED® certified facilities and green buildings.
Competitive Advantage: "Certified asthma & allergy friendly™" now joins Natura's® other recognitions and accolades; Natura® is truly Green Without Compromise®.

Awards and Certifications:









*Zero VOC according to EPA Method 24
 **Zero emissions detected according to CARB's LBS/Standard Method V11.1, 2010
 ***No harsh fumes - Zero emissions detected according to CDPH's RH-13/Standard Method V1.1, 2010
 ©2015 Benjamin Moore & Co. All trademarks are registered trademarks of their respective owners. The CERTIFIED ASTHMA & ALLERGY FRIENDLY Mark is a Registered Certification Mark of the ASTHMA AND ALLERGY FOUNDATION OF AMERICA

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Exhibit G



Natura
Waterborne Interior Paint



The Program

The Natura advertising program will build consumer awareness and drive foot traffic to local retailers, ultimately supporting sales of Natura. There are several new programs and initiatives that will establish Natura's long term growth so that it continues to be our flagship green product, especially in light of the growing demand for green products.

Why Natura?
Natura was one of the first products in the industry to be a true zero VOC product. However, Natura is more than just zero VOCs.

Natura also offers unique benefits including:

- Patented manufacturing, odor and emission technology
- Low emissions
- Lowest odors - No harsh chemical smell
- Segregated and proprietary manufacturing process that uses exclusive resin
- Meets or exceeds the most comprehensive environmental testing standards in the industry
- The first paint to earn the Green Good Housekeeping seal

National Advertising

Benjamin Moore will be leveraging multiple media outlets to gain visibility and provide consumer education about Natura, Benjamin Moore's greenest product.

- Shades of Green - an educational TV program devoted to the advancement of renewable energy and sustainable living
 - 4-6 minute feature on Discovery (Dish/Direct TV) and CNN Airport
 - 30 second commercial spots
- Good Housekeeping print and digital advertising
- Digital Experience
 - Natura landing page
 - Expanded keyword search buy
 - Display ads
- PR outreach behind patent
- Trade shows



Retail Support

- Print, digital and social media assets
- 100% co-op reimbursement when select Natura ad slicks are utilized
- Free Natura 2013 POP Kit
 - Window Poster, End Cap Kit, Color Preview Studio Graphic, Bail Hangers and Shelf Talker
 - Available for order to all Natura dealers on www.mybenjaminmoore.com
- Please note that coupons cannot be utilized on these ads

*VOC < 5 g/L
© 2013 Benjamin Moore & Co. Benjamin Moore, Green Promise, Natura and the triangle "M" symbol are registered trademarks and For everything that matters is a trademark of Benjamin Moore & Co. Printed in USA.

Benjamin Moore
For everything that matters.

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondent is Benjamin Moore & Co., Inc, a New Jersey corporation with its principal office or place of business at 101 Paragon Drive, Montvale, New Jersey 07645.

Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Clearly and conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

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5. On a product label, the disclosure must be presented on the principal display panel.
 6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. “Close proximity” means that the disclosure is very near the triggering representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation. A disclosure made on a different printed page than the triggering representation is not in close proximity.
- C. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- D. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric

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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. Section 51.100(s).

- E. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- F. “Trace” level of emission means:
 - 1. A VOC has not been intentionally added to the covered product;
 - 2. Emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and
 - 3. Emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating.
- G. “Certification” means any seal, logo, emblem, shield, or other insignia that expresses or implies approval or endorsement of any product, package, service, practice, or program, or any attribute thereof.
- H. “Respondent” means Benjamin Moore & Co., Inc. and its successor and assigns.

**I. Prohibited Misleading and Unsubstantiated
Representations Regarding Emission and VOC
Level of Covered Product**

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in

Decision and Order

active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, that the emission level of a covered product is zero, or that the VOC level of a covered product is zero, unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is 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. The covered product's emission is zero micrograms per meter cubed and the covered product's VOC content is zero grams per liter; or
- B. The covered product does not emit or produce more than a trace level of emission.

For purposes of this Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

II. Prohibited Misleading and Unsubstantiated Representations Regarding Environmental and Health Claims

IT IS FURTHER ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

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- A. The emission of the covered product;
- B. The VOC level of the covered product;
- C. The odor of the covered product;
- D. Any other health benefit or attribute of, or risk associated with exposure to, the covered product, including those related to VOC, emission, or chemical composition; or
- E. Any other environmental benefit or attribute of the covered product, including those related to VOC, emission, or chemical composition,

unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is 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 the representation is true. For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

III. Notice to Dealers and Distributors

IT IS FURTHER ORDERED that Respondent deliver as soon as practicable, but in no event later than 60 days after the effective date of this Order, a notice in the form shown in Attachment A to all of Respondent’s dealers and distributors, and all other entities to which Respondent provided point-of-sale advertising, including product labels, for any covered product identified in Attachment A. The notice required by this paragraph must not include any document or other enclosures other than those referenced in Attachment A.

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IV. Prohibited Misleading Certification Marks

IT IS FURTHER ORDERED that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any misrepresentation, expressly or by implication, regarding certifications, including:

- A. The fact that, or degree to which, a third party has, evaluated a product, package, service, practice, or program based on its environmental benefits or attributes; or
- B. That a certification is endorsed by an independent person or organization.

V. Disclosure of Material Connection

IT IS FURTHER ORDERED that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any product, package, certification, service, practice, or program, must not make any representation, in any manner, expressly or by implication, about any user or endorser of such product, package, certification, service, practice, or program unless Respondent discloses, clearly and conspicuously, and in close proximity to the representation, any unexpected material connection, when one exists, between such user or endorser and (1) the Respondent or (2) any other individual or entity affiliated with the product or service. For purposes of this Provision, "unexpected material connection" means any relationship that might materially affect the weight or credibility of the testimonial or endorsement and that would not reasonably be expected by consumers.

Decision and Order

VI. Means and Instrumentalities

IT IS FURTHER ORDERED that Respondent, and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product, must not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact, including but not limited to any representation prohibited by Provisions I, II, IV, or V, above. For purposes of this Provision, “means and instrumentalities” shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product, in or affecting commerce.

VII. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.
- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

Decision and Order

- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days after delivery, a signed and dated acknowledgment of receipt of this Order.

VIII. Compliance Report and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. Sixty days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order and a copy of the notice sent to dealers and distributors; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in any designated point of contact or the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

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- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must 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: In re Benjamin Moore, Docket No. C-4646.

IX. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

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- C. Records of all consumer complaints concerning the subject matter of the Order , including complaints involving representations covered by Parts I, II, IV, or V of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. For 5 years from the date of the last dissemination of any representation covered by this Order:
 - 1. All materials that were relied upon in making the representation; and
 - 2. All tests, analyses, research, studies, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls 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; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

X. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

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- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XI. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which is stated at the end of this Order, next to the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any provision in this Order that terminates in less than 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 provision.

If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the

Decision and Order

dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision 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.

Decision and Order

Attachment A*Attachment A: Notice to Dealers and Distributors*

[on Respondent letterhead]

[insert date]

IMPORTANT NOTICE ABOUT _____
ADVERTISING AND MARKETING MATERIALS

[insert addressee name]

[insert addressee address used in the ordinary course of business]

Dear Dealer or Distributor,

In response to a complaint from the Federal Trade Commission, Benjamin Moore & Co., Inc. has agreed not to make claims that its paints contain zero VOCs (volatile organic compounds) or other harmful emissions, unless we can substantiate that the level is actually zero or otherwise comply with the settlement terms. We request that you immediately stop using existing _____ advertising and marketing materials that represent the emission level of any paint is zero, or that the VOC level of any paint is zero.

In addition, our in-house Green Promise certification mark did not adequately identify it as a self-certification or the specific characteristics of the certification.

We have included placards that you must display clearly and prominently next to the paint containers and at each point of sale to eliminate any misrepresentation to consumers. Enclosed are illustrations of how to properly place the placards. The placards must be displayed until you have sold all paint containers bearing the problematic claims.

We will make revised marketing materials available to you shortly. Should you have any questions about compliance with this notice, please contact [insert contact person]. In addition, you can obtain further information about the settlement by visiting www.ftc.gov and searching for "Benjamin Moore."

Sincerely,

[name]

Analysis to Aid Public Comment

**LABEL UPDATE:
Benjamin Moore's "Zero Emission"
and "Zero VOC" Paints**

Benjamin Moore Natura® Waterborne Interior "Zero Emission" paints emit chemicals during the painting process and while drying. Some of these chemicals can be harmful to sensitive groups such as babies and those suffering from asthma or allergies.

**LABEL UPDATE:
Benjamin Moore's "Green Promise" Certification**

Benjamin Moore's Green Promise® designation is the Company's assurance that this product meets—and often exceeds—rigorous environmental and performance criteria regarding VOCs, emissions, application, washability, scrubbability, and packaging, while also delivering the premium levels of performance you expect from Benjamin Moore.

**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 Benjamin Moore & Co., Inc. ("respondent").

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 will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing, sale, and distribution of purportedly "emission-free" paints. Emission is any compound emitted from paint during application or thereafter and includes volatile organic compounds (or VOCs). According

Analysis to Aid Public Comment

to the FTC complaint, 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 FTC also alleges that respondent used its Green Promise seal without adequately disclosing that respondent awarded the seal to its own product. Consumers likely interpret such seals as a claim that an independent third party certified the product. The FTC further alleges that respondent provided independent retailers with promotional materials containing the same claims it made to consumers. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains five provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace levels. The orders define “emission” to include all emissions (not just VOCs that cause smog). This definition reflects the Commission’s Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. The order defines “trace level of emission” to mean (1) no intentionally added VOC, (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health, and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating. Part II prohibits misleading representations regarding emission, VOC levels, odor, and any general environmental and health benefit of paints. The order requires competent and reliable scientific evidence to substantiate these representations. Parts IV and V prohibit

Analysis to Aid Public Comment

respondent from misrepresenting third-party certifications and failing to adequately disclose a material connection. Part VI prohibits respondent from providing third parties with the means and instrumentalities to make false, unsubstantiated, or otherwise misleading representations of material fact regarding paints, including any representation prohibited by Parts I, II, IV or V.

To correct allegedly existing unsubstantiated zero emission and VOC claims and deceptive certification claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to place placards next to paint cans and at point of sale.

Parts VII through XI are reporting and compliance provisions. Part VII mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VIII requires that respondent submit compliance reports to the FTC within sixty (60) days of the order's issuance and submit additional reports when certain events occur. Part IX requires that respondent must create and retain certain records for five (5) years. Part X provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part XI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

If the Commission finalizes the agreement's proposed order, it plans to propose harmonizing with this order the consent orders issued in the PPG Architectural Finishes, Inc. (Docket No. C-4385) and The Sherwin-Williams Company (Docket No. C-4386) matters. Specifically, the Commission plans to issue orders to show cause why those matters should not be modified pursuant to Section 3.72(b) of the Commission Rules of Practice, 16 C.F.R. § 3.72(b).

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

IMPERIAL PAINTS, LLC
D/B/A
LULLABY PAINTS AND ECOS PAINTSCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4647; File No. 162 3080
Complaint, April 24, 2018 – Decision, April 24, 2018

This consent order addresses Imperial Paints, LLC's marketing, sale, and distribution of purportedly "VOC-free" paints. The complaint alleges that respondent made unsubstantiated representations that its paints: (1) are free of volatile organic compounds ("VOCs"); (2) are VOC-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, pregnant women, 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, pregnant women, and allergy and asthma sufferers. The consent order prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels.

Participants

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

For the *Respondent*: Ryan Clark and Joan Long, Barnes & Thornburg LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Imperial Paints, LLC, a limited liability company, 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 Imperial Paints, LLC ("Imperial"), also doing business as, *inter alia*, Lullaby Paints and ECOS Paints is a South Carolina limited liability company with its principal office or