

Complaint

IN THE MATTER OF

ICP CONSTRUCTION INC.
F/K/A
CALIFORNIA PRODUCTS CORP.
D/B/A
MURALO PAINTS

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

Docket No. C-4648; File No. 162 3081
Complaint, April 24, 2018 – Decision, April 24, 2018

This consent order addresses ICP Construction Inc.’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; 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. The consent order prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace level, and requires the respondent to send letters to its dealers and distributors, instructing them to post placards next to paint cans and at point of sale.

Participants

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

For the *Respondent*: Christopher Cole and Peter Miller, Crowell & Moring LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that ICP Construction, Inc., formerly known as California Products Corporation, doing business as Muralo Paints, (ICP or “Respondent”) 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:

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1. Respondent ICP Construction, Inc., formerly known as California Products Corp., doing business as Muralo Paints, is a Massachusetts corporation with its principal office or place of business at 150 Dascomb Road, Andover, Massachusetts 01810-5873.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including BreatheSafe paints.

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.

Respondent’s BreatheSafe Paints

4. Respondent distributes BreatheSafe paints to consumers through a network of authorized, independent retailers.

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

a.



(Exhibit D, Brochure.)

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- b. Muralo BreatheSafe is a virtually odorless high-performance water-based latex, formulated with no harmful solvents and based on a sustainable chemistry technology, for interior use. Ideal for nursing homes, schools, babies' rooms and health care facilities.... Specified for space that is occupied during painting.

(Exhibit A, www.muralo.com/products/breathesafe_matte.php).

Respondent's Eco Assurance Logo

6. Respondent distributes, or has caused its independent retailers to distribute several paint products bearing the following "Eco Assurance" logo, including BreatheSafe paints.

a.



(Exhibit E, paint can label).

Count I
Unsubstantiated Claims

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

- a. BreatheSafe Paints are VOC-free;

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- b. BreatheSafe Paints are VOC-free during or immediately after painting;
- c. BreatheSafe Paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies; and
- d. BreatheSafe 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.

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 Eco Assurance**

9. In connection with the advertising, promotion, offering for sale, or sale of its paints, such as through the use of its Eco Assurance 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 Eco Assurance, such as the fact the Eco Assurance 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.

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Count III
Means and Instrumentalities

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

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Exhibit A



Complaint

Exhibit B

Good for the environment & Great for your walls

Breathe Safe™ Finishes



- ZERO VOC formula, based on a sustainable chemistry technology
- Meet or exceed LEED green building requirements
- High hide
- Virtually odorless
- Clean spraying
- Superior touch-up
- Fast drying with easy water clean-up
- Crystalline Silica free
- Available in Interior White Primer, Ceiling White Paint and in Flat, Eggshell, Semi-Gloss finishes (in over 1200 colors)

Ideal for:

- Health care facilities
- Business offices, conference centers
- Retail stores, malls
- Hotels, motels
- Restaurants
- Schools, libraries, universities

MOHAWK
Manufactured with Windpower

Printed on Mohawk Via Smooth, which is manufactured entirely with Green-e certified renewable wind-generated electricity.


Printed on 100% post consumer use recycled paper.

The Murala Company Inc.
Bayonne, NJ Chicago, IL
simplygreenpaint.com
murala.com elderandjenks.com
1-800-631-3440

10/11 M99400

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Exhibit C

BreatheSafe™

INTERIOR WATER-BASED
ZERO VOC FINISHES



Good for the environment & Great for your walls



Breathe Safe™ Finishes

- ZERO VOC formula, based on a sustainable chemistry technology
- Meet or exceed LEED green building requirements
- High hide
- Paint & Primer in one
- Virtually odorless
- Clean spraying
- Superior touch-up
- Fast drying with easy water clean-up
- Crystalline Silica free
- Available in Interior White Primer, Ceiling White Paint and in Matte, Flat, Eggshell, Semi-Gloss finishes (in over 1200 colors)

FINISH	PRODUCT #	RECOMMENDED USES	VOC*	GREEN SEAL COMPLIANT	LEED COMPLIANT
 Matte	60XX	Higher traffic areas, where durability is required	0		
 Flat	20XX	Low traffic areas, walls & ceilings	0		
 Eggshell	40XX	Higher traffic areas, where durability is required	0		
 Semi-Gloss	70XX	High traffic areas, cabinets, doors, trim	0		
 Ceiling Paint	2048	Ceilings	0		
 Primer	2235	Walls & Ceilings	0		

* Calculated

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Exhibit D

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Exhibit F


Muralo
PAINTS

Breathe Safe.

INTERIOR WATER-BASED
ZERO VOC FINISH

GOOD FOR THE ENVIRONMENT
GREAT FOR YOUR WALLS

For over 115 years, Muralo Paints has engineered innovative products to satisfy the most discriminating customers. Muralo's Breathe Safe™ line is no different. It is virtually odorless and free of VOC's, while still keeping the high performance properties you've come to expect from a Muralo product.

Simply green

FINISH	PRODUCT #	RECOMMENDED USES	VOC*	GREEN SEAL COMPLIANT	LEED COMPLIANT
 Matte	60XX	Higher traffic areas, where durability is required	0		
 Flat	20XX	Low traffic areas, walls & ceilings	0		
 Eggshell	40XX	Higher traffic areas, where durability is required	0		
 Semi-Gloss	70XX	High traffic areas, cabinets, doors, trim	0		
 Ceiling Paint	2048	Ceilings	0		
 Primer	2235	Walls & Ceilings	0		

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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 (“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 the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondent is ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, a Massachusetts corporation with its principal office or place of business at 150 Dascomb Road, Andover, Massachusetts 01810-5873.

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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 ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, and its successors and assigns.

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**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 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

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product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

- 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

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must not include any document or other enclosures other than those referenced in Attachment A.

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) 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

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the weight or credibility of the testimonial or endorsement and that would not reasonably be expected by consumers.

VI.Means and Instrumentalities

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 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" means 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

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Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- 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 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

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affiliate that engages in any acts or practices subject to this Order.

- 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 ICP Construction, Docket No. C4648.

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

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title or position; dates of service; and (if applicable) the reason for termination;

- 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

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penalty of perjury, and produce records for inspection and copying.

- 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 on April 24, 2038, 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.

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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 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.

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, ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, has agreed not to make claims that its paints contain No 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.

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In addition, our in-house ECO ASSURE 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 the 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 _____. In addition, you can obtain further information about the settlement by visiting www.ftc.gov and searching for “ICP Construction.”

Sincerely,
[name]
[title]

(first placard)**LABEL UPDATE:
ICP Construction’s “ZERO VOC” Paints**

All “Zero VOC” (volatile organic compound) paints emit chemicals during the painting process and while drying. Some of these chemicals can be harmful to people, especially to sensitive groups such as babies, pregnant women, and those suffering from asthma or allergies. _____ paints emit chemicals for at least two weeks. Inside a home, these chemicals can stay in the air for even longer.

Analysis to Aid Public Comment

(second placard)
LABEL UPDATE:
ICP Construction's "Eco Assurance" Certification

ICP Construction's Eco Assurance seal is our company's promise that this product meets or exceeds certain industry environmental standards, including Green Seal and LEED Green Building requirements, while still keeping the highest performance properties you've come to expect from our products.

**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 ICP Construction Inc., formerly known as California Products Corp., d/b/a/ Muralo Paints, a corporation ("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 "VOC-free" paints. "VOC" is the abbreviation for volatile organic compounds. VOC-free includes claims such as "zero VOCs," "0 VOCs," and "No VOCs." According to the FTC complaint, respondent made unsubstantiated representations that its paints: (1) are VOC-free; (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

Analysis to Aid Public Comment

as babies; 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. The FTC also alleges that respondent used its ECO ASSURANCE seal without adequately disclosing that respondent awarded the seal to its own product. Consumers likely interpret the seal 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 level. The orders define “emission” to include all emissions (not just VOC that causes 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 emission found in indoor air, not just VOC 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 level, 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 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.

Analysis to Aid Public Comment

To correct existing unsubstantiated zero-VOC claims and deceptive certification claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to post 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

YOLO COLORHOUSE, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4649; File No. 162 3082
Complaint, April 24, 2018 – Decision, April 24, 2018

This consent order addresses YOLO Colorhouse, 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 children; 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 children. The consent order prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels, and requires the respondent to send letters to its dealers and distributors, instructing them to put stickers on paint cans to obscure allegedly unsubstantiated emission and VOC claims.

Participants

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

For the *Respondent*: Michael Cohen and Anne M. Talcott, Schwabe Williamson & Wyatt.

COMPLAINT

The Federal Trade Commission, having reason to believe that YOLO Colorhouse, 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 YOLO Colorhouse, LLC ("YOLO") is a limited liability company with its principal office or place of business at 519 NE Hancock St. # B, Portland, Oregon 97212.