

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.

Complaint

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

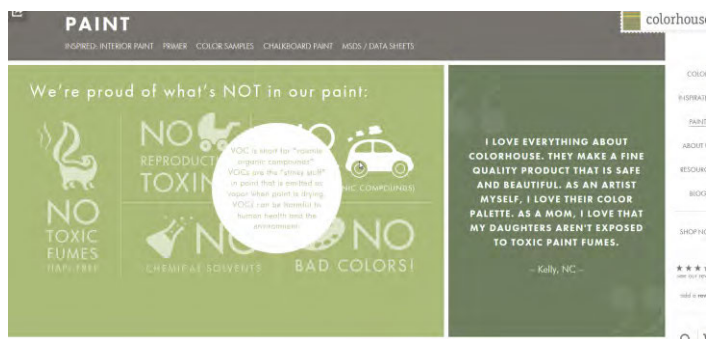
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

YOLO’s Colorhouse Paints

4. Respondent distributes Colorhouse Paints directly to consumers through its showroom and website (<http://www.colorhousepaint.com>), and through independent retailers.

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

- a. “Our products have NO VOCs, NO toxic fumes/HAPs-free, NO reproductive toxins, and No chemical solvents or other stinky stuff.”
- b. “We’re proud of what is not in our paint – NO VOCs. VOCs are the ‘stinky stuff’ in paint that is emitted as vapor when paint is drying. VOCs can be harmful to human health and the environment.”



(website material, Exhibit A)

Complaint

- c. A video entitled “Paint for the People and the Planet,” showing a community of people, including a toddler, painting together and on each other. (Exhibit B)

Count I
Unsubstantiated Claims

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

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

7. The representations set forth in Paragraph 6 were not substantiated at the time the representations were made.

Count II
Means and Instrumentalities

8. Respondent has distributed promotional materials, including the statements and depictions contained in Exhibits A-B 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

Complaint

9. 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.

Complaint

Exhibit A

PAINT
INSPIRED: INTERIOR PAINT | PRIMER | COLOR SAMPLES | CHALKBOARD PAINT | MUGS / DATA SHEETS

colorhouse

We're proud of what's NOT in our paint:

- NO TOXIC FUMES** (with a flame icon)
- NO REPRODUCTIVE TOXINS** (with a baby carriage icon)
- NO VOCs** (with a car icon)
- NO CHEMICAL SOLVENTS** (with a paint can icon)
- NO BAD COLORS!** (with a paint palette icon)

I LOVE EVERYTHING ABOUT COLORHOUSE. THEY MAKE A FINE QUALITY PRODUCT THAT IS SAFE AND BEAUTIFUL. AS AN ARTIST MYSELF, I LOVE THEIR COLOR PALETTE. AS A MOM, I LOVE THAT MY DAUGHTERS AREN'T EXPOSED TO TOXIC PAINT FUMES.

— Kelly, NC —

INSPIRED: INTERIOR PAINT

Colorhouse Inspired interior paints are low-odor, have superior coverage and durability, and are 100% acrylic. Our paints are available in 3 sheens: Flat, Eggshell, and Semi-Gloss. Colorhouse paints contain NO VOCs (volatile organic compounds), NO toxic fumes/odors, NO reproductive toxins, and NO chemical solvents. For more information on application and ingredients, view [Colorhouse POS](#).

colorhouse

DRY TIME
Dry to touch in 30-60 minutes; recoat after 2-4 hours.

COVERAGE
Covers 350-400 square feet per gallon.

CLEAN UP
Wash tools with warm soapy water. Scrape excess paint before washing.

STORAGE
Store in a dry area. Protect from freezing.

AWESOME! I CAN'T WAIT TO PAINT SOMETHING ELSE! PAINT CHIPS WERE EXCELLENT GUIDES, AND THE PAINT WAS SO LOW-ODOR I NEVER ONCE GOT A HEADACHE EVEN IN A SMALL ENCLOSED ROOM. THE COLOURS ARE MAGNIFICENT AND ALL WE HAD HOPED FOR.

— RICHARD, TX —

colorhouse

COLOUR
INSPIRATION
PAINT
ABOUT US
RESOURCES
BLOG
SHOP NOW

★★★★★
Join our newsletter

100% SATISFACTION

SEARCH

ADD TO CART

VIEW PRODUCT LIST

Complaint



COLORHOUSE PRIMER

Colorhouse Inspired Multi-Purpose Primer has excellent hide and adhesion. Our Primer is designed for many surfaces like new wallboard, raw wood, cured masonry and galvanized metal. For more application info click [here](#).

Colorhouse Multi-Purpose Primer contains NO VOCs (volatile organic compounds), NO toxic fumes/HAPs-free, NO reproductive toxins, and NO chemical solvents.

City: Select Size: [ADD TO CART](#)



FAN DECKS

colorhouse

ADD TO CART



COLORSPOT 8 OZ. SAMPLES

[EXPLORE COLORS](#)

USE THE WORLD MORE COLORFUL AND LESS VOCATED

[FREE COLOR HELP](#)

CHALKBOARD PAINT

Colorhouse Chalkboard paint turns any interior surface into a chalkboard! We encourage you to write on your walls with our durable chalkboard finish. Like all Colorhouse paint, there are NO VOCs (volatile organic compounds), NO toxic fumes/HAPs-free, NO reproductive toxins, and NO chemical solvents. Available in 10 striking Colorhouse hues. For more information: [View Colorhouse Chalkboard PDS](#)

[EXPLORE CHALKBOARD COLORS](#)



PRODUCT AND MSDS DATA SHEETS

Technical information about our primer and paints.

[DOWNLOAD DATA SHEETS](#)

WARRANTY

Colorhouse Inspired zero VOC paint and primer warranty.

[DOWNLOAD WARRANTY](#)

FAQS

The answer to all your questions.

[VIEW FAQS](#)

[Home](#)
[Contact](#)
[Privacy Policy](#)
[Sitemap](#)

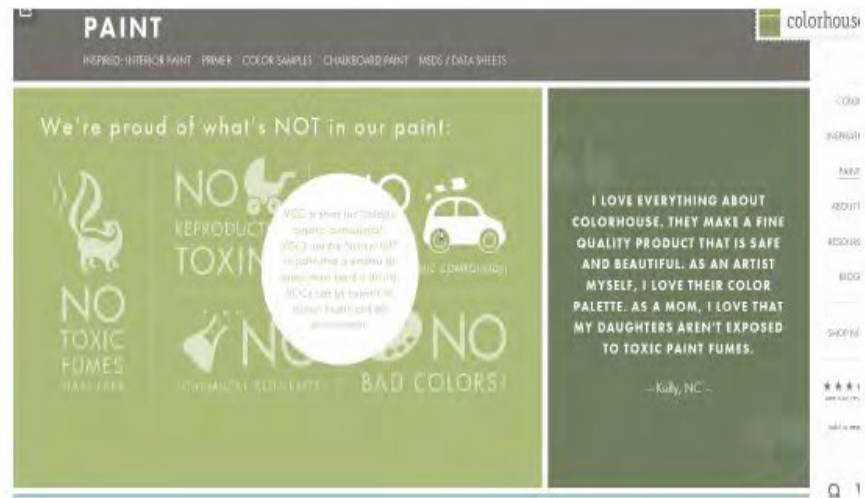
Connect with us





Join our Color Community!
 [SUBMIT](#) [SIGN UP NOW](#)

Complaint



RESOURCES

[PAINT CALCULATOR](#) [FREE COLOR HELP](#) [FAQS](#)

FAQS

All our answers to all your questions.

[Where can I buy Colorhouse paint?](#)

[What sheens does Colorhouse have and where do I use them?](#)

[Do you have a primer?](#)

[How can I sample your colors?](#)

[What makes your paint environmentally-friendly?](#)

[What is a VOC? Why are they bad? Why choose a Zero VOC paint?](#)

[What makes Colorhouse different from other low or zero VOC paints?](#)

Colorhouse paints are formulated with you and the environment in mind. We restrict over a 1000 chemical compounds. Our products have NO VOCs, NO toxic fumes/HAPs-free, NO reproductive toxins, and No chemical solvents or other sticky stuff!

[Why were VOCs added to paints in the first place? Why aren't VOCs in Colorhouse paint?](#)

[What is LEED? Does Colorhouse paint qualify for LEED Green Building points?](#)

[Why do you put mildewcide in Colorhouse paint?](#)

[Does Colorhouse paint work for chemically sensitive people?](#)

[What does "No Toxic Fumes" mean?](#)

No toxic fumes means that Colorhouse paints do not contain any hazardous air pollutants. These toxic chemicals are pollutants that can cause serious health effects and have adverse impact on our environment.

[Is Colorhouse a natural paint?](#)

[Is Colorhouse tested on animals/animal ingredients?](#)

[What ingredients are in Colorhouse?](#)

[How do I store or dispose of my leftover paint?](#)

[Does Colorhouse seal in VOCs?](#)

[Is Colorhouse primer a stain-blocking primer?](#)

[I am pregnant — can I paint?](#)

Our paints are zero VOC and are absent of the commonicky chemicals and toxic fumes found in conventional paints, such as mutagens, hazardous air pollutants, ozone depleting compounds, formaldehyde and phthalates. Our paints are a healthier option for the home, but if you have specific health concerns we always recommend speaking with your doctor.

[Can I paint with Colorhouse on the following surfaces: drywall, wood, concrete, furniture, floors, cabinetry and metal?](#)

[Does the color add VOCs?](#)

[Can another company's colors be mixed in Colorhouse?](#)

[Does Colorhouse offer color-choosing help?](#)

[Home](#)
[Contact](#)
[Privacy Policy](#)
[Sitemap](#)

Connect with us

Join our Color Community!

Complaint

Exhibit B

Exhibit B

(video entitled "Paint for the People and the Planet")

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 (“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 YOLO Colorhouse, LLC, a limited liability company with its principal office or place of business at 519 NE Hancock St. # B, Portland, Oregon 97212.

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. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- B. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. Section 51.100(s).
- C. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- D. “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

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normal conditions in the typical residential home without interior architectural coating.

- E. “Respondent” means YOLO Colorhouse, LLC, and its successors 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 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.

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**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:

- 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.

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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.

IV. 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 Provision I or by Provision II 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.

V. 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.

Decision and 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.
- 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.

VI. 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.

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- 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.
- 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 YOLO Colorhouse, Docket No. C4649.

VII. 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:

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- 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;
- C. Records of all consumer complaints concerning the subject matter of the Order, including complaints involving representations covered by Parts I or II 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.

Decision and Order

VIII. 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.
- 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.

IX. 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:

Decision and Order

- 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 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: Notice to Dealers and Distributors

[on Respondent letterhead]

[insert date]

**IMPORTANT NOTICE ABOUT COLORHOUSE
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, YOLO Colorhouse, LLC has agreed to qualify its claims that its paints contain zero VOCs (volatile organic compounds) or other harmful emissions, to ensure that retailers and dealers avoid misleading consumers. We request that you immediately replace existing Colorhouse advertising and marketing materials with revised versions which include these qualifications. We have included appropriate materials for this purpose to affix to each can of Colorhouse paint in your possession. Enclosed are illustrations of how to properly place the stickers.

The requirement to affix stickers is only needed if you currently have our product in your inventory. Please note that you will not have to add any stickers to any paint ordered or shipped after the date of this letter.

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 “YOLO Colorhouse.”

Sincerely,
[name]
[title]

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from YOLO Colorhouse, LLC, a limited liability company (“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 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 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 three 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 emissions 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

Analysis to Aid Public Comment

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 and 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. Part IV 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 or II.

To correct existing unsubstantiated zero emission and VOC claims, Part III 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.

Parts V through IX are reporting and compliance provisions. Part V 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 VI 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 VII requires that respondent must create and retain certain records for five (5) years. Part VIII provides for the FTC’s continued compliance monitoring of respondent’s activity during the order’s effective dates. Part IX 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

Analysis to Aid Public Comment

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

**AIR MEDICAL GROUP HOLDINGS, INC.,
KKR NORTH AMERICA FUND XI (AMG) LLC,
AND
AMR HOLDCO, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4642; File No. 171 0217
Complaint, March 6, 2018 – Decision, April 24, 2018*

This consent order addresses the \$2.4 billion acquisition by Air Medical Group Holdings, Inc., a wholly owned subsidiary of KKR North America Fund XI (AMG) LLC, of certain assets of AMR Holdco, Inc., a wholly-owned subsidiary of Envision Healthcare. The complaint alleges that the acquisition, if consummated would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition for the provision of inter-facility air ambulance transport services in Hawaii. The consent order requires AMR to sell its inter-facility air ambulance transport services business, including the assets that support that business, to AIRMD, LLC d/b/a LifeTeam.

Participants

For the *Commission*: Sylvia Kundig and Joe Lipinsky.

For the *Respondents*: Peter Guryan and Richard Jamgochian,
Simpson Thacher & Bartlett.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Air Medical Group Holdings, Inc. has entered into a transaction with Respondent AMR Holdco, Inc.; that such transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and that a proceeding in respect thereof would be in the public