

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:** Robert Pitofsky, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

In the Matter of )  
                        )  
                        )  
**The Valspar Corporation,** )      **Docket No. C-3995**  
                        )  
                        )  
a corporation.         )      )  
                        )

## **COMPLAINT**

The Federal Trade Commission (“Commission”), having reason to believe that Respondent, The Valspar Corporation. (“Valspar”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Lilly Industries, Inc. (“Lilly”), a corporation subject to the jurisdiction of the Commission, in violation of 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

## I. DEFINITIONS

1. “Acquisition Agreement” means the Agreement and Plan of Merger By and Among Lilly Industries, Inc., The Valspar Corporation and VAL Acquisition Corp., dated June 23, 2000.
  2. “Silver Solution” means any solution used to produce a reflective surface on a mirror.
  3. “Tin Solution” means any solution used to adhere a silver solution to the surface of a piece of glass to make a mirror.
  4. “Copper Solution” means any solution used to create a protective barrier between the

silver solution and the mirror backing paint.

5. "Mirror Backing Paint" means any paint that is applied to the back of a mirror to provide a hard shell coating.
6. "Respondent" means The Valspar Corporation.

## **II. THE PARTIES**

7. Respondent Valspar, is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware with its office and principal place of business located at 1101 Third Street South, Minneapolis, Minnesota 55440.
8. Lilly Industries, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Indiana, with its principal executive offices located at 200 W. 103 Street, Indianapolis, Indiana.
9. Pursuant to the Acquisition Agreement, Valspar will acquire 100 percent of the outstanding voting securities of Lilly Industries, Inc.
10. Respondent and Lilly are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in, or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **III. THE ACQUISITION**

11. On June 23, 2000, Respondent and Lilly entered into an Agreement and Plan of Merger, under which Valspar is to acquire 100 percent of the voting securities of Lilly in a transaction valued at approximately \$762 million ("Acquisition").

## **IV. THE RELEVANT MARKETS**

12. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:
  - a. the research, development, manufacture and sale of Silver Solutions;
  - b. the research, development, manufacture and sale of Tin Solutions;

- c. the research, development, manufacture and sale of Copper Solutions; and
  - d. the research, development, manufacture and sale of Mirror Backing Paints.
13. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

## **V. THE STRUCTURE OF THE MARKETS**

- 14. The market for the research, development, manufacture and sale of Silver Solutions in the United States is highly concentrated. Valspar and Lilly account for over 90% of the Silver Solution market in the United States.
- 15. The market for the research, development, manufacture and sale of Tin Solutions in the United States is highly concentrated. Valspar and Lilly account for over 90% of the Tin Solution market in the United States.
- 16. The market for the research, development, manufacture and sale of Copper Solutions in the United States is highly concentrated. Valspar and Lilly account for over 90% of the Copper Solution market in the United States.
- 17. The market for the research, development, manufacture and sale of Mirror Backing Paint in the United States is highly concentrated. Valspar and Lilly account for over 60% of the Mirror Backing Paint market in the United States.

## **VI. BARRIERS TO ENTRY**

- 18. Entry into the relevant markets set forth in paragraphs 12 and 13 would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph 19 because of, among other things, the difficulty in developing formulas, establishing a nationwide sales and service network, and gaining brand name recognition and customer acceptance in the markets. In addition, entry into the relevant markets would be relatively costly in light of the size of the markets and is not likely to occur because sales opportunities would likely be too small to justify the costs and risks associated with new entry.

## **VII. EFFECTS OF THE ACQUISITION**

- 19. The effects of the Acquisition, if consummated, may be substantially to lessen competition

and to tend to create a monopoly in the relevant markets set forth above in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct and substantial competition between Respondent and Lilly in the relevant markets;
- b. by increasing the likelihood that the combined Valspar and Lilly would increase prices of Silver Solutions, Tin Solutions, Copper Solutions and Mirror Backing Paints unilaterally; and
- c. by reducing innovation in the relevant markets.

### **VIII. VIOLATIONS CHARGED**

20. The Acquisition agreement described in Paragraph 11 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
21. The Acquisition described in Paragraph 11, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-sixth day of January, 2001, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL: