

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of THE SHERWIN-WILLIAMS COMPANY, a corporation.)))))))))))	Docket No.
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COMPLAINT

The Federal Trade Commission, having reason to believe that The Sherwin-Williams Company (“respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Ohio corporation with its principal office or place of business at 101 West Prospect Avenue, Cleveland, OH 44115. Respondent does business under its own name as well as the names “Sherwin-Williams,” “Dutch Boy,” “Krylon,” “Minwax,” and “Thompson’s WaterSeal.”
2. Respondent manufactures, advertises, offers for sale, sells, and distributes paint products, including *Dutch Boy Refresh* paints. Respondent distributes these paint products to its own stores, independent distributors, and retailers.
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.
4. Typically, a paint retailer will tint a base paint with colorant in order to produce the paint color desired by the customer. Retailers of *Dutch Boy Refresh* paints typically provide customers with the option of tinting the base paint to a *Dutch Boy*-formulated color prior to purchase and at no additional charge.
5. Both base paints and colorants may contain volatile organic compounds (“VOCs”). Tinting can significantly increase the VOC level of a paint.
6. Respondent has disseminated or has caused the dissemination of promotional materials for its *Dutch Boy Refresh* paints, including print advertisements, website advertisements, and point-of-sale materials to its independent distributors and retailers. *See, e.g.*, Exhibits A through H. Respondent, its independent distributors, and retailers have disseminated or have caused the dissemination of these promotional materials to consumers.

7. In numerous instances, including but not limited to the promotional materials shown in Exhibits A through H, respondent has represented that *Dutch Boy Refresh* paints contain “Zero VOCs.”

8. Consumers likely interpret a representation that a paint contains “Zero VOCs” to mean that the quantitative measure of the VOC level is zero grams per liter, or that the VOC level is “trace” (or effectively zero) where: (a) VOCs have not been intentionally added to the paint; (b) the presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs; and (c) the presence of VOCs at that level does not result in concentrations higher than would be found at background levels in the ambient air.

9. In numerous instances, *Dutch Boy Refresh* paints contain more than a trace level of VOCs after tinting.

10. In certain promotional materials (including in fine print at the bottom of the signs in Exhibits B and D and on the back of the paint can in Exhibit F), and in contrast to respondent’s zero VOC representations, respondent inconspicuously has stated that “Some colors may not be Zero VOC after tinting with conventional colorants.”

11. In reality, the vast majority of *Dutch Boy*-formulated colors of paint are not zero VOC after tinting *Dutch Boy Refresh* base paints with respondent’s colorants. Therefore, any reasonable consumer who saw the inconspicuous disclosure described in Paragraph 10 would likely be deceived about the VOC content of *Dutch Boy Refresh* paints.

COUNT I (False or Misleading Representation)

12. Through the means described in Paragraphs 6 and 7, respondent has represented, expressly or by implication, that all *Dutch Boy Refresh* paints, including paints with color added, contain zero VOCs.

13. In truth and in fact, in numerous instances, *Dutch Boy Refresh* paints do not contain zero VOCs after color is added. Therefore, the representation set forth in Paragraph 12 is false or misleading.

COUNT II (Unsubstantiated Representation)

14. Through the means described in Paragraphs 6 and 7, in numerous instances, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 12, at the time the representation was made.

15. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 12, at the time the representation was made. Therefore, the representation set forth in Paragraph 14 is false or misleading.

COUNT III (Means and Instrumentalities)

16. Respondent has distributed the promotional materials described in Paragraphs 6 and 7 to independent distributors and retailers. In so doing, respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

17. Respondent's practices, as alleged in this complaint, constitute 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 ___ day of _____ 2012, has issued this complaint against respondent.

By the Commission.

SEAL:

Donald S. Clark
Secretary