

ENFORCEMENT POLICY STATEMENT REGARDING VOC-FREE CLAIMS FOR ARCHITECTURAL COATINGS

The Guides for the Use of Environmental Marketing Claims (“Green Guides”), 16 C.F.R. Part 260, set forth the Commission’s current views on environmental marketing to help advertisers avoid making unfair or deceptive claims under Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. Although the Green Guides do not bind the FTC or the public, the Commission can take action under the FTC Act if a marketer makes an environmental claim inconsistent with them.

With regard to free-of claims, the Green Guides, as revised in 2012, advise marketers as follows:

Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if: (1) the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance’s presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product. 16 C.F.R. § 260.9(c) (hereinafter “trace amount test”).

This trace amount test is designed to provide general guidance to marketers without regard to product, substance, or industry. As stated in footnote 4 of § 260.9(c), however, what constitutes a trace contaminant or background level depends on the substance at issue and requires a case-by-case analysis.

The Commission recently analyzed the trace amount test in the context of zero-VOC claims for architectural coatings. In March 2013, the Commission issued final decisions and orders resolving allegations that The Sherwin-Williams Company (“Sherwin-Williams”) and PPG Architectural Finishes, Inc. (“PPG”) had deceptively advertised their paint products as “zero VOC.”¹ These orders prohibit the companies from representing that the VOC level of a paint is “zero” unless, after tinting, the VOC level is zero grams per liter, or they possess and rely upon competent and reliable scientific evidence that the paint contains no more than a “trace level of VOCs.” The orders include a definition of “trace level of VOCs” derived from 16 C.F.R. § 260.9(c) and adapted specifically to address VOC-free claims for architectural coatings such as paint. Namely, the orders state that “trace level of VOCs” means:

(A) VOCs have not been intentionally added to the product; (B) the presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs, including but not limited to, harm to the environment or human health; and (C) the presence of VOCs at that level does not result in

¹ Volatile organic compounds (“VOCs”) are carbon-containing compounds that evaporate at room temperature. Some VOCs can have detrimental effects on the environment and human health.

concentrations higher than would be found at background levels in the ambient air.

The orders' definition of "trace level of VOCs" tailors the Green Guides' general trace amount test in two key respects. First, the "material harm" prong specifically includes harm to the environment and human health. This refinement acknowledges that consumers find both the environmental and health effects of VOCs material in evaluating VOC-free claims for architectural coatings.

Second, the orders define "trace level" as the background level of VOCs in the ambient air, as opposed to the level at which the VOCs in the paint would be considered "an acknowledged trace contaminant." The harm consumers associate with VOCs in coatings is caused by emissions following application. Thus measuring the impact on background levels of VOCs in the ambient air aligns with consumer expectations about VOC-free claims for coatings. Additionally, the Commission is aware of no scientific or regulatory body that has recognized a specific trace contaminant level of VOCs in paint or any other architectural coating. Therefore, it is the Commission's view that the first prong of the trace amount test for VOC-free claims for architectural coatings is the amount beyond which VOC emissions would result in concentrations that exceed the background level of VOCs in the ambient air.

Based on its enforcement experience, the Commission finds it in the public interest to apply the tailored definition of "trace level of VOCs" to all VOC-free claims for architectural coatings.² If a marketer makes a VOC-free claim about an architectural coating that contains more than a "trace level of VOCs," as defined by the Sherwin-Williams and PPG orders and discussed above, or lacks substantiation for such claim, the Commission may take action under Section 5 of the FTC Act.

² VOC-free marketing claims include, but are not limited to, "zero VOCs," "0 VOCs," "no VOCs," and "free of VOCs."