

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairman**
 Jon Leibowitz
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

)	
In the Matter of)	
)	
THE SHERWIN-WILLIAMS)	DOCKET NO. C-4386
COMPANY,)	
a corporation.)	
)	
)	

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its counsel, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent is an Ohio corporation with its principal office or place of business at 101 West Prospect Avenue, Cleveland, OH 44115.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondent” shall mean The Sherwin-Williams Company, also doing business as Sherwin-Williams, Dutch Boy, Krylon, Minwax, and Thompson’s WaterSeal, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Clearly and prominently” shall mean as follows:
 - A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 - B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and
 - C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. “Competent and reliable scientific evidence” shall mean tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are 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 representation is true.

5. “Covered product” shall mean any architectural coating applied to stationary structures, portable structures, and their appurtenances.

6. “Tinting” shall mean achieving a particular color through the use of any foreseeably available colorant. *Provided however*, that if respondent clearly and prominently discloses that a representation regarding a covered product applies only if the product is tinted with specified colorant(s), the definition of “tinting” shall be limited to the use of those colorants.

7. “Trace” level of VOCs shall mean:

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

8. “Volatile Organic Compound” (“VOC”) shall mean 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. § 51.100(s).

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that the VOC level of a paint is zero, unless:

- A. After tinting, the VOC level is zero grams per liter (“g/L”), or respondent possesses and relies upon competent and reliable scientific evidence that the paint contains no more than a trace level of VOCs;

- B. After tinting, the VOC level is less than 50 g/L, and respondent clearly and prominently discloses, either within or in close proximity to the representation, that the representation applies only to the base paint and that the VOC level may increase, depending on the color choice; or
- C. Respondent clearly and prominently discloses, either within or in close proximity to the representation, that the representation applies only to the base paint and that the VOC level may increase “significantly” or “up to [*insert*: the highest possible VOC level after tinting],” depending on the color choice.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

- A. The VOC level of such product; or
- B. Any other environmental benefit or attribute of such product,

unless the representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I or II above. For the purposes of this Part, “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.

IV.

IT IS FURTHER ORDERED that respondent shall deliver as soon as practicable, but in no event later than thirty (30) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A, showing the date of delivery, to all of respondent’s dealers and distributors, and all other entities to which respondent provided point-of-sale advertising, including product labels, for the product identified in Attachment A. The notice required by this paragraph shall not include any document or enclosures other than those referenced in the notice and may be sent to the principal place of business of each entity.

V.

IT IS FURTHER ORDERED that respondent The Sherwin-Williams Company, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call 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.

VI.

IT IS FURTHER ORDERED that respondent The Sherwin-Williams Company, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

VII.

IT IS FURTHER ORDERED that respondent The Sherwin-Williams Company, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall 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: "The Sherwin-Williams Company, File No. C-4386."

VIII.

IT IS FURTHER ORDERED that respondent The Sherwin-Williams Company, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

IX.

This order will terminate March 5, 2033, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (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 Part.

Provided, further, that 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 Part 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, Commissioners Leibowitz and Wright not participating.

Richard C. Donohue
Acting Secretary

SEAL
ISSUED: March 5, 2013

ATTACHMENT A

[ON SHERWIN-WILLIAMS LETTERHEAD]

**IMPORTANT NOTICE ABOUT *DUTCH BOY REFRESH*
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name]
[insert addressee address]

Dear Dealer or Distributor,

In response to a settlement with the Federal Trade Commission, The Sherwin-Williams Company (Sherwin-Williams) has agreed not to make claims that its paints contain zero VOCs (volatile organic compounds), unless the VOC level is zero after tinting or Sherwin-Williams clearly and prominently discloses that the VOC claim applies only to the base paint and that the VOC level may increase (or, if 50 g/L or more, increase “significantly” or “up to [the highest possible VOC level after tinting]”), depending on the consumer’s color choice. This is because the FTC has alleged that, in numerous instances, *Dutch Boy Refresh* paints contain VOCs after tinting. Therefore, Sherwin-Williams requests that you immediately stop using your existing *Dutch Boy Refresh* advertising and marketing materials that describe the paint as containing “no VOCs” or “zero VOCs.” Sherwin-Williams will make revised marketing materials available to you shortly.

Furthermore, we have included stickers that should be affixed to each container of *Dutch Boy Refresh* paint in your possession if those containers utilize the old *Dutch Boy Refresh* labels. This should be done immediately. Please find the enclosed instruction sheet which will provide you with directions as to how to apply the stickers correctly.

Should you have any questions about compliance with this notification, please contact [insert contact person]. In addition, further information about the settlement can be obtained by visiting www.ftc.gov and searching for “Sherwin-Williams.”

Sincerely,

Christopher Connor
Chief Executive Officer
The Sherwin-Williams Company