

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

WHITE CASTLE SYSTEM, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3477. Complaint, Jan. 6, 1994--Decision, Jan. 6, 1994

This consent order prohibits, among other things, an Ohio-based chain of fast-food restaurants from misrepresenting the extent to which its fast-food container or any product or package is capable of being recycled or the extent of the availability of recycling collection programs for such products. In addition, the consent order prohibits the respondent from representing the environmental benefit of any product or packaging it uses unless it possesses competent and reliable evidence to substantiate the representation.

Appearances

For the Commission: *Theresa McGrew* and *C. Steven Baker*.

For the respondent: *Nicholas W. Zuk*, Columbus, OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that White Castle System, Inc., a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent White Castle System, Inc. (“White Castle”), is a Delaware corporation with its principal office or place of business at 555 West Goodale Street, Columbus, Ohio.

PAR. 2. Respondent has offered for sale, sold, advertised, labeled and distributed food products that are contained in disposable paper packaging to the public.

PAR. 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.

PAR. 4. Respondent has disseminated or has caused to be disseminated promotional materials, including product labeling on the paper packaging it uses to contain its food products, including but not necessarily limited to the attached Exhibit 1.

The aforesaid product labeling includes the following statement and a depiction of a three chasing arrow symbol:



Recyclable

PAR. 5. Through the use of the statement and depiction contained in the promotional materials referred to in paragraph four, including but not necessarily limited to the product labeling attached as Exhibit 1, respondent has represented, directly or by implication, that White Castle paper packaging is recyclable after ordinary use.

PAR. 6. In truth and in fact, while White Castle paper packaging is capable of being recycled, the vast majority of consumers cannot recycle the paper packaging because there are virtually no collection facilities that accept food contaminated paper for recycling. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statement and depiction contained in the promotional materials referred to in paragraph four, including but not necessarily limited to the product labeling attached as Exhibit 1, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 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.

Complaint

EXHIBIT 1



**White
Castle®**

Buy 'em by the "Sack"®

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**SAY NO TO DRUGS AND
YES TO LIFE**



DON'T BE A LITTERBUG!

EXHIBIT 1



*The taste
some people
won't live
without!®*



**White
Castle®**

*Hamburger Specialists
since 1921*

**PATENT NO.
2,435,355**



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 complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, 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 of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 said Act, and that 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 sixty (60) days, and no comments having been filed thereafter by interested parties, pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent White Castle System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware corporation with its principal office or place of business at 555 West Goodale Street, Columbus, Ohio.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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:

The term “*product or package*” means any product or package, including, but not limited to, any item used by respondent to contain, serve, or package goods, offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the White Castle brand name or any other brand name of respondent, its successors and assigns; and, also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

The term “*competent and reliable scientific evidence*” shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondent, White Castle System, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

II.

It is further ordered, That respondent, White Castle System, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product or package offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence, in its possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation including complaints from consumers.

IV.

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of

subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE VALSPAR CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3478. Complaint, Jan. 25, 1994--Decision, Jan. 25, 1994

This consent order requires, among other things, a Minnesota-based corporation to divest, within 12 months of the date of the order, certain assets it acquired from Cargill, to Newco, an independent corporation that Valspar forms as a successor corporation to McWhorter, and to obtain Commission approval of the divestiture arrangement prior to consummation. In addition, the consent order requires McWhorter and Newco, for 10 years, to obtain the Commission's approval before acquiring any stock or other interest in any entity that manufactures coating resins in the United States.

Appearances

For the Commission: *Robert S. Tovsky* and *Rhett R. Krulla*.

For the respondents: *James F. Rill* and *Robert M. Huber*, *Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Valspar Corporation ("Valspar"), through its wholly-owned subsidiary McWhorter, Inc. ("McWhorter"), has entered into an agreement with Cargill, Incorporated ("Cargill"), that violates said Acts, 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:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, the term “*coating resins*” means alkyd resins, modified alkyd resins, saturated polyester resins, and oil-modified urethane resins (excluding powder coating resins), supplied for use in formulating surface coatings. Such resins generally are produced from the reaction of polybasic acids or anhydrides and polyhydric alcohols.

THE RESPONDENTS

PAR. 2. Respondent The Valspar Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1101 Third Street South, Minneapolis, Minnesota.

PAR. 3. Respondent McWhorter, Inc., a wholly-owned subsidiary of The Valspar Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 400 East Cottage Place, Carpentersville, Illinois.

PAR. 4. Valspar, through its wholly-owned subsidiary McWhorter, Inc., is a leading producer of coating resins in the United States.

PAR. 5. Cargill, through its Resin Products Division, is a leading producer of coating resins in the United States.

PAR. 6. At all times relevant herein, each of the respondents or their predecessors, and Cargill or its predecessors, have been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12; and have been corporations whose business is in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE ACQUISITION

PAR. 7. On May 19, 1993, McWhorter entered into an agreement with Cargill for the acquisition of the assets and businesses of Cargill’s Resin Products Division (“the Acquisition”).

THE RELEVANT MARKETS

PAR. 8. For purposes of this complaint, the relevant lines of commerce in which to evaluate the effects of the Acquisition are the manufacture and sale of coating resins, and other markets contained therein.

PAR. 9. For purposes of this complaint, the relevant geographic market is the United States.

PAR. 10. The coating resins market in the United States is concentrated.

PAR. 11. Entry into the manufacture and sale of coating resins is difficult and would take a long time.

PAR. 12. Valspar, through its wholly-owned subsidiary McWhorter, and Cargill are actual competitors in the manufacture and sale of coating resins in the United States.

THE EFFECTS OF THE ACQUISITION

PAR. 13. The effect of the Acquisition may be substantially to lessen competition in the relevant market in the United States, 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, because, among other things, the Acquisition eliminates substantial actual competition, between Valspar and Cargill and others, in the manufacture and sale of coating resins in the United States and significantly enhances the likelihood of collusion or interdependent coordination among the remaining firms in the relevant market.

THE VIOLATIONS CHARGED

PAR. 14. The Acquisition agreement described in paragraph seven violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 15. The Acquisition of the coating resins assets and businesses of Cargill by Valspar, through its wholly-owned subsidiary McWhorter, would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

PAR. 16. The Acquisition of the coating resins assets and businesses of Cargill by Valspar, through its wholly-owned

subsidiary McWhorter, would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Owen dissenting.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of assets by The Valspar Corporation ("Valspar") and McWhorter, Inc. ("McWhorter") from Cargill, Incorporated, which acquisition is more fully described at paragraph I.(A) below, and Valspar and McWhorter having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Valspar and McWhorter with violations of the Clayton Act and Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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 respondents have violated the said Acts, and that 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Valspar Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1101 Third Street South, Minneapolis, Minnesota.

2. Respondent McWhorter, Inc., a wholly-owned subsidiary of The Valspar Corporation, is a corporation organized, existing and

doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 400 East Cottage Place, Carpentersville, Illinois.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

As used in this order, the following definitions shall apply:

(A) “*Acquisition*” means the acquisition described in the Sales and Purchase of Assets Agreement entered into on May 19, 1993 by which McWhorter has agreed to acquire and Cargill, Incorporated has agreed to convey certain rights and interests in, and title to, certain of the assets of Cargill.

(B) “*Acquired Assets*” means all assets, rights, title, interest, and businesses that Valspar acquires from Cargill, Incorporated pursuant to the Acquisition, as defined in paragraph I.(A), above.

(C) “*Valspar*” means The Valspar Corporation, all of its directors, officers, employees, agents, and representatives, all of its predecessors, subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(D) “*McWhorter*” means McWhorter, Inc., a wholly-owned subsidiary of Valspar, all of its directors, officers, employees, agents, and representatives, all of its predecessors, subsidiaries, divisions, groups and affiliates (including, but not limited to, the Properties to Be Divested as hereinafter defined) controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors (including, but not limited to, Newco as hereinafter defined) and assigns of any of the foregoing.

(E) “*Cargill*” means the Resin Products Division of Cargill, Incorporated, all of its predecessors, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(F) “*Cargill Technology*” means general and specific information developed by Cargill or used in any product sold by Cargill on or before the date of the Acquisition, including all technology transferred in the Acquisition, all such information being sufficiently detailed for the commercial production, sale and use of such products, including, but not limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations. Cargill Technology shall exclude information to the extent disclosure of such information by Cargill is prohibited by a contract between Cargill and any coating producer.

(G) “*McWhorter Technology*” means general and specific information developed by McWhorter or used in any product sold by McWhorter to customers other than Valspar on or before the date of the Acquisition, all such information being sufficiently detailed for the commercial production, sale and use of such products, including, but not limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations. McWhorter Technology shall exclude information to the extent disclosure of such information by McWhorter is prohibited by a contract between McWhorter and any coating producer.

(H) “*Newco*” means McWhorter or a corporation to be formed by Valspar and McWhorter as a successor corporation to McWhorter, in accordance with paragraph II.(C) of this order, and through which Valspar shall divest, in a manner that receives the prior approval of the Commission, the Properties to Be Divested; and includes without limitation all of Newco’s subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(I) “*Properties to Be Divested*” means the Acquired Assets and all facilities operated by Valspar at Carpentersville, Illinois, Portland, Oregon, and Philadelphia, Pennsylvania, utilized in the production of Coating Resins, including, without limitation, all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property, and all right, title and interest in and to real property, together with appurtenances, licenses and permits.

(J) “*Valspar Retained Properties*” means all tangible and intangible assets and businesses of Valspar and McWhorter other than those included within the Properties to Be Divested.

(K) “*Commission*” means the Federal Trade Commission.

(L) “*Coating Resins*” means alkyd resins, modified alkyd resins, saturated polyester resins, and oil-modified urethane resins (excluding powder coating resins), supplied for use in formulating surface coatings. Such resins generally are formed from the reaction of polybasic acids or anhydrides and polyhydric alcohols.

(M) “*Viability and Competitiveness*” of the Properties to Be Divested and of the Valspar Retained Properties means that such respective properties are capable of functioning independently and competitively in the Coating Resins business.

II.

It is ordered, That:

(A) Within twelve (12) months of the date this order becomes final, Valspar shall divest, absolutely and in good faith, the Properties to Be Divested, and shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the Viability and Competitiveness of the Properties to Be Divested and to assure the Viability and Competitiveness of the Valspar Retained Properties. Provided, however, that this requirement shall not prohibit any shareholder of Valspar from participating, in his or her personal capacity as a shareholder of Valspar, in the distribution of the authorized common stock of Newco, pursuant to paragraph II.(D) of this order.

(B) Valspar shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as Valspar has divested all the Properties to Be Divested or such other time as stated in said Agreement.

(C) Valspar shall divest the Properties to Be Divested by forming, in a manner that receives the prior approval of the Commission, Newco, with at least sufficient authorized common stock to comply with the provisions of this order and with by-laws obligating Newco to be bound by this order and containing provisions insuring compliance with paragraph II.(E) hereof, to which

McWhorter shall transfer the Properties to Be Divested by merger with Newco or otherwise. Valspar shall make all necessary regulatory filings to ensure that such common stock is registered, and shall also ensure that the stock is registered for trading on the NASDAQ National Market System or listed for trading on the New York Stock Exchange or the American Stock Exchange. Valspar shall demonstrate the Viability and Competitiveness of the Properties to Be Divested and of the Valspar Retained Properties, respectively, in its application for approval of the proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is (1) to ensure the continuation of the Properties to Be Divested as an ongoing, viable business engaged, in competition with the Valspar Retained Properties and others, in the manufacture and sale of Coating Resins; (2) to ensure the continuation of the Valspar Retained Properties as an ongoing viable business engaged, in competition with the Properties to Be Divested and others, in the manufacture and sale of Coating Resins; and (3) to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) Valspar shall divest the Properties to Be Divested, only to an acquirer, including the shareholders of Valspar as a group, and in a manner that receives the prior approval of the Commission, including by distributing the shares of Newco pro rata to the stockholders of record of Valspar.

(E) Valspar (excluding, for purposes of this paragraph II.(E), Newco), McWhorter and Newco shall provide that:

1. After completion of the Acquisition and prior to the divestiture of Newco by distribution of the Newco stock to the stockholders of Valspar or otherwise, Valspar shall vote the stock of Newco for the election of an interim board of directors meeting the requirements of paragraph III.j of the Agreement to Hold Separate, to serve until the election of directors by the stockholders of Newco in accordance with paragraph II.(E)3 of this order;

2. Within seven (7) days of the distribution or other divestiture of the Newco stock, any director of Newco who is also a Valspar director, officer, employee or agent shall resign from the Newco Board, and the remaining directors of Newco shall designate a new director or new directors in accordance with this order who are not directors, officers, employees or agents of Valspar;

3. Newco shall within twelve (12) months of the distribution or other divestiture of the Newco stock call a stockholders' meeting for the purpose of electing directors;

4. No nominee for the board of directors of Newco shall, at the time of his or her election, be an officer, director or employee of Valspar or shall hold, or have under his or her direction or control, greater than 5 percent of the outstanding common stock of Valspar;

5. No officer, director or employee of Valspar shall concurrently serve as an officer, director or employee of Newco nor shall any officer, director or employee of Newco serve concurrently as an officer, director or employee of Valspar;

6. No officer or director of Newco shall hold, or have under his or her direction or control, greater than 5 percent of the outstanding common stock of Valspar; and officers and directors of Newco in aggregate, shall not concurrently hold, or have under their direction or control, greater than 10 percent of the outstanding common stock of Valspar;

7. C. Angus Wurtele shall not, as long as he remains an officer or director of Valspar, hold, or have under his direction or control, more than 12.4 percent of the outstanding common stock of Newco, and the other directors and officers of Valspar in aggregate, shall not concurrently hold, or have under their direction or control, greater than 5 percent of the outstanding common stock of Newco;

8. No officer or director of Valspar shall increase by purchase his or her holdings of Newco authorized common stock beyond the percentage that such officer or director holds as a result of any initial distribution of such stock pursuant to paragraph II.(D) of this order, nor shall such officer or director be permitted to be a creditor of Newco;

9. No officer or director of Valspar shall concurrently serve as an officer or director of any entity that holds or controls, as trustee or otherwise, greater than five percent of the outstanding common stock of Newco, and no officer or director of Newco shall concurrently serve as an officer or director of any entity that holds or controls, as trustee or otherwise, greater than five percent of the outstanding common stock of Valspar;

10. Except as provided for in paragraph II.(E)1 and paragraph II.(E)2 of this order and except with respect to organization matters prior to the divestiture of Newco by distribution of the Newco stock to the stockholders of Valspar or otherwise, no officer or director of

Valspar, who concurrently holds or has under his or her direction or control more than one percent of the outstanding common stock of Newco shall, in his or her personal capacity as a shareholder of Newco or otherwise, vote any stock of Newco which he or she shall hold or which shall be held under his or her direction or control, nor shall any officer, director or employee of Valspar influence, or attempt to control, supervise or influence, directly or indirectly, any other person's voting of Newco stock; and no officer or director of Newco, who concurrently holds or has under his or her direction or control more than one percent of the outstanding common stock of Valspar shall, in his or her personal capacity as a shareholder of Valspar or otherwise, vote any stock of Valspar which he or she shall hold or which shall be held under his or her direction or control, nor shall any officer, director or employee of Newco influence, in his or her personal capacity as a shareholder of Valspar or otherwise, or attempt to control, supervise or influence, directly or indirectly, any other person's voting of Valspar stock;

11. Neither Valspar nor any officer, director or employee of Valspar, in his or her personal capacity as a shareholder of Newco or otherwise, shall participate in any decision by Newco, at shareholders, meetings or otherwise, relating to Newco's production, capacity, development, marketing, pricing or sale of Coating Resins, nor exercise, or attempt to exercise, in any way, directly or indirectly, any control, supervision or influence over any policy, decision or action regarding any aspect of Newco's production, capacity, development, marketing, pricing or sale of Coating Resins, other than through the policies, decisions, and actions of Valspar relating to the purchase, in the ordinary course of business, by Valspar of products from Newco for use in Valspar coatings; and neither Newco nor any officer, director or employee of Newco, in his or her personal capacity as a shareholder of Valspar or otherwise, shall participate in any decision by Valspar, at shareholders' meetings or otherwise, relating to Valspar's production, capacity, development, marketing, pricing or sale of Coating Resins, nor exercise, or attempt to exercise, in any way, directly or indirectly, any control, supervision or influence over any policy, decision or action regarding any aspect of Valspar's production, capacity, development, marketing, pricing or sale of Coating Resins, other than through the policies, decisions, and actions of Newco relating to the sale, in the ordinary course of business, by Newco of products to Valspar for use in Valspar

