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## Via Online Comment Portal

Secretary Donald S. Clark  
Federal Trade Commission  
600 Pennsylvania Avenue  
Washington, D.C. 20580

**Comments of PPG Architectural Finishes, Inc. re: In the Matter of Benjamin Moore & Co., Inc. (File No. 1623079); In the Matter of ICP Construction Inc. (File No. 1623081); In the Matter of YOLO Colorhouse, LLC (File No. 1623082); and In the Matter of Imperial Paints, LLC (File No. 1623080)**

Dear Secretary Clark:

PPG Architectural Finishes, Inc. (“PPG”) respectfully submits this comment regarding each of the proposed orders in the following cases: *In the Matter of Benjamin Moore & Co., Inc.* (File No. 1623079); *In the Matter of ICP Construction Inc.* (File No. 1623081); *In the Matter of YOLO Colorhouse, LLC* (File No. 1623082); and *In the Matter of Imperial Paints, LLC* (File No. 1623080) (collectively, the “New Orders,” and separately, the “Benjamin Moore Order,” “ICP Construction Order,” “YOLO Colorhouse Order,” and “Imperial Paints Order”). PPG appreciates the opportunity to provide its input to the Federal Trade Commission (the “FTC” or “Commission”).

The Commission entered into consent orders with PPG and The Sherwin-Williams Company concerning advertising issues regarding Volatile Organic Compound (“VOC”) claims in 2013 (collectively, the “PPG and Sherwin-Williams Orders”). The FTC’s notice accompanying the proposed New Orders suggested that it may seek to harmonize the PPG and Sherwin-Williams Orders with the New Orders if they are finally approved by the Commission.

Founded in 1883, PPG is a global supplier of paints, coatings, optical products, specialty materials, and fiber glass. It employs 47,000 people and operates 156 manufacturing facilities worldwide, including at 45 sites in 19 U.S. states.

### 1. The New Orders Should Address “Tinting”

PPG respectfully requests that the Commission include the concept of “tinting” in the New Orders in order to enable consumers to make informed purchasing choices. While there may be more low-VOC tints available in the marketplace than there were at the time that the PPG and Sherwin-Williams Orders were issued, tinting continues to raise relevant consumer protection issues in the context of VOC marketing claims.

The definition of “covered product” in the New Orders, as in the PPG and Sherwin-Williams Orders, is “any architectural coating applied to stationary structures, portable structures, and their appurtenances.” *See, e.g.*, Imperial Paints Order at 2. In the PPG and Sherwin-Williams Orders, that definition was qualified in several places – notably in Section I – with the phrase “after tinting.” In the PPG and Sherwin-Williams Orders, “tinting” was defined as “achieving a particular color through the use of any foreseeably available colorant,” and Section I of the PPG and Sherwin-Williams Orders permitted the respondents to make representations that the VOC level of a paint is zero if:

- 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.

*See* PPG and Sherwin Williams Orders at 3-4. Thus, in the PPG and Sherwin-Williams Orders, it was clear that all substantiation and disclosure determinations were dependent on tinted paint. Tinting as a concept is absent from the New Orders. Yet, the advertisements and marketing materials at issue in the complaints that led to the New Orders generally depict paint in various colors. For example, the ICP Construction advertisements show children interacting with paint in a wide array of colors. Thus, the advertising and marketing materials generally make references to no-emission characteristics of tinted paint. Despite that, the New Orders do not address whether substantiation must take into account the range of foreseeable colors that a base paint could be tinted and whether consumers may be entitled to disclosure that a zero-VOC base paint may be tinted with colorants at the point of sale that could significantly increase the VOC level of the product that is brought home. The PPG and Sherwin-Williams Orders addressed this aspect with particularity.

PPG urges the Commission to consider the importance of including the tinting concept in the New Orders. Depending on the retail location (which may vary from company-owned stores to “big box” home centers), paint companies may not have control over the colorants used with their base paints, and third-party colorants may be used. Thus, a no-VOC base paint may be tinted with colorants that may add a significant level of VOCs to the base paint. In order to provide consumers with clear and accurate information about the products they are buying, representations and substantiation requirements concerning the VOC content of a paint should apply to the tinted paint, consistent with the PPG and Sherwin-Williams Orders. To mitigate this omission, we suggest that the Commission revisit the New Orders to make clear that they address tinted paint by adding the qualifier “after tinting” where appropriate, thereby clarifying that both representations and substantiation requirements refer to paint in this state. Additionally, to the extent that it is foreseeable that base paints could be tinted at the point of

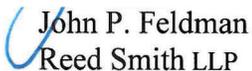
sale with colorants that add VOCs, the New Orders should require companies to disclose that such tinting may increase the VOC level of the product, potentially to a substantial degree, thus ensuring that consumers are properly informed.

**2. The Scope of the Fencing-In Provisions of the New Orders Should Not Be Narrower than the Parallel Provisions of the PPG and Sherwin-Williams Orders**

PPG respectfully requests that the Commission consider revising Section II of the New Orders so that the scope of topics with regard to which the respondents are barred from making misleading and unsubstantiated representations is as broad as the parallel section of the PPG and Sherwin-Williams Orders. PPG recognizes that the scope of this provision is in some ways broader than the PPG and Sherwin-Williams Orders in that they include “emission of the covered product,” “odor of the covered product,” and “[a]ny other health benefit or attribute of, or risk associated with exposure to, the covered product.” *See, e.g.,* YOLO Colorhouse Order at 3-4. The wider breadth is understandable in the context of the New Orders because the advertisements and marketing materials at issue generally included claims about emissions beyond those necessarily associated with VOCs.

However, in other respects, this provision is drafted more narrowly than in the PPG and Sherwin-Williams Orders. Section II seeks to ensure that claims regarding the environment or human health, “including those related to VOC, emission, or chemical composition,” are not misleading. *See, e.g.,* ICP Construction Order at 8. It is not clear whether the word “including” in this context limits claims to those related to VOC, emission, or chemical composition or whether those categories are only exemplary. Furthermore, the parallel provision of the PPG and Sherwin-Williams Orders required that all “environmental benefit or attribute” claims be true, not misleading, and adequately substantiated. *See* PPG and Sherwin-Williams Orders at 4. The fencing-in provision in the PPG and Sherwin-Williams Orders may be reasonably interpreted to cover a very broad range of deceptive or misleading environmental marketing claims, not just those related to VOCs. There is no reason why the New Orders should be more narrowly tailored to only VOC, emission, or chemical compound claims and not deceptive or misleading environmental marketing claims generally. Thus, we urge the Commission to reexamine the fencing-in provision to ensure appropriate coverage.

Very truly yours,

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cc: Jamie Irving  
Glenn Bost