

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	File No. 112 3198
THE SHERWIN-WILLIAMS COMPANY,)	AGREEMENT
 a corporation.)	CONTAINING
)	CONSENT ORDER
)	
)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of The Sherwin-Williams Company, a corporation (“Sherwin-Williams” or “proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Sherwin-Williams, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent is an Ohio corporation with its principal office or place of business at 101 West Prospect Avenue, Cleveland, OH 44115.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

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. _____."

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 twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 2012

THE SHERWIN-WILLIAMS COMPANY

By: _____ Date _____
CHRISTOPHER CONNOR
Chief Executive Officer

_____ Date _____
LEWIS M. ROSE
Kelley Drye & Warren LLP
Counsel for The Sherwin-Williams Company

_____ Date _____
DANA B. ROSENFELD
Kelley Drye & Warren LLP
Counsel for The Sherwin-Williams Company

_____ Date _____
AUGUST T. HORVATH
Kelley Drye & Warren LLP
Counsel for The Sherwin-Williams Company

ZACHARY V. HUNTER
Counsel for Federal Trade Commission

Date

SANDHYA P. BROWN
Counsel for Federal Trade Commission

Date

APPROVED:

LAURA KIM
Assistant Director
Division of Enforcement

JAMES A. KOHM
Associate Director
Division of Enforcement

DAVID C. VLADECK
Director
Bureau of Consumer Protection

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