



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION

April 24, 2018

The Sherwin-Williams Company
c/o Kelley Drye & Warren LLP
Attn.: Dana Rosenfeld, Esq.
3050 K St. NW, Suite 400
Washington, DC 20007

Re: *Zero VOC Claims for Paints:*
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082

Dear Ms. Rosenfeld:

Thank you for commenting on the Federal Trade Commission's proposed consent orders in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you recommend that the Commission allow marketers to substantiate unqualified "zero VOC" claims for interior household paint by, inter alia, conducting: (1) emissions testing confirming that paint has no more than trace level of emission at six hours after paint application, and (2) a content review confirming that the paint does not contain any substance with the potential to cause material harm to the health of the average adult. You also suggest two changes to the Consent Orders: (1) that the Commission remove "produce" from the definition of "emission" and Section I.B.; and (2) that the Commission substitute "ambient air" for "normal conditions in the typical residential home without interior architectural coating" as the baseline condition in the definition of "Trace" level of emission.¹

¹The Consent Orders define "Trace" level of emission to mean: (1) a VOC has not been intentionally added to the covered product; (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without architectural coating.

The Commission’s analysis of “zero VOC” paint claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission’s evolved understanding of the marketplace. To clarify further that these Consent Orders represent the Commission’s current view, the Commission also has rescinded the Enforcement Policy Statement Regarding VOC-Free Claims for Architectural Coatings (“EPS”).²

Specifically, the Consent Orders provide that, when substantiating unqualified “zero VOC” claims for interior household paints, marketers must demonstrate zero VOC content **and** zero emission³ at all times beginning at application. Marketers should keep in mind that consumers likely understand unqualified “zero VOC” claims to apply to all emissions, not just VOCs.⁴ Consequently, the Consent Orders define emission broadly, to capture even those emissions that could be produced from chemical reactions with surrounding air, not just VOCs. Removing the word “produce” would limit the definition of emission in a manner inconsistent with likely consumer understanding of an unqualified claim.

Alternatively, a marketer may still make an unqualified “zero VOC” claim by satisfying the Consent Orders’ three-prong “trace level of emission” test.⁵ The Commission is not prescribing what tests to perform but is indicating that this test would satisfy the marketers’ substantiation requirements. Consumer understanding drives its application. For instance, consumers likely understand unqualified “zero VOC” claims to mean that painting will not adversely affect air quality in their homes. Therefore, under the trace level of emission test, normal conditions in the typical residential unpainted home—and not ambient air, which could refer to outdoor conditions—is the proper basis for comparison.

² The Commission voted out the EPS in 2013. However, given the Commission’s current view regarding substantiating unqualified VOC-free claims, the “trace amount test” articulated in the EPS is obsolete. Accordingly, the Commission has decided to rescind the EPS in conjunction with the approval of these orders.

³ The Consent Orders define “Emission” as any compound that is emitted or produced during application, curing, or exposure of a covered product.

⁴ The Consent Orders defined VOC or “volatile organic compound” to mean “any compound of carbon that participates in atmospheric photochemical reactions” (excluding certain compounds that the EPA has determined are of negligible photochemical reactivity). More generally, VOC is any carbon containing compound that evaporates at room temperature.

⁵ The Consent Orders define “Trace” level of emission to mean: (1) a VOC has not been intentionally added to the covered product; (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without architectural coating.

The Commission recognizes that marketers may rely on other approaches to comply with Section 5 of the FTC Act, 15 U.S.C. § 45(a).⁶ Accordingly, the Commission has determined that marketers may substantiate “zero VOC” claims with evidence demonstrating that the paint has trace level of emission at six hours or less after paint application (and thereafter), and contains no substance that could cause material harm to the health of the average adult (or specific population, if marketed to that segment) under normal anticipated use. The content determination can rely upon, for example, a thorough constituent review, such as the one conducted in connection with the chemical hazard classification process required by state and federal regulatory bodies.

Commission staff is available to provide additional guidance to any paint company seeking informal feedback on substantiating unqualified “zero VOC” claims. Additionally, a marketer may make any qualified claim about its product’s emission or other attributes, provided the claim is truthful and substantiated.

The Consent Orders provide clarity to industry regarding how to substantiate unqualified “zero VOC” claims for interior household paint. Therefore, after considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints. At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decision and Orders and other relevant materials are available on the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁶ Substantiation, of course, must be consistent with the advertising message, including simulating actual-use conditions.



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION

April 24, 2018

American Coatings Association
Attn.: Riaz Zaman, Esq.
Counsel, Government Affairs
Attn.: Heidi K. McAuliffe
Vice President, Government Affairs
901 New York Avenue NW, Suite 300
Washington, DC 20001

Re: Zero VOC Claims for Paints:
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082

Dear Ms. Zaman and Ms. McAuliffe:

Thank you for commenting on the Federal Trade Commission's proposed consent orders in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you urge the Commission to work with the paint industry and other stakeholders to provide clarity regarding substantiation requirements for "zero VOC" claims. You note that the Consent Orders deviate from earlier consent orders with PPG and Sherwin-Williams.¹ Specifically you challenge that adding the word "produce" to the definition of emission and replacing "ambient air" with "normal conditions in the typical residential home without interior architectural coating" as the baseline condition in the definition of "Trace" level of emission,² the Consent Orders create uncertainty and could lead to industry abandonment of

¹ In re: PPG Architectural Finishes, Inc., No. C-4385 (Mar. 5, 2013); In re: The Sherwin-Williams Company, No. C-4386 (Mar. 5, 2013).

² The Consent Orders define "Trace" level of emission to mean: (1) a VOC has not been intentionally added to the covered product; (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and (3) emission of the covered product does not result in more

“zero VOC” marketing claims. This could, in turn, deter innovation or deprive the public of product safety improvements.

The Commission’s analysis of “zero VOC” paint claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission’s evolved understanding of the marketplace. To clarify further that these Consent Orders represent the Commission’s current view, the Commission also has rescinded the Enforcement Policy Statement Regarding VOC-Free Claims for Architectural Coatings (“EPS”).³

Specifically, the Consent Orders provide that, when substantiating unqualified “zero VOC” claims for interior household paints, marketers must demonstrate zero VOC content **and** zero emission⁴ at all times beginning at application. Marketers should keep in mind that consumers likely understand unqualified “zero VOC” claims to apply to all emissions, not just VOCs.⁵ Consequently, the Consent Orders define emission broadly, to capture even those emissions that could be produced from chemical reactions with surrounding air, not just VOCs. Removing the word “produce” would limit the definition of emission in a manner inconsistent with likely consumer understanding of an unqualified claim.

Alternatively, a marketer may still make an unqualified “zero VOC” claim by satisfying the Consent Orders’ three-prong “trace level of emission” test. The Commission is not prescribing what tests to perform but is indicating that this test would satisfy the marketers’ substantiation requirements. Consumer understanding drives its application. For instance, consumers likely understand unqualified “zero VOC” claims to mean that painting will not adversely affect air quality in their homes. Therefore, under the trace level of emission test, normal conditions in the typical residential unpainted home—and not ambient air, which could refer to outdoor conditions—is the proper basis for comparison.

than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without architectural coating.

³ The Commission voted out the EPS in 2013. However, given the Commission’s current view regarding substantiating unqualified VOC-free claims, the “trace amount test” articulated in the EPS is obsolete. Accordingly, the Commission has decided to rescind the EPS in conjunction with the approval of these orders.

⁴ The Consent Orders define “Emission” as any compound that is emitted or produced during application, curing, or exposure of a covered product.

⁵ The Consent Orders define VOC or “volatile organic compound” to mean “any compound of carbon that participates in atmospheric photochemical reactions” (excluding certain compounds that the EPA has determined are of negligible photochemical reactivity). More generally, VOC is any carbon-containing compound that evaporates at room temperature.

The Commission recognizes that marketers may rely on other approaches to comply with Section 5 of the FTC Act, 15 U.S.C. § 45(a).⁶ Accordingly, the Commission has determined that marketers may substantiate “zero VOC” claims with evidence demonstrating that the paint has trace level of emission at six hours or less after paint application (and thereafter), and contains no substance that could cause material harm to the health of the average adult (or specific population, if marketed to that segment) under normal anticipated use. The content determination can rely upon, for example, a thorough constituent review, such as the one conducted in connection with the chemical hazard classification process required by state and federal regulatory bodies.

Commission staff is available to provide additional guidance to any paint company seeking informal feedback on substantiating unqualified “zero VOC” claims. Additionally, a marketer may make any qualified claim about its product’s emission or other attributes, provided the claim is truthful and substantiated.

The Consent Orders provide clarity to industry regarding how to substantiate unqualified “zero VOC” claims for interior household paint. Therefore, after considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints.⁷ At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decisions and Orders and other relevant materials are available on the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁶ Substantiation, of course, must be consistent with the advertising message, including simulating actual-use conditions.

⁷ Your comment also states that the Consent Orders may conflict with the EPA’s air quality regulations, but companies can comply simultaneously with both EPA requirements and the Consent Orders by qualifying or separating any EPA-required language so that consumers do not interpret it as a “no harmful emission” claim.



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION

April 24, 2018

Coatings Research Group Inc.
Attn.: Richard M. Scott, Executive Director
125 Pelret Industrial Parkway
Berea, OH 44017

Re: *Zero VOC Claims for Paints:*
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082

Dear Mr. Scott:

Thank you for commenting on the Federal Trade Commission's proposed consent agreements in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you urge the Commission to provide specific guidance to industry regarding the definition and measurement of VOCs. You note that, without such guidance, uncertainty could lead to industry abandonment of "zero VOC" marketing claims. This could, in turn, deter innovation or deprive the public of product safety improvements.

The Commission's analysis of "zero VOC" paint claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission's evolved understanding of the marketplace. To clarify further that these Consent Orders represent the Commission's current view, the Commission also has rescinded the Enforcement Policy Statement Regarding VOC-Free Claims for Architectural Coatings ("EPS").¹

¹ The Commission voted out the EPS in 2013. However, given the Commission's current view regarding substantiating unqualified VOC-free claims, the "trace amount test" articulated in the EPS is obsolete. Accordingly, the Commission has decided to rescind the EPS in conjunction with the approval of these orders.

Specifically, the Consent Orders provide that, when substantiating unqualified “zero VOC” claims for interior household paints, marketers must demonstrate zero VOC content **and** zero emission² at all times beginning at application. Marketers should keep in mind that consumers likely understand unqualified “zero VOC” claims to apply to all emissions, not just VOCs.³ Consequently, the Consent Orders define emission broadly, to capture even those emissions that could be produced from chemical reactions with surrounding air, not just VOCs.

Alternatively, a marketer may still make an unqualified “zero VOC” claim by satisfying the Consent Orders’ three-prong “trace level of emission” test.⁴ The Commission is not prescribing what tests to perform but is indicating that this test would satisfy the marketers’ substantiation requirements. Consumer understanding drives its application. For instance, consumers likely understand unqualified “zero VOC” claims to mean that painting will not adversely affect air quality in their homes. Therefore, under the trace level of emission test, normal conditions in the typical residential unpainted home—and not ambient air, which could refer to outdoor conditions—is the proper basis for comparison.

The Commission recognizes that marketers may rely on other approaches to comply with Section 5 of the FTC Act, 15 U.S.C. § 45(a).⁵ Accordingly, the Commission has determined that marketers may substantiate “zero VOC” claims with evidence demonstrating that the paint has trace level of emission at six hours or less after paint application (and thereafter), and contains no substance that could cause material harm to the health of the average adult (or specific population, if marketed to that segment) under normal anticipated use. The content determination can rely upon, for example, a thorough constituent review, such as the one conducted in connection with the chemical hazard classification process required by state and federal regulatory bodies.

Commission staff is available to provide additional guidance to any paint company seeking informal feedback on substantiating unqualified “zero VOC” claims. Additionally, a

² The Consent Orders define “Emission” as any compound that is emitted or produced during application, curing, or exposure of a covered product.

³ The Consent Orders define VOC or “volatile organic compound” to mean “any compound of carbon that participates in atmospheric photochemical reactions” (excluding certain compounds that the EPA has determined are of negligible photochemical reactivity). More generally, VOC is any carbon containing compound that evaporates at room temperature.

⁴ The Consent Orders define “Trace” level of emission to mean: (1) a VOC has not been intentionally added to the covered product; (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without architectural coating.

⁵ Substantiation, of course, must be consistent with the advertising message, including simulating actual-use conditions.

marketer may make any qualified claim about its product's emission or other attributes, provided the claim is truthful and substantiated.

The Consent Orders provide clarity to industry regarding how to substantiate unqualified "zero VOC" claims for interior household paint. Therefore, after considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints. At this time, the Commission has determined that the public interest would best be served by issuing the Decision and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decision and Orders and other relevant materials are available on the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



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United States of America
FEDERAL TRADE COMMISSION

April 24, 2018

ICP Construction Inc.
c/o Crowell Moring
Attn.: Peter B. Miller, Esq.
1001 Pennsylvania Ave. NW
Washington, DC 20004

Re: Zero VOC Claims for Paints:
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082

Dear Mr. Miller:

Thank you for commenting on the Federal Trade Commission's proposed consent agreements in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you note that the Consent Orders deviate from earlier consent orders with other paint companies,¹ and express concern that finalization – without clarification that the 2018 final orders represent current guidance on how to make "zero VOC" claims consistent with Section 5 of the FTC Act – could confuse the marketplace or create an uneven playing field for the settling Respondents. You request that the Commission publicly state that the Consent Orders represent the Commission's analysis of "zero VOC" claims.

The Commission's analysis of "zero VOC" paint claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission's evolved understanding of the marketplace. To clarify further that these Consent Orders represent the

¹ In re: PPG Architectural Finishes, Inc., No. C-4385 (Mar. 5, 2013); In re: The Sherwin-Williams Company, No. C-4386 (Mar. 5, 2013).

Commission's current view, the Commission also has rescinded the Enforcement Policy Statement Regarding VOC-Free Claims for Architectural Coatings ("EPS").²

Specifically, the Consent Orders provide that, when substantiating unqualified "zero VOC" claims for interior household paints, marketers must demonstrate zero VOC content **and** zero emission³ at all times beginning at application. Marketers should keep in mind that consumers likely understand unqualified "zero VOC" claims to apply to all emissions, not just VOCs.⁴ Consequently, the Consent Orders define emission broadly, to capture even those emissions that could be produced from chemical reactions with surrounding air, not just VOCs.

Alternatively, a marketer may still make an unqualified "zero VOC" claim by satisfying the Consent Orders' three-prong "trace level of emission" test.⁵ The Commission is not prescribing what tests to perform but is indicating that this test would satisfy the marketers' substantiation requirements. Consumer understanding drives its application. For instance, consumers likely understand unqualified "zero VOC" claims to mean that painting will not adversely affect air quality in their homes. Therefore, under the trace level of emission test, normal conditions in the typical residential unpainted home—and not ambient air, which could refer to outdoor conditions—is the proper basis for comparison.

The Commission recognizes that marketers may rely on other approaches to comply with Section 5 of the FTC Act, 15 U.S.C. § 45(a).⁶ Accordingly, the Commission has determined that marketers may substantiate "zero VOC" claims with evidence demonstrating that the paint has trace level of emission at six hours after paint application (and thereafter), and contains no

² The Commission voted out the EPS in 2013. However, given the Commission's current view regarding substantiating unqualified VOC-free claims, the "trace amount test" articulated in the EPS is obsolete. Accordingly, the Commission has decided to rescind the EPS in conjunction with the approval of these orders.

³ The Consent Orders define "Emission" as any compound that is emitted or produced during application, curing, or exposure of a covered product.

⁴ The Consent Orders define VOC or "volatile organic compound" to mean "any compound of carbon that participates in atmospheric photochemical reactions" (excluding certain compounds that the EPA has determined are of negligible photochemical reactivity). More generally, VOC is any carbon containing compound that evaporates at room temperature.

⁵ The Consent Orders define "Trace" level of emission to mean: (1) a VOC has not been intentionally added to the covered product; (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without architectural coating.

⁶ Substantiation, of course, must be consistent with the advertising message, including simulating actual-use conditions.

substance that could cause material harm to the health of the average adult (or specific population, if marketed to that segment) under normal anticipated use. The content determination can rely upon, for example, a thorough constituent review, such as the one conducted in connection with the chemical hazard classification process required by state and federal regulatory bodies.

Commission staff is available to provide additional guidance to any paint company seeking informal feedback on substantiating unqualified “zero VOC” claims. Additionally, a marketer may make any qualified claim about its product’s emission or other attributes, provided the claim is truthful and substantiated.

The Consent Orders provide clarity to industry regarding how to substantiate unqualified “zero VOC” claims for interior household paint. Therefore, after considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints. At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decisions and Orders and other relevant materials are available on the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION

April 24, 2018

PPG Architectural Finishes, Inc.
c/o ReedSmith
Attn.: John P. Feldman, Esq.
1301 K Street NW, Suite 1000 East
Washington, DC 20005

Re: *Zero VOC Claims for Paints:*
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082

Dear Mr. Feldman:

Thank you for commenting on the Federal Trade Commission's proposed Consent Orders in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you note that, in contrast with the Commission's earlier consent orders with PPG and Sherwin Williams,¹ the Consent Orders do not specifically address the need for paint companies to qualify "zero VOC" claims for base paints if the addition of tints would significantly increase the paint's VOC level. Accordingly, you urge the Commission to add language to the Consent Orders specifically addressing this issue. You also request that the Commission revise the Consent Orders if provisions prohibiting deceptive environmental benefit claims are narrower than parallel provisions in the PPG and Sherwin-Williams orders.

After considering your comment, the Commission declines to add specific language to the Consent Orders distinguishing between "zero VOC" claims for base paints and tinted paints. Specifically, although the distinction between base paints and tinted paints was at the heart of the 2013 PPG and Sherwin-Williams matters,² the Commission's analysis of "zero VOC" paint

¹ In re: PPG Architectural Finishes, Inc., No. C-4385 (Mar. 5, 2013); In re: The Sherwin-Williams Company, No. C-4386 (Mar. 5, 2013).

² See Press Release Announcing PPG and Sherwin-Williams Consent Orders (Oct. 25, 2012), available at <https://www.ftc.gov/news-events/press-releases/2012/10/sherwin-williams-ppg-settle-ftc-charges-they-misled-consumers>.

claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission's evolved understanding of the marketplace. To clarify further that these Consent Orders represent the Commission's current view, the Commission also has rescinded the Enforcement Policy Statement Regarding VOC-Free Claims for Architectural Coatings ("EPS").³ The Consent Orders do not specifically address tinting because they cover all "zero VOC" claims, whether they relate to base paints or to tinted paints. Marketers that wish to make qualified claims distinguishing between emissions of base and tinted paints may continue to do so, provided that they can substantiate their claims with competent and reliable scientific evidence, and the claims are not otherwise misleading.

The Commission has also considered your question whether the injunctive relief in the Consent Orders is narrower than the relief in the 2013 orders. Your specific concern was that use of the word "including" in Section II might limit the covered environmental benefit claims to only those relating to VOC, emission, or chemical composition. The Commission clarifies this provision is not narrower than the parallel provision in the 2013 orders, and, in fact, is broader because it also covers health benefit claims. Section II prohibits misleading and unsubstantiated claims regarding VOC, emission, odor, and "[a]ny other health benefit," "environmental benefit," or "attribute of" the covered product, "including those related to VOC, emission, or chemical composition." Thus, the phrase is intended to be illustrative, not limiting, and should be construed as "including, but not limited to."

After considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints. At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decisions and Orders and other relevant materials are available on the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

³ The Commission voted out the EPS in 2013. However, given the Commission's current view regarding substantiating unqualified VOC-free claims, the "trace amount test" articulated in the EPS is obsolete. Accordingly, the Commission has decided to rescind the EPS in conjunction with the approval of these orders.



Office of the Secretary

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FEDERAL TRADE COMMISSION

April 24, 2018

Washington Legal Foundation
Attn.: Cory L. Andrews
Attn.: Richard A. Samp
2009 Massachusetts Ave. NW
Washington, DC 20036

*Re: Zero VOC Claims for Paints:
Benjamin Moore & Co., Inc., File No. 162 3079
Imperial Paints, LLC d/b/a Lullaby Paints and Ecos Paints, File No. 162 3080
ICP Construction Inc., f/k/a California Products Corporation, d/b/a/ Muralo
Paints, File No. 162 3081
YOLO Colorhouse, LLC, File No. 162 3082*

Dear Mr. Andrews and Mr. Samp:

Thank you for commenting on the Federal Trade Commission's proposed Consent Orders in the above-referenced proceedings ("Consent Orders"). The Commission has considered your comment and placed it on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

In your comment, you recommend that, instead of finalizing the Consent Orders, the Commission open a review of its Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"), 16 C.F.R. Part 260, and initiate a notice-and-comment period for proposed amendments relating to "zero VOC" paint claims.

Specifically, your comment raises concerns that inconsistencies among the Green Guides, earlier consent orders with PPG and Sherwin-Williams,¹ and the Consent Orders could lead to uncertainty in the industry or an uneven playing field. These concerns could be alleviated, you state, by amending the Green Guides through a notice-and-comment process that would give industry notice of changes to the Commission's analysis and opportunities to provide input into how to comply with Section 5 of the FTC Act, 15 U.S.C. § 45(a). You further state that, because

¹ In re: PPG Architectural Finishes, Inc., No. C-4385 (Mar. 5, 2013); In re: The Sherwin-Williams Company, No. C-4386 (Mar. 5, 2013).

the Commission previously initiated notice-and-comment proceedings to promulgate and amend the Green Guides, the Guides should now be treated as enforceable rules, and the Commission should not amplify covered topics through litigation.

The Green Guides are not independently enforceable and “do not confer any rights on any person and do not operate to bind the FTC or the public.” 16 C.F.R. § 206.1. Instead, the Guides provide general guidance without regard to product, substance, or industry. As the Commission explained in its 2012 Statement of Basis and Purpose, the Guides are designed to help marketers in making non-deceptive environmental claims, but cannot always anticipate which specific claims will, or will not, be deceptive because of incomplete consumer perception evidence and because perception often depends on context.² The Commission brings cases in particular contexts, such as here, pursuant to Section 5 when a particular act or practice is unfair or deceptive. Agencies “must retain power to deal with problems on a case-by-case basis.” *SEC v. Chenery*, 332 U.S. 194, 202 (1947). The Commission is not required to engage in rulemaking even where an administrative decision may “affect agency policy and have general prospective application.” *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 497 (D.C. Cir. 2015).

The Commission’s analysis of “zero VOC” paint claims has evolved in response to changes in the marketplace including changes in the content of tints and the low cost of available emissions testing. The 2018 Consent Orders are consistent with the Commission’s evolved understanding of the marketplace.

After considering your comment, the Commission has determined that the relief set forth in the Consent Orders is appropriate and sufficient to remedy the violations alleged in the complaints. At this time, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without modification (except as to a minor change to the exhibit to the Benjamin Moore order). The final Decisions and Orders and other relevant materials are available on the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See The Green Guides Statement of Basis and Purpose (Oct. 2012), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>.