

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney

_____	)	
In the Matter of	)	
	)	
THE SHERWIN-WILLIAMS COMPANY,	)	
a corporation;	)	
	)	Docket No. C-
and	)	
	)	
THE VALSPAR CORPORATION,	)	
a corporation.	)	
	)	
_____	)	

**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent The Sherwin-Williams Company (“Sherwin-Williams”), a corporation subject to the jurisdiction of the Commission, agreed to acquire Respondent The Valspar Corporation (“Valspar”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, 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:

**I. RESPONDENTS**

1. Respondent Sherwin-Williams is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its headquarters and principal place of business located at 101 West Prospect Avenue, Cleveland, Ohio.
2. Respondent Valspar is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at 1101 South 3<sup>rd</sup> Street, Minneapolis, Minnesota.

## **II. JURISDICTION**

3. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

## **III. THE PROPOSED ACQUISITION**

4. Pursuant to an Agreement and Plan of Merger (the “Merger Agreement”) dated as of March 19, 2016, Sherwin-Williams proposes to purchase all issued and outstanding common stock of Valspar in a transaction valued at approximately \$11.3 billion (“the Acquisition”), including the assumption of debt.

## **IV. THE RELEVANT PRODUCT MARKET**

5. The relevant line of commerce in which to analyze the effects of the Acquisition is no broader than coatings used in the manufacture of industrial wood products, such as furniture, kitchen cabinets, and building products (“industrial wood coatings”).

6. Industrial wood coatings consist of a broad category of stains, topcoats, and sealants used during the manufacture of wood products such as kitchen cabinets, furniture, and building products. Industrial wood coatings are distinguishable from consumer wood coatings by, among other characteristics, their higher resistance to abrasion and water.

7. Furniture, kitchen cabinet, and building products manufacturers (“wood product manufacturers”) would not switch from industrial wood coatings to consumer wood coatings in response to a small but significant and non-transitory increase in price in industrial wood coatings. Consumer wood coatings cannot provide the same levels of abrasion and water resistance that wood products manufacturers demand. In addition, industrial wood coatings are often sold with on-site technical assistance to wood products manufacturers. This service is critical to wood products manufacturers as it enables them to resolve any problems with the application of the industrial wood coatings on their finishing lines.

8. Wood product manufacturers would likewise not switch from industrial wood coatings to alternative substrates in response to a small but significant and non-transitory increase in price for industrial wood coatings. Wood product manufacturers rely on finished wood in order to maximize sales and attract certain customers who value the appearance that finished wood gives to cabinets, furniture, and building products. If wood product manufacturers switched away from finished wood in response to higher industrial wood coatings prices, they would face an unacceptably high risk of lost sales.

## **V. THE RELEVANT GEOGRAPHIC MARKET**

9. The relevant geographic market in which to analyze the competitive effects of the Acquisition for industrial wood coatings is no broader than North America. Due to high freight costs and logistical challenges, there are minimal imports of industrial wood coatings from overseas into the North American market.

## **VI. MARKET STRUCTURE**

10. Sherwin-Williams, Valspar, and Akzo Nobel N.V. (“Akzo Nobel”) are the three leading suppliers of industrial wood coatings in North America. Post-Acquisition, the combined share of Sherwin-Williams and Valspar would be over 40% for industrial wood coatings sold in North America. The merged firm and Akzo Nobel together would account for over 70% of the North American industrial wood coatings market.

## **VII. ENTRY CONDITIONS**

11. Entry into the relevant market would not be timely, likely, or sufficient to prevent or deter the expected anticompetitive effects of the Acquisition. Considerable entry barriers exist in the manufacture of industrial wood coatings, including significant volume requirements necessary to manufacture efficiently; high capital costs to construct an industrial wood coatings plant; and customer reluctance to switch to unproven new suppliers.

12. Likewise, the threat of vertical integration by wood product manufacturers would not be timely, likely, or sufficient to prevent or deter the expected anticompetitive effects of the Acquisition. Even for the largest wood product manufacturers, vertical integration would not be a credible threat due to the significant capital costs and technical requirements associated with operating an industrial wood coatings plant.

## **VIII. EFFECTS OF THE ACQUISITION**

13. The Acquisition, if consummated, is likely to substantially lessen competition in the relevant line of commerce in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents Sherwin-Williams and Valspar;
- b. by increasing the likelihood that Sherwin-Williams will unilaterally exercise market power; and
- c. by increasing the likelihood of coordinated interaction among the remaining competitors in the relevant market.

14. The ultimate effects of the Acquisition would be to increase the likelihood that prices of industrial wood coatings will rise, and that quality, selection, service, and innovation will be lessened.

## IX. VIOLATIONS CHARGED

15. The allegations contained in Paragraphs 1 through 14 above are hereby incorporated by reference as though fully set forth here.
16. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.
17. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
18. The Merger Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this \_\_\_\_ day of \_\_\_\_\_, 2017, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL: