

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PPG INDUSTRIES, INC., (a Pennsylvania Corporation), and PPG ARCHITECTURAL FINISHES, INC. (a Delaware Corporation),	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	_____
v.	)	
	)	
SHERWIN-WILLIAMS CO. (an Ohio Corporation),	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT**

Plaintiffs PPG INDUSTRIES, INC. and PPG ARCHITECTURAL FINISHES, INC. (collectively "PPG"), by their undersigned attorneys, file this Verified Complaint against Defendant SHERWIN-WILLIAMS CO. ("SHERWIN-WILLIAMS"), upon actual knowledge with respect to themselves and their own acts and upon information and belief as to all other matters.

**NATURE OF THE ACTION**

1. This is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §1051, et seq., as well as for unfair and deceptive acts and practices under 73 P.S. §201-1. et seq., and trademark infringement under the common law of Pennsylvania. PPG brings this action seeking equitable relief and damages because Defendant is using PPG's COLORS OF INSPIRATION mark to advertise and promote its architectural paint products and color selection system thereby violating PPG's valuable intellectual property rights.

### **THE PARTIES**

2. Plaintiff PPG INDUSTRIES, INC. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania having a principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15272.

3. Plaintiff PPG ARCHITECTURAL FINISHES, INC. is a corporation organized and existing under the laws of the State of Delaware having a principal place at One PPG Place, Pittsburgh, Pennsylvania 15272.

4. Defendant SHERWIN-WILLIAMS CO. is a corporation organized and existing under the laws of the state of Ohio having a principal of business at 101 Prospect Ave., Cleveland, Ohio 44115.

### **JURISDICTION AND VENUE**

5. This action arises under the federal Trademark Act, 15 U.S.C. § 1051, et seq. for trademark infringement and unfair competition. PPG also asserts claims for trademark infringement and for unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under the laws of the Commonwealth of Pennsylvania, both statutory and common law. Subject matter jurisdiction over this action is conferred upon this Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). This Court also has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

### **PPG'S RIGHTS**

6. Since at least as early as 2004, prior to Defendant's first use of THE COLOR OF INSPIRATION and its Domain Names, PPG has promoted a color palette paint color selection system hereinafter ("color selection system") and has distributed,

and sold in the United States a line of architectural paint products and services in connection with its trademark COLORS OF INSPIRATION.

7. PPG's COLORS OF INSPIRATION trademark is a valuable asset, and PPG has significantly invested in the promotion of architectural paint products and its color selection system and services in connection with the COLORS OF INSPIRATION mark in the United States.

8. PPG also uses the mark COLORS OF INSPIRATION in connection with a color selection system, in which customers can view and select primary and complementary exterior and interior paint colors.

9. PPG owns a valid and subsisting U.S. trademark application for the COLORS OF INSPIRATION mark (Ser. No. 77/579953), a copy of which is attached as Complaint Exhibit A.

10. PPG provides its color selection system and paint products in connection with the mark COLORS OF INSPIRATION at over 1500 locations across the United States, including without limitation, California, Texas, Virginia, Florida, New York, and Michigan. Attached as Complaint Exhibit B are photographs of in-store displays and promotional materials featuring the COLORS OF INSPIRATION mark and color selection system.

11. PPG also provides information to its customers about its architectural paints and color selection system under the COLORS OF INSPIRATION mark on its website located at [www.olympic.com/paint\\_products/color\\_and\\_inspiration/index.htm](http://www.olympic.com/paint_products/color_and_inspiration/index.htm). Sample printouts of PPG's website are attached as Complaint Exhibit C.

12. PPG has continuously and extensively used the COLORS OF INSPIRATION mark in connection with the distribution, sale, and promotion of architectural paint products and its color selection system to identify the source of PPG's goods and services, thereby distinguishing them from the goods and services of others.

13. PPG has enjoyed considerable success in the sale of architectural paint in connection with the COLORS OF INSPIRATION mark and has sold millions of dollars of product in connection with its mark.

14. By virtue of PPG's exacting quality control standards, PPG's products and services offered in connection with the COLORS OF INSPIRATION mark have acquired a reputation for uncompromising quality in the marketplace.

15. As a result of PPG's promotional efforts, substantial sales, and reputation for uncompromising quality, the trade and purchasing public throughout the United States, including within this District, have come to recognize and rely upon PPG's COLORS OF INSPIRATION mark to represent and symbolize the tremendous goodwill and business reputation enjoyed by PPG and its products and services.

16. PPG's COLORS OF INSPIRATION mark is distinctive and therefore deserving of a broad scope of protection.

#### **SHERWIN-WILLIAMS'S WRONGFUL ACTS**

17. Defendant SHERWIN-WILLIAMS selected and registered the domain names colorofinspiration.com and colorsofinspiration.com ("Domain Names") on December 27, 2007 and January 10, 2008 respectively. Copies of the Network Solutions WHOIS information for these Domain Names are attached as Exhibit D.

18. Defendant uses the Domain Names in connection with an online color-matching service, in which customers can view and select primary and complementary exterior and interior paint colors, print them out, and bring them to one of Defendant's stores where they can purchase the paint they selected online.

19. Defendant's use of THE COLOR OF INSPIRATION mark on its websites and "colorsofinspiration" and "colorofinspiration" in its Domain Names for marketing its paint products and color-matching services causes consumers to believe, falsely, that Defendant's paint products and color-matching services are associated with or related to PPG. Sample printouts of Defendant's website are attached as Exhibit E.

20. Defendant's registration of the domain names colorofinspiration.com and colorsofinspiration.com have precluded PPG from being able to register these same domain names to promote PPG's products and services.

21. Defendant is not now, nor has it ever been, authorized or licensed to use or reproduce PPG's COLORS OF INSPIRATION mark in connection with the sale and advertising of architectural paint or its color-matching services or anything else.

22. Defendant knowingly uses a mark identical or nearly identical to PPG's COLORS OF INSPIRATION mark for the identical goods and services to capitalize on the valuable and favorable reputation and goodwill that this mark has earned through PPG's years of prior use.

23. Defendant engages in these infringing acts willfully and with full knowledge of PPG's prior use and exclusive ownership of rights in the COLORS OF INSPIRATION mark and for purposes of advancing Defendant's own commercial gain by the misappropriation of PPG's valuable goodwill and business reputation, including

that which PPG's COLORS OF INSPIRATION mark symbolizes, all in violation of PPG's rights.

**INJURY TO PPG**

24. Defendant's misappropriation of PPG's COLORS OF INSPIRATION mark will cause confusion and mistake regarding the relationship of Defendant with PPG, and has irreparably injured and, if not prohibited by the Court, will continue to injure irreparably PPG and its marks, PPG's reputation and goodwill associated with the COLORS OF INSPIRATION mark, and PPG's uncompromising reputation for exceedingly high-quality products and services.

25. PPG has suffered actual damages in an amount to be proven at trial, but in excess of \$75,000.

26. PPG has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF  
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION  
UNDER SECTION 43(A) OF THE LANHAM ACT, 15 U.S.C. § 1125(A)(1)**

27. PPG repeats and realleges the allegations set forth in paragraphs 1 through 26 hereof.

28. The willful and deliberate acts of Defendant are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by or with PPG, and thus constitute false designations of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1), and PPG has suffered and will continue to suffer irreparable injury and damages as a result of Defendant's acts.

**SECOND CLAIM FOR RELIEF**  
**VIOLATION OF THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT**  
**UNDER SECTION 43(d) OF THE LANHAM ACT, 15 U.S.C. 1125(d)**

29. PPG repeats and realleges the allegations set forth in paragraphs 1 through 28 hereof.

30. Defendant deliberately registered Domain Names confusingly similar to PPG's famous PPG mark with a bad faith intent to profit from its use of PPG's mark, thus violating the Anticybersquatting Consumer Protection Act under Section 43(d) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125(d), and PPG has suffered, and will continue to suffer, irreparable injury and damages as a result of Defendant's acts.

**THIRD CLAIM FOR RELIEF**  
**DECEPTIVE AND UNFAIR BUSINESS PRACTICES UNDER 73 P.S. §§ 201-1, et seq.**

31. PPG repeats and realleges the allegations set forth in paragraphs 1 through 30 hereof.

32. The acts, conduct, and practices of Defendant described above constitute deceptive and unfair business practices in violation of 73 P.S. §201-1, et seq.

33. Defendant is a person engaged in the conduct of trade or commerce within the meaning of 73 P.S. §201-1, et seq.

34. As a direct and proximate result of the actions, conduct and practices of Defendant alleged above, PPG has suffered, and will continue to suffer, irreparable injury and damages.

**FOURTH CLAIM FOR RELIEF**  
**TRADEMARK INFRINGEMENT UNDER 54 Pa. C.S.A. §1101, et seq.**

35. PPG repeats and realleges the allegations set forth in paragraphs 1 through 34 hereof.

36. The willful and deliberate acts of Defendant are likely to cause confusion with respect to PPG's COLORS OF INSPIRATION mark for the same or similar goods and services, and thus constitute trademark infringement of PPG's COLORS OF INSPIRATION mark under the common law of Pennsylvania, 54 Pa. C.S.A. § 1101, et seq.

37. As a direct and proximate result of the actions, conduct and practices of Defendant alleged above, PPG has suffered, and will continue to suffer, irreparable injury and damages.

**PRAYER FOR RELIEF**

WHEREFORE, PPG prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. A preliminary and permanent injunction enjoining Defendant from using THE COLOR OF INSPIRATION mark, or any confusingly similar marks, to advertise, promote, distribute, or use in any manner in connection with architecture paint products or any other products.

B. A preliminary and permanent injunction enjoining Defendant from using THE COLOR OF INSPIRATION mark, or any confusingly similar marks, to advertise, promote, distribute, or use in any manner in connection with a paint color-matching system or any other services.



C. An award granting PPG monetary relief including damages, Defendant's profits, attorneys' fees and the costs of this action pursuant to 15 U.S.C. § 1117, 73 P.S. §201-4.1 and other applicable laws.

D. An award granting PPG treble damages pursuant to 15 U.S.C. § 1117(b) and other applicable laws.

E. An award granting PPG statutory damages pursuant to 15 U.S.C. § 1117(d)(1) and other applicable laws.

F. An award granting PPG punitive damages in accordance with the common law of Pennsylvania, and other applicable laws.

G. An order directing that Defendant transfer the domain names colorofinspiration.com and colorsofinspiration.com to PPG.

H. Such other relief as the Court may deem appropriate.

**JURY DEMAND**

PPG enters a jury demand in this case.

Dated: February 2, 2009

Respectfully submitted,

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