

BISHOP INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-1724. Complaint, Apr. 10, 1970—Decision, Apr. 10, 1970*

Consent order requiring a Union, N.J., manufacturer of beauty aids to cease the deceptive use of "before and after" photographs and other tests and demonstrations as proof of any fact or product feature of its cosmetic preparations.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bishop Industries, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bishop Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New York with its principal office and place of business located at 2345 Vauxhall Road, in the city of Union, State of New Jersey.

PAR. 2. Respondent now, and for some time past, has been engaged in the sale and distribution of beauty aid products, including a facial lotion described as Sudden Change, which, when sold is shipped to purchasers located in various States of the United States. Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said facial lotion in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of beauty aids of the same general kind and nature.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its said facial lotion, respondent extensively employs advertising in newspapers and in national and regional magazines. Respondent's major advertising theme consists of a so-called "before and after" demonstration.

PAR. 5. The so-called "before and after" demonstration consists of two photographs of a woman's face placed side by side. Under one photograph, in small print, appears the legend "Un-retouched photo before Sudden Change." Under the other photograph, in equally small print, appears the legend "Un-retouched photo after Sudden Change using Hazel Bishop makeup."

PAR. 6. Through the use of the aforesaid pictorial demonstration and statements used in connection therewith, respondent represents, directly or by implication that such demonstration is evidence of how Sudden Change conceals embarrassing facial areas such as heavy lines, wrinkles, puffs and bags and improves the user's overall facial appearance.

PAR. 7. In truth and in fact, the aforementioned "before" photograph depicts a woman's face entirely devoid of all makeup and the aforementioned "after" photograph depicts a woman's face with Sudden Change lotion and additional makeup, including eye liner, eye shadow, lipstick, cream and powder complexion base and compact powder.

Therefore, the said pictorial demonstration, including the statement and representations used in connection therewith, is not evidence of the efficacy of Sudden Change lotion in concealing embarrassing facial areas, or improving the user's overall facial appearance, and therefore is false, misleading and deceptive.

## Decision and Order

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PAR. 8. The use by the respondent of the aforesaid invalid demonstration and the false, misleading and deceptive statements and representations used in connection therewith has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of a substantial quantity of respondent's facial lotion because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bishop Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business

located at 2345 Vauxhall Road, in the city of Union, State of New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

*It is ordered*, That respondent Bishop Industries, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Sudden Change lotion or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising any such product by presenting a test, experiment or demonstration or part thereof that is presented as actual proof of any fact or product feature that is material to inducing the sale of the product, but which does not actually prove such fact or product feature.

*It is further ordered*, That respondent shall file a report of Compliance with the Commission within sixty (60) days from the date the order becomes final.

*It is further ordered*, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

*It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

#### IN THE MATTER OF

#### STAR OFFICE SUPPLY CO., ET AL.

#### ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

*Docket 8749. Complaint, Nov. 27, 1967—Decision, Apr. 16, 1970*

Order requiring a New York City distributor of stationery and office supplies to cease allowing their salesmen to falsely imply they have been recommended by officials of prospective purchasers' firms, falsely claiming connection with Government agencies, padding quantities of ordered merchandise.