

herein.

IN THE MATTER OF

RHODES PHARMACAL COMPANY, INC., ET AL.

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

Docket C-1903. Complaint, Apr. 21, 1971—Decision, Apr. 21, 1971

Consent order requiring a Chicago, Ill., seller and distributor of cosmetic and beauty aid products to cease misrepresenting that tests or experiments are proof of any feature of its beauty aid products or using such misrepresentations to induce purchase of respondents' products.

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 Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose, individually and as officer of said corporation, and Elan Corporation, a corporation, and James S. Rose, individually and as officer of said corporation, hereinafter referred to as respondents, have 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 Rhodes Pharmacal Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and

place of business located at 200 East Ontario Street, in the city of Chicago, in the State of Illinois.

Respondent J. Sanford Rose is an individual and an officer of the aforementioned corporate respondent. He formulates, directs and controls the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the aforementioned corporate respondent.

Respondent Elan Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at 200 East Ontario Street, in the city of Chicago, in the State of Illinois.

Respondent James S. Rose is an individual and an officer of the aforementioned corporate respondent. He formulates, directs and controls the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the aforementioned corporate respondent.

PAR. 2. Respondents Rhodes Pharmacal Company, Inc., and J. Sanford Rose now, and for some time last past, have been engaged in the sale and distribution of beauty aid products including a skin preparation advertised and distributed under the trade name "Donnatelli" Honey and Egg Creme Facial, containing ingredients which come within the classification of cosmetics as the term "cosmetics" is defined in the Federal Trade Commission Act.

Respondents Elan Corporation, and James S. Rose now, and for some time last past, have been engaged in the sale and distribution of beauty aid products including a skin preparation, of identical composition and properties as the aforementioned skin preparation, advertised and distributed under the trade name "Renascene" Honey and Egg Creme Facial, and in addition, respondents Elan Corporation and James S. Rose now, and for some time last past have been engaged in the sale and distribution of a beauty aid product described as Couvert Make-Up, which beauty aid products contain ingredients which come within the classification of cosmetics as the term "cosmetics" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents now and for some time last past, have been engaged in the sale and distribution of the aforementioned beauty aid products, which, when sold, are shipped to purchasers located in various States of the United States. Thus respondents maintain, and at all times mentioned herein have maintained a substantial

course of trade in said beauty aid products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents at all times mentioned herein have been and now are in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of beauty aid products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their businesses, as aforesaid, respondents have disseminated and caused the dissemination of, certain advertisements concerning the said beauty aid products by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertising inserted in newspapers, magazines and other advertising media, and by means of television broadcasts transmitted by television stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said cosmetic products, and have disseminated, and caused the dissemination of, advertisements concerning said cosmetic products by various means, including but not limited to the aforementioned media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said cosmetic products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents' major advertising theme consists of so-called "before and after" demonstrations in which two photographs of a woman's face are placed side by side as evidence of the efficacy of the products.

PAR. 7. By and through the use of the aforesaid pictorial demonstrations and statements used in connection therewith, respondents represent, directly or by implication that such demonstration is evidence of how "Donnatelli" and "Renascene" Honey and Egg Creme Facials will tighten loose sagging skin on the chin and throat, firm up puffiness under the eyes, make lines and wrinkles vanish from sight, and provide a more youthful appearance to the user.

By and through the use of the aforesaid pictorial demonstrations and statements used in connection therewith, respondents Elan Corporation, and James S. Rose represent, directly or by implication that such demonstration is evidence of how Couvert Make-Up conceals facial lines, wrinkles, deeply etched furrows, dark circles and other facial flaws.

PAR. 8. In truth and in fact, the "before and after" demonstrations are not evidence of the efficacy of said beauty aid products in that the photographic lighting used in connection with the "before" pictures differs from the photographic lighting used in connection with the "after" pictures; and in addition, with further respect to "Donnatelli" and "Renascene" Honey and Egg Creme Facials, said demonstrations are not evidence of the efficacy of said skin preparation in that the "after" photographs depict women wearing facial make-up which differs in quantity and application from facial make-up worn on women depicted in "before" photographs, and furthermore, that such facial make-up has been applied by a professional make-up artist which fact is not known to the viewer of said advertisements.

Therefore, the advertisements referred to in Paragraphs Six and Seven were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive representation, and the dissemination by the respondents of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 they had reason to believe that the respondents have violated the said Act, and that complaint should issue stating their 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 Section 2.34(b) of their Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rhodes Pharmacal Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 200 East Ontario Street, in the city of Chicago, in the State of Illinois.

Respondent J. Sanford Rose is an individual and an officer of the aforementioned corporate respondent. He formulates, directs and controls the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the aforementioned corporate respondent.

Respondent Elan Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at 200 East Ontario Street, in the city of Chicago, in the State of Illinois.

Respondent James S. Rose is an individual and an officer of the aforementioned corporate respondent. He formulates, directs and controls the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the aforementioned corporate respondent.

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

ORDER

It is ordered, That respondents Rhodes Pharmacal Company, Inc., a corporation, and its officers and J. Sanford Rose, individually and as officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution,

of "Donnatelli" Honey and Egg Creme Facial, or other beauty aid products do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents directly or by implication:

(a) That tests, experiments or demonstrations, or the results thereof, presented either alone or accompanied by oral or written statements, or any other evidence, are proof of any fact or product feature of any such beauty aid products, when in fact such tests, experiments, or demonstrations, or the results thereof, or other evidence do not constitute actual proof of such fact or product feature.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, the commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 hereof.

II

It is ordered, That respondent Elan Corporation, a corporation and its officers, and James S. Rose, individually, and as officer of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, of "Renascene" Honey and Egg Creme Facial, and Couvert Make-Up, or other beauty aid products, do forthwith cease and desist from directly or indirectly.

1. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act which represents directly or by implication:

(a) That tests, experiments or demonstrations, or the results thereof, presented either alone or accompanied by oral or written statements, or any other evidence, are proof of any fact or product feature of any such beauty aid products, when in fact such tests, experiments or demonstrations or the results thereof, or other evidence do not constitute actual proof of such fact or product feature.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of re-

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spondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents 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.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

BORDEN, INC.