

with distribute a copy of this order to each of its operating divisions.
It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
FABERGE, INC., ET AL.

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

Docket C-1925. Complaint, May 18, 1971—Decision, May 18, 1971

Consent order requiring a New York City seller and distributor of a device designated as a "Tone-O-Matic" belt to cease advertising that any such device can be an effective substitute for physical exercise and offering for sale its "Tone-O-Matic" belt without furnishing a warning that it may be physically injurious to some persons.

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 Faberge, Inc., a corporation, and Tone-O-Matic Products, Inc., a 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 Faberge, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 1345 Avenue of the Americas, in the city of New York, State of New York.

Respondent Tone-O-Matic Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2436 30th Avenue in the city of St. Petersburg, State of Florida. Tone-O-Matic Products, Inc., is a wholly-owned subsidiary of Faberge, Inc.

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PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a device which falls within the classification of "device," as said term is defined in the Federal Trade Commission Act. The device is designated by respondents as "Tone-O-Matic" belt. Said device is a weighted belt which consists of a leatherette covering with several compartments containing lead granules, and "Velcro" fastening strips at both ends of the belt which when pressed together hold the belt in place around the waist. Respondents instruct the wearers of said device to wear it while in the conduct of their normal activities or while participating in various sporting activities.

PAR. 3. Respondents cause the said device when sold, to be transported from their place of business in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such device in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been, and is substantial.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States and in the District of Columbia, 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 device; and have disseminated, and caused the dissemination of, advertisements concerning said device by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the statements and representations contained in said advertisements, disseminated, as aforesaid, but not all inclusive thereof, are the following:

Tone up * * * Trim Down. New and easy way while you work or play. Good news! Now you can recapture that lean waist look without long hours of monotonous exercise. Wear the Tone-O-Matic, and normal body movements pro-

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vide the exercise by forcing inactive muscles to carry the weight * * * all you do is wear it.

Trim your waistline while you work or play.

WEAR THE TONE-O-MATIC
and firm up your waist without exercise and strengthen slack muscles. And all that effortless exercise can whittle inches off your waist (firm up your thighs and hips, too).

TONE-O-MATIC
SCIENTIFICALLY
WEIGHTED BELT

Good news * * * if you lack the time or will power for regularly scheduled exercise don't despair * * * here is your answer. Just wrap the Tone-O-Matic around your waist and go about your normal activities. No fuss * * * no strain * * * you are exercising in your own everyday movements. Wear the Tone-O-Matic and normal body movements provide the exercise by forcing inactive muscles to carry the weight.

You can trim inches off your waistline simply by wearing this scientifically weighted belt.

* * * if you don't have the time or the inclination to get that much needed exercise solve the problem . . . by wearing a Tone-O-Matic belt. Wait until you see what it can do for your waistline.

PAR. 6. Through the use of said advertisements, and others similar thereto, not specifically set out herein, respondents have represented and are now representing, directly or by implication that:

1. The Tone-O-Matic is effective as a substitute for exercise, in keeping physically fit, causing weight reduction, reduction of waistline and in firming abdominal muscles.

2. The Tone-O-Matic is safe for use.

PAR. 7. In truth and in fact:

1. The Tone-O-Matic is not effective as a substitute for exercise, in keeping physically fit, causing weight reduction, reduction of waistline and in firming abdominal muscles.

2. The Tone-O-Matic is not safe for use for all individuals. In fact, the wearing of the said device can cause physical injury to some individuals who wear it.

Therefore, the advertisements referred to in Paragraph Five and Six hereof 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. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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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 Consumer Protection 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 the 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 it had reason to believe that the respondents have 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Faberge, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 1345 Avenue of the Americas, in the city of New York, State of New York.

Respondent Tone-O-Matic Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2436 30th Avenue in the city of St. Petersburg, State of Florida. Tone-O-Matic Products, Inc., is a wholly-owned subsidiary of Faberge, Inc.

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

ORDER

It is ordered, That respondents Faberge, Inc., a corporation, and its officers, and Tone-O-Matic Products, Inc., a corporation, and its

officers, 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 Tone-O-Matic belts, or any other device of similar composition or possessing substantially similar attributes, do forthwith cease and desist from directly or indirectly:

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

- a. Any such device is or can be effective as a substitute for exercise.

- b. Any such device is or can be effective in keeping physically fit.

- c. Any such device is or can be effective in causing weight reduction or reduction of waistline.

- d. Any such device is or can be effective in toning or firming abdominal muscles.

2. Advertising, offering for sale, selling or distributing the Tone-O-Matic or any other such device unless the following statement is disclosed clearly and conspicuously in all such advertisements and on the outside of all containers or packages in which the said product is sold:

"WARNING: This product may be physically injurious to some individuals. Consult your physician before purchase and use."

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

4. 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' devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains statements which are inconsistent with, negate or contradict the affirmative disclosure required by Paragraph 2 of this order, or which in any way obscures the meaning of such disclosure.

It is further ordered, That the respondent corporations shall forth-

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with distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents submit to the Commission within sixty (60) days after the order becomes final all advertising for products covered by this order to show the manner of compliance therewith, and thereafter will submit samples of all such advertising each six months to show continued compliance.

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 corporations which may affect compliance obligations arising out of the order.