

Docket 8830. Complaint, Jan. 12, 1971—Decision, Oct. 2, 1973.*

Consent order requiring a Beverly Hills, Calif., corporation which acquired assets, including patent rights, from the now-bankrupt franchisor of the "Medi-Hair" hair replacement system, to cease representing that the system will restore the customer's hair so well that there will be no need for further attention; to disclose that the system involves the application of wire sutures in the scalp which may cause pain and risk

* For complaint see 80 F.T.C. 627.

of infection; to notify prospective customers to consult with their personal physicians; to advise purchasers that contracts may be cancelled up until the third day; and not to negotiate a customer's note to a finance company prior to midnight of the fifth day.

Appearances

For the Commission: *Paul R. Peterson* and *Gerald E. Wright*.

For the respondent: *pro se*.

DECISION AND ORDER

The Commission having heretofore issued its decision and order in the matter of Medi-Hair International, a corporation, and Jack I. Bauman, individually and as a director of said corporation, on April 21, 1972, which provides that said order shall apply to "successors and assigns" of said order, and that a transferee of all or a substantial part of the business or assets of the corporate respondent shall file promptly with the Commission a written agreement to be bound by the terms of said order, or present to the Commission prior to the transfer any reasons why said order should not apply to such transferee in its existing form; and

Dura-Hair International, Inc., having proposed to acquire a substantial part of the assets of Medi-Hair International, the corporate respondent in Docket 8830; and

Dura-Hair International, Inc., and counsel for the Commission having executed an agreement containing a consent order, an admission by Dura-Hair of the jurisdiction of the Federal Trade Commission pursuant to Sections 5 and 12 of the Federal Trade Commission Act and pursuant to the Medi-Hair order as a transferee of a substantial part of the Medi-Hair assets, a statement that the signing of the agreement does not constitute an admission by Dura-Hair that it has violated the law as alleged in the Medi-Hair complaint (Docket 8830) and does not constitute an admission by Dura-Hair that the facts as stated in the Medi-Hair complaint are true, and waivers and provisions as required by Commission's rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 makes the following jurisdictional findings, and enters the following order.

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1. Dura-Hair International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Calif., with its principal office and place of business located at 8383 Wilshire Boulevard, Suite 652, Beverly Hills, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Dura-Hair International, Inc., and the proceeding is in the public interest.

ORDER

It is ordered, That Dura-Hair International, Inc., a corporation, its successors and assigns, and its agents, representatives, and employees (hereinafter collectively referred to as "Dura-Hair"), directly or through any corporation, subsidiary, division, or other device, or through its franchisees, licensees or through its patent licensees, in connection with the advertising, offering for sale, sale, or distribution of the hair replacement system covered by United States Patent 3553737, or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined by the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication:

1. That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, teeth, and fingernails and has the following characteristics of natural hair:

a. The same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

b. It may be cared for like natural hair where care involves possible pulling on the hair;

c. The wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

3. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or

skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That Dura-Hair, in advertising or otherwise promoting the system by radio, television, newspapers or periodicals, disclose clearly and conspicuously that the system involves a surgical procedure, requiring the use of a local anesthetic, resulting in the implantation of sutures in the scalp, to which hair is affixed.

It is further ordered, That Dura-Hair, in advertising or otherwise promoting the system other than by radio, television, newspapers or periodicals, and in offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure, requiring the use of a local anesthetic, resulting in the implantation of sutures in the scalp, to which hair is affixed.
2. By virtue of the surgical procedure involving implantation of sutures in the scalp, and by virtue of the sutures remaining in the scalp, there is a risk of discomfort, pain, infection, scarring and other skin disorders.
3. Continuing special care of the system is necessary to minimize the risks referred to in Subparagraph Two of this paragraph, and such care may involve additional costs for medications and assistance.
4. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

It is further ordered, That Dura-Hair, in connection with the sale of the system, provide prospective purchaser with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, Subparagraphs One (1) through Four (4) thereof, and that Dura-Hair require that, prior to executing any contract to purchase said system, such prospective purchasers, sign and date the disclosure sheet after the sentence, "I have read the foregoing disclosures and understand what they mean," and that Dura-Hair provide a copy of said disclosure sheet to the customer and retain such signed disclosure sheet for at least three years.

It is further ordered, That, in connection with the sale of the system, no contract for application of the system shall become binding on the purchaser prior to midnight of the third day,

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excluding Sundays and legal holidays, after the day on which said contract for application of the System was executed, and that:

1. Dura-Hair shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Dura-Hair shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Dura-Hair shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That Dura-Hair, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or franchisee, upon each present and every future patent licensee, and upon each physician participating in application of Dura-Hair's system, and obtain written acknowledgement of the receipt thereof; and that Dura-Hair obtain from each present and future licensee or franchisee, and from each present and future patent licensee, an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise, or patent license, for failure to do so; and that Dura-Hair cancel the license or franchise, or patent license of any licensee or franchisee or patent licensee, that fails to abide by the terms of this order. Dura-Hair shall retain such acknowledgements and agreements for so long as such persons or firms continue to participate in the application or sale of Dura-Hair's system.

It is further ordered, That Dura-Hair, in connection with advertising, offering for sale, sale, or distribution of the system, forthwith distribute a copy of this order to each of their operating divisions or departments.

It is further ordered, That Dura-Hair notify the Commission at

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least thirty (30) days prior to any proposed change in said Dura-Hair, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or patent licensees, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That in the event that Dura-Hair merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, Dura-Hair shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided*, That if said Dura-Hair wishes to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That Dura-Hair International, Inc., shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by Dura-Hair, setting in detail the manner and form of their compliance with this order.

IN THE MATTER OF

CHOCK FULL O'NUTS CORPORATION, INC.

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

Docket 8884. Complaint, May 5, 1972—Order & Opinion, Oct. 2, 1973.

Order requiring a New York City franchisor of a counter-type restaurant, among other things to cease combining or conspiring to maintain resale prices and cutting off supplies or services to their franchisee.