

HAIR ENCORE, INC., TRADING AS HAIR ENCORE, ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2591. Complaint, Nov. 1, 1974 — Decision, Nov. 1, 1974

Consent order requiring a Columbia, S.C., promoter of a cosmetic hair replacement system, among other things to cease failing to disclose the medical risks—i.e., discomfort and pain, risk of irritation, infection and skin disease, and permanent scarring of the scalp—involved in its system and to give customers a three-day cooling-off period within which to cancel their contract. Further, 15 percent of respondents' advertising must include disclosures as to the possible deleterious side effects to be encountered.

Appearances

For the Commission: *Robert L. Osteen, Jr.*

For the respondents: *Patrick E. Treacy*, Columbia, S.C.

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 Hair Encore, Inc., a corporation, doing business as Hair Encore, and James D. Wilson, Sr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing

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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 Hair Encore, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of South Carolina with its office and principal place of business located at 1801 Main Street, Jefferson Square, Columbia, S.C.

Respondent James D. Wilson, Sr., is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the operation of Hair Encore Clinics and promote on their own behalf, among others, the cosmetic hair replacement system (hereinafter sometimes referred to as the "System"). The system involves a surgical procedure whereby prolene sutures are implanted in the scalp to which wefts of synthetic hair are attached.

Hair Encore centers sell and maintain the system, except that the surgical procedure itself is performed by a medical doctor.

Subsequent to the attachment, Hair Encore cuts, styles and maintains the system.

PAR. 3. Respondents' cosmetic hair replacement system constitutes either a cosmetic or a device, or both, as defined in Section 15(d) and (e) of the Federal Trade Commission Act, 15 U.S.C. Section 55(d) and (e).

In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across state lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondents have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and cause to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the cosmetic hair replacement system, respondents, directly have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

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Permanent, natural looking.

A process that has virtually none of the shortcomings of transplants, toupees and weaves.

A full head of hair that looks, acts and feels like the real thing.

Hair that doesn't take any more care than your own hair.

You don't have to pamper it. It keeps up with any active lifestyle.

So you can keep that golf date, go sailing, swimming, skydiving.

It'll keep up with you, whatever you do.

Hair Encore offers you the best method known in medical technology today to cover up your baldness * * * beautifully and undetectably.

The wefts are perfectly matched to your own hair under special lighting. So perfectly, no one will ever know it's not really you.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, respondents have represented directly or by implication that:

1. The hairpiece applied becomes part of the anatomy like natural hair and has characteristics of natural hair, including the following:

a. The same appearance as natural hair upon normal observation and upon extreme close up examination;

b. It may be cared for like natural hair, particularly in that action such as washing, combing, brushing and shampooing may be performed on it in the same manner as might a person with natural hair.

c. The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

2. 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 charges over and above the charge for installing the System.

PAR. 6. In truth and in fact:

1. The hairpiece applied does not become part of the anatomy like natural hair. The system involves prolene sutures which are stitched into the scalp by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

a. It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece upon normal observation, and upon extreme close-up examination;

b. It cannot be cared for like regular hair, but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing and shampooing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding and may cause the sutures to pull out. As a consequence, washing the hair and scalp, foreign particles and dead skin tissue tend

to accumulate on the scalp and become a significant source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited; and

c. The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

2. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgical procedure or the continuing presence of prolene sutures in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair wefted to the system applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance. A substantial additional charge for such services would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color dyed, loss of dye through washing and normal wear; thus replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

The statements and representations set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents have represented in advertisements the asserted advantages of their system, as hereinbefore described. Respondents have represented their system to be relatively painless, and in no case have respondents' newspaper advertisements disclosed:

1. That clients may experience discomfort and pain as a result of the surgical procedure, from the prolene sutures themselves, and from pulling normally incident to wearing the hairpiece;

2. That clients will be subject to the risk of irritation, infection, and skin diseases as a result of the surgical procedure and as a result of the prolene sutures remaining in the scalp; and

3. That permanent scarring to the scalp may result from the required surgical procedures, and as a result of the prolene sutures remaining in the scalp.

The consequences described in this Paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to, rejection of the prolene sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said Paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their hair replacement system, respondents entice members of the purchasing public to their center with advertisements such as, "A full head of hair, permanent, natural looking. In four hours." and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their center. When members of the purchasing public have visited the center, they are persuaded to sign a contract for the application of the system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the prolene sutures in the scalp. Persons are urged to sign such contracts and make such downpayments, through the use of sales presentations employing the following practice, among others:

Inducing prospects to sign contracts and/or make downpayments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the prolene sutures being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading and the acts and practices set forth in such paragraph were and are unfair, false and deceptive within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial compe-

tition in commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the prolene sutures in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 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 Atlanta Regional Office 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 sixty (60) 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 Hair Encore, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at 1801 Main Street, Jefferson Square, Columbia, S.C.

Respondent James D. Wilson, Sr., is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Hair Encore, Inc., a corporation, doing business as Hair Encore or any other trade name or names, its successors and assigns, and James D. Wilson, Sr., individually and as an officer of said corporation (hereinafter sometimes referred to as "respondents"), and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any hair replacement product or process involving surgical implants (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in 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 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; and

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.

2. 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 respondents, in advertising and in all oral sales presentations, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of prolene (or any substitute) sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of prolene (or any substitute) sutures in the scalp, and by virtue of the prolene (or any substitute) sutures remaining in the scalp, there is a high probability of discomfort and pain, and a risk of infection, skin disease and scarring.

3. The system has been in use for too short a period of time to determine to a reasonable medical certainty the extent or seriousness of the above described side effects, or whether there are other side effects.

4. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in Subparagraph Two of this paragraph, and such care may involve additional costs for medications and assistance.

5. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided, however,* That in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Attention: This application involves surgery whereby permanent sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician (this statement is required by Order of the Federal Trade Commission).

No less than 15 percent of such advertisement shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously

from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, Subparagraphs One through Five, thereof, and that respondents require that such prospective purchasers, subsequent to receipt of such disclosure sheet, consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the probabilities of discomfort and pain, and risks of infection, skin disease, and scarring.

It is further ordered, That no contract for application of respondents' system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents, or after the day on which said contract for application of the system was executed, whichever day is later, and that:

1. Respondents 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 of the purchaser's above-described consultation with a duly licensed physician or after the day on which said contract for application of the system was executed, whichever day is later.

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

3. Respondents 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 of the purchaser's above-described consultation with a duly licensed physician, or after the day on which said contract for application of the system was executed, whichever day is later.

4. Respondents shall obtain from each purchaser a certificate signed by the physician who was consulted as required by this order, such certificate specifying that the said physician has explained to the purchaser the nature of the surgery to be done, and has advised him of the probabilities of discomfort and pain, and

risks of infection, skin disease and scarring, and specifying the date and approximate time of the consultation; and respondents shall retain all such certificates for three years.

It is further ordered, That respondents, 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, and upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgements and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' System.

It is further ordered, That respondents 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, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event that the corporate respondent 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, said respondent 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 respondent wishes to present to the Commission any reasons 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 respondents forthwith distribute a copy of this order to each of their operating divisions, offices, department or affiliated corporation.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale or distribution of respondents' system or in any aspect of preparation,

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creation or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the 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

RONNIE RAY DOING BUSINESS AS RONNIE RAY'S NATIONAL
HEALTH STUDIOS

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF