

in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

C.E.B. PRODUCTS, INC., ET AL.

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

Docket C-2650. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Chicago, Ill., cosmetic manufacturer, among other things to cease advertising and packaging "Dark-Eyes Lash and Brow Tint" without a warning to consumers that the product can cause severe pain to the eye for a substantial period of time. Further, the order requires that all existing packages of the product not yet sold to the public and all point-of-purchase displays either be corrected so as to prominently display the required warning or be recalled by respondent.

Appearances

For the Commission: *Marvin R. Lange* and *Stewart A. Block*.

For the respondents: *R. Quincy White* and *Jack Bierig*, *Sidley & Austin*, Chicago, Ill.

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 C.E.B. Products, Inc., a corporation, and Charlotte E. Barth and Herman Goldenberg, individually and as officers 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. For purposes of this complaint, the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act;
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act;
3. "Dark-Eyes" means the product "Dark-Eyes Lash and Brow Tint" in each formulation in which it is packaged and sold to the public.

4. "Product package" means the package in which "Dark-Eyes Lash and Brow Tint" is contained and sold.

PAR. 2. Respondent C.E.B. Products, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7115 Ridge Blvd., Chicago, Ill.

Respondent Charlotte E. Barth is an officer of C.E.B. Products, Inc. She formulates, directs, and controls the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. Her address is the same as that of C.E.B. Products, Inc.

Respondent Herman Goldenberg is an officer of C.E.B. Products, Inc. He participates in the formulation, direction, and control of the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. His address is the same as that of C.E.B. Products, Inc.

PAR. 3. Respondent C.E.B. Products, Inc., is now, and for all times relevant to this complaint has been, engaged in the manufacturing, advertising, offering for sale, sale, and distribution of a liquid eyelash and eyebrow darkener designated as "Dark-Eyes Lash and Brow Tint." Said product is a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent C.E.B. Products, Inc., causes "Dark-Eyes" contained in its product package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent C.E.B. Products, Inc., maintains and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce. The volume of business in commerce has been and is substantial.

PAR. 5. In the course and conduct of their aforesaid business, respondents have disseminated, or have caused to be disseminated, in commerce, advertisements for the purpose of inducing, or which are likely to induce, the purchase of "Dark-Eyes," and have disseminated or have caused to be disseminated advertisements for the purpose of inducing, or which are likely to induce, the purchase, in commerce, of "Dark-Eyes."

PAR. 6. Among the advertisements disseminated by means of television, but not all inclusive thereof, are the following:

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

1. *Open on MLS of two women in bedroom. Daughter opens box with wedding dress and holds up for mother to see.*
2. *Cut to CU of mother crying.*
3. *Cut MS of girl, who also starts crying.*
4. *Zoom to CU of girl's face to show how tears have made mascara run down her face.*
5. *Cut to MLS as Mother hands tissue to girl who dabs away tears.*
6. *Diss. to CU of Dark Eyes Pkg. chroma-keyed over a calendar. SUPER: The Once-A-Month Eye Make-Up.*
7. *Diss. to MCU of girl lightly dabbing vaseline on eyes and above brows.*
8. *Diss. to display of pkg. and bottles. Hand enters and dips brush into cap filled with liquid.*
9. *Cut to CU as girl applies Dark Eyes to lashes.*
10. *Diss. to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.*
11. *Diss. to girl applying Dark Eyes to brows.*
12. *Diss. to same girl in shower. Zoom into CU of eyes.*
13. *Diss. to CU of same girl using cream on face.*
14. *Diss. to same girl in bed, just awakening.*
15. *Diss. to CU display of product. SUPER: The Once-A-Month Eye Make-Up. also SUPER: \$2.00*
16. *Diss. to wedding scene in church. CU of bride and groom. Groom lifts veil, camera zooms to CU of girls face to show tears on cheek.*
1. *When a woman cries... You never really know....*
2. *She could be happy...or sad.*
3. *But then, that's what makes her a woman...and that makes her all the more beautiful.*
4. *Except if those tears make her mascara run. She can't stop those tears.*
5. *but she should have used the unique eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.*
6. *It's called DARK EYES. DARK EYES is not a mascara...It's a once-a-month eye cosmetic tint that could save you lots of tedious make-up time each week.*
7. *Here's what you do. First, apply a little vaseline around your eyes.*
8. *Then simply brush your lashes gently with DARK EYES # 1.*
9. *and let dry for a few minutes.*
10. *Now, brush them again with DARK EYES # 2 and wipe with a moist cotton ball. That's all there is to it.*
11. *For eyebrows, apply DARK EYES the same way.*
12. *Now, go ahead and shower...even go swimming as often as you like...DARK EYES won't wash off.*
13. *And, don't hesitate to cream your face...DARK EYES won't cream off.*
14. *But best yet, when you use DARK EYES you'll wake up pretty every single morning.*
15. *This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.*
16. *So get DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.*

Complaint

85 F.T.C.

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

- | | |
|---|--|
| 1. <i>MS of man and woman in romantic dinner table setting with candlelight. Man hands woman engagement ring.</i> | 1. <i>It's the moment you've waited for... and you wanted to look your loveliest. A romantic candlelight dinner...and now, you're engaged.</i> |
| 2. <i>Cut to CU of girl's face. She's weeping tears of joy and mascara is streaking.</i> | 2. <i>But just look at you...with your mascara running down your face.</i> |
| 3. <i>Cut back to MS as man hands woman his handkerchief and she dabs at her eyes.</i> | 3. <i>You can't stop those happy tears, but you should have used the amazing eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.</i> |
| 4. <i>Diss to CU of Dark Eyes pkg chroma-keyed over calendar page. Super: The Once-a-month eye make-up.</i> | 4. <i>It's called DARK EYES. DARK EYES is not a mascare..it's a Once-A-Month eye make-up that will save you hours of tense make-up time each week.</i> |
| 5. <i>Diss to display of pkg and bottles. Hand enters scene and dips brush into cap filled with liquid.</i> | 5. <i>Just a few minutes ONCE A MONTH with DARK EYES and your eyes will stay beautiful, no matter what you do.</i> |
| 6. <i>Cut to CU of girl's eyes as she applies Dark Eyes to her eyelashes.</i> | 6. <i>Here's how it works. Simply brush your lashes gently with DARK EYES # 1 and let dry for a few minutes.</i> |
| 7. <i>Diss to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.</i> | 7. <i>Then brush them again with DARK EYES # 2 and wipe with a moist cotton ball. It's that easy.</i> |
| 8. <i>Girl applies Dark Eyes to her eyebrows.</i> | 8. <i>For eyebrows, apply DARK EYES the same way.</i> |
| 9. <i>Diss to same girl in shower. Zoom to CU of eyes.</i> | 9. <i>Now, go ahead and shower...even go swimming...as often as you like... DARK EYES won't wash off.</i> |
| 10. <i>Diss to CU of same girl using cream on face.</i> | 10. <i>And don't hesitate to cream your face...DARK EYES won't even cream off.</i> |
| 11. <i>Diss to same girl in bed just awakening.</i> | 11. <i>But best yet, with DARK EYES you can wake up pretty every single morning.</i> |
| 12. <i>Diss to CU display of product. Super: The Once-A-Month eye make-up.</i> | 12. <i>This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.</i> |
| 13. <i>ECU of beautifully made-up eyes. One clear tear forms and trickles down cheek.</i> | 13. <i>So get carefree DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.</i> |

PAR. 7. Among the statements and representations made on the product package are the following:

Package Front: "Darkens lashes and brows with a tender tint* * *."

Package Back: "Stars and models recommend 'Dark-Eyes' tender tint* * *."

PAR. 8. Respondents market and advertise "Dark-Eyes" without disclosing in advertising or on the product package that application of the product can cause severe pain and irritation to the eye for a substantial period of time. This fact is a material fact, which if known to certain consumers would be likely to affect their decisions whether or not to purchase such product.

PAR. 9. Therefore, due to the failure to disclose the aforesaid material fact, all advertisements for "Dark-Eyes" which fail to disclose said fact (including those set forth in Paragraph Six) and all product packages which fail to disclose said fact constitute false advertisements and/or unfair or deceptive acts or practices in commerce.

PAR. 10. Through the use of the statements and representations set forth in Paragraph Seven, respondents have represented that "Dark-Eyes" is a "tender tint."

PAR. 11. In truth and in fact, "Dark-Eyes" is not tender. It can cause severe pain and irritation to the eye for a substantial period of time, requiring medical attention in some cases.

PAR. 12. Therefore, the statements and representations set forth in Paragraph Seven are misleading in a material respect, and constitute false advertisements and/or unfair or deceptive acts or practices in commerce.

PAR. 13. In the course and conduct of their aforesaid business, respondents have disseminated, and have authorized others to disseminate, through the United States mails and in commerce, the following statement or statements similar thereto in response to inquiries about the safety of "Dark-Eyes":

One of the basic ingredients in "Dark-Eyes" is Silver Nitrate. It is common knowledge that the law in our 50 states require hospitals to use between 1 percent and 2 percent Silver Nitrate in every newborn baby's eyes to prevent infection and blindness. We use 1 percent Silver Nitrate in "Dark-Eyes." However, we do not use "Dark-Eyes" in the eyes—only used for on the eyelashes and eyebrows.

PAR. 14. Through use of the statement set forth in Paragraph Thirteen or other statements similar thereto, respondents have represented, directly or by implication:

a. That no formulation for "Dark-Eyes" then marketed contained in excess of 1 percent silver nitrate.

b. That no formulation for "Dark-Eyes" then marketed contained other ingredients which substantially contribute to the capacity of "Dark-Eyes" to cause severe pain and irritation.

c. That each formulation for "Dark-Eyes" then marketed does not cause severe pain and irritation because it contains no more than 1 percent silver nitrate.

PAR. 15. In truth and in fact, at the times the aforementioned statements were disseminated:

a. Each formulation of "Dark-Eyes" then marketed contained a concentration of silver nitrate in excess of 1 percent.

b. Each formulation for "Dark-Eyes" then marketed also contained substantial amounts of silver sulfate which acts similarly to silver nitrate in the "Dark-Eyes" formulae and which substantially contributes to the capacity of "Dark-Eyes" to cause severe pain and irritation.

c. Each formulation for "Dark-Eyes" can cause severe pain and irritation to the eye for a substantial period of time because it contains silver nitrate and silver sulfate, which produce an amount of silver ions in excess of the equivalent of a solution containing 2 percent silver nitrate.

PAR. 16. Therefore, the statements and representations set forth in Paragraph Thirteen were and are misleading in a material respect and constitute unfair or deceptive acts or practices in commerce.

PAR. 17. Through use of the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth herein, respondents have represented directly or by implication that the application process depicted and described in the aforementioned advertisements is the complete process for the application of "Dark-Eyes."

PAR. 18. In truth and in fact the application process depicted and described in the advertisements set forth in Paragraph Six and in other advertisements not specifically set forth herein is not the complete process for application of "Dark-Eyes." The instructions for application contained inside the product package include additional procedures including covering all working surfaces with newspapers to protect against spills and stains, and application of Vaseline Petroleum Jelly to all areas of the skin around the eyes other than the eyelashes and eyebrows to prevent the unwanted staining of those areas. Said additional procedures are precautions required for prevention of unwanted results.

PAR. 19. Therefore, the statements and representations set forth in Paragraph Seventeen are false and misleading in a material respect and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 20. By use of the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth, respondents have presented demonstrations of the process of application of "Dark-Eyes."

For the reasons set forth in Paragraph Eighteen, said demonstrations substantially vary from and disregard the precautions set forth in the instructions for application of "Dark-Eyes" which are contained within the product package.

PAR. 21. Therefore, the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth herein, negate the importance of closely following said instructions for application of "Dark-Eyes" and detract from the effectiveness of said precautions and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 22. Respondents enclose instructions for application of "Dark-Eyes" within the product package. Said instructions state: "If fingers should become stained, moisten cotton with household bleach to remove." The said instructions do not warn against the use of household bleach to remove stains on the skin in the area around the eyes.

PAR. 23. The aforementioned instructions have the tendency or capacity to lead consumers to believe that unwanted stains should be removed from the area around the eyes by the use of household bleach.

PAR. 24. In truth and in fact, household bleach should not be used to remove stains from the area around the eyes. If consumers cleanse the area around their eyes with household bleach, there is a risk that household bleach may come in contact with the surface of the eye or surrounding eye tissue. Household bleach can cause severe and extensive pain and irritation to the eye if it comes into contact with the eye.

PAR. 25. Therefore, the failure of the aforementioned instructions to warn consumers that household bleach should not be used in the area around the eye constitutes an unfair or deceptive act or practice in commerce.

PAR. 26. In the course and conduct of its aforesaid business, and at all times mentioned herein respondents have been, and now are, in substantial competition in commerce, with other corporations engaged in the manufacture and sale of cosmetic products.

PAR. 27. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of 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 methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Sections 12 and/or 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 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 sixty (60) days, and having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules, 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 C.E.B. Products, Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7115 Ridge Blvd., Chicago, Ill.

Respondent Charlotte E. Barth is an officer of C.E.B. Products, Inc. She formulates, directs, and controls the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. Her address is the same as that of C.E.B. Products, Inc.

Respondent Herman Goldenberg is an officer of C.E.B. Products, Inc. He participates in the formulation, direction, and control of the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. His address is the same as that of C.E.B. Products, 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

I

It is ordered, That respondents C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte E. Barth and Herman Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, sale, offering for sale, or distribution of Dark-Eyes Lash and Brow Tint, or any other cosmetic product for use on the eyebrows, eyelashes, or otherwise in the area around the eyes, containing the same or substantially the same ingredients, including, but not limited to, silver nitrate, silver sulfate, or any other ingredients which produce silver ions when dissolved, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement, or any statement made on the package in which such product is contained and sold (hereinafter referred to as the "product package"), which represents, directly or by implication, that such product is harmless, safe for use, noninjurious, nonirritating, tender, or gentle.

B. Disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which fails to contain, clearly and conspicuously, the following specific disclosure:

WARNING: "Dark-Eyes" [or such other name for such product] can cause severe pain to the eye for a substantial period of time.

Provided however, That Paragraph I(B) herein shall not apply to any such product for which a petition for listing as a "color additive" under Section 706 of the Food, Drug and Cosmetic Act, as amended, and regulations thereto, has been approved by the Secretary of the Department of Health, Education and Welfare where:

(1) respondents promptly notify the Commission that such a petition for listing has been filed with the Secretary of the Department of Health, Education and Welfare and make available to the Commission a copy of such petition and supporting documents;

(2) respondents promptly notify the Commission when the Secretary

has (pursuant to Section 701(e)(1) of the Food, Drug and Cosmetic Act, as amended) published his order acting on such petition; and

(3) respondents promptly notify the Commission of the effective date of such order;

Provided, further, however, That notwithstanding the foregoing proviso, the Commission may determine, upon its own initiative, that the above required disclosure, or some other disclosure of material fact(s) is required in the public interest.

C. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including, but not limited to, statements or representations in advertising or contained on or within the product package which directly or by implication recommends or suggests for removing stains caused by such product from any part of the human body:

1. The use of chlorine bleach, or any substance of like composition, unless accompanied by a clear and conspicuous statement that said substance is hazardous to the eye and must not be used to remove stains from the face, eyelashes, or eyebrows.

2. The use of any substance which can cause pain or injury to any part of the human body; *Provided, however,* If such substance does not cause pain or injury when used on certain parts of the human body, then its use may be recommended or suggested on those particular parts if such recommendation or suggestion is accompanied by a clear and conspicuous statement that such substance is hazardous and must not be used on any other part of the body.

D. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, which, directly or by implication, contradicts, negates, or is inconsistent with the disclosures required by Paragraph I(B) or I(C) above, or in any way obscures the meaning of such disclosure.

E. Disseminating, or causing to be disseminated, by any means, any advertisement or any product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to contain the specific disclosure required by Paragraph I(B), above, or, when appropriate, the disclosures required by Paragraph I(C), above, or which contains any representation prohibited by Paragraphs I(A), I(C), or I(D), above.

II

It is ordered, That respondents C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte Barth and Herman Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, sale, offering for sale, or distribution of any cosmetic, drug, or device, as those terms are defined by the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any statement made on the product package which affirmatively represents, directly or by implication, that the use of such product is safe, noninjurious, harmless, tender, or gentle, or that such product will not cause pain or irritation or other side effects, unless prior to the time such statement or representation is made, it has been demonstrated that such is the case by competent and reliable scientific tests; *Provided, however,* That it shall not be a violation of this provision to make such claims when qualified by setting forth, in immediate conjunction and equal conspicuousness, all of the circumstances under which, or the type of persons to whom, such claims are inapplicable, if such is the case.

B. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act,

(1) any advertisement or any statement or representation contained on or within the product package for such product which directly or by implication misrepresents the presence or quantity of any ingredient in such product;

(2) any statement or representation other than statements or representations made in advertising or contained on or within the product package for such product which purports to give the qualitative or quantitative formula for such product, or any portion thereof, or to describe the composition of such product, and which does not actually give the complete qualitative or quantitative formula.

C. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which relates or depicts any portion of the application process or method of use of such product without relating

or depicting, in conjunction therewith and equally conspicuously, each "Type A" precaution which is set forth in the directions for use of such product (as those terms are defined in Part IV of this order); *Provided, however,* That it shall not be a violation of this provision to present no more than a single still depiction of an action in the application process or method of use of such product, so long as (a) nothing in said still depiction in any way negates, is inconsistent with, or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product, and (b) there is no representation, directly or by implication, that the entire application process or method of use of such product has been depicted.

D. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, which directly or by implication contradicts, negates, or is inconsistent with the disclosures required by Paragraph II(A), II(B)(2) or II(C), above, or in any way obscures the meaning of such disclosure.

E. Disseminating, or causing to be disseminated, by any means, any advertisement or any product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to contain, when appropriate, the disclosures required by Paragraph II(A), II(B)(2) or II(C), above, or which contains any representation prohibited by Paragraph II(A), II(B)(1), II(C) or II(D), above.

III

It is further ordered, That Paragraphs I(A), II(A), and II(B) of this order also apply to all oral or written statements or representations, whether or not such statements or representations are made in advertising, on or in a product package, or elsewhere, when made or authorized by the aforesaid respondents, to any of the following individuals, partnerships or corporations, whether or not doing business with respondents:

- a. advertising agencies;
- b. radio and television stations and print media;
- c. representatives of Better Business Bureaus, the National Association of Broadcasters, the National Advertising Review Board, or other similar nongovernmental regulatory bodies;
- d. purchasers, distributors, wholesalers, and retailers, except in

connection with routine indemnifications or warranties specifically requested by the aforesaid;

e. members of the public, including correspondence with ultimate purchasers after purchase of such product.

IV

For the purposes of Parts II and IV of this order, the following definitions apply:

1. "Directions for use" means the directions or instructions for the application, use, or storage of a product or its packaging which are contained in the "labeling" (as defined in Section 201(m) of the Food, Drug and Cosmetic Act, as amended) of such product.

2. "Type A precaution" means an affirmative action relating to application or use (but not storage) of a product, prescribed by the directions for use of the product (whether stated affirmatively or negatively) for the purpose of avoiding or reducing a risk to person or property, and applicable to all or substantially all users of the product. By way of illustration and not limitation, the following are examples of "Type A" precautions: "Apply petroleum jelly to skin before use." "Do not use until petroleum jelly is applied to skin." "Shake well before using" [if this is prescribed for the purpose of avoiding or reducing a risk to person or property].

3. "Type B precaution" means all actions, except "Type A" precautions, proscribed or prescribed by the directions for use of a product for the purpose of avoiding or reducing a risk to person or property, including but not limited to the following categories of actions: (By way of illustration and not limitation, examples of "Type B" precautions are given after each category.)

(a) Actions relating to storage of a product. ("Refrigerate after opening." "Store in a cool dry place." "Keep out of reach of children.")

(b) Actions proscribed or proscribed for fewer than all or substantially all users of a product. ("If you have sensitive skin, wear gloves." "Do not use if you have kidney disease.")

(c) Actions to remedy problems which may arise in less than every instance of application or use. ("If product gets into eye, rinse out with water." "If a rash develops, see a doctor." "If product drips onto painted surface, wash off immediately.")

(d) Actions proscribed, whether stated affirmatively or negatively, in the directions for use. ("Do not use near open flame." "Use only in well ventilated areas." "For external use only." "Do not puncture or incinerate container.")

It is ordered, That respondents C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte E. Barth and Herman

Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, sale, offering for sale or distribution of any product, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which relates or depicts the application process or method of use of such product which, in any way negates, is inconsistent with or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product.

B. Disseminating, or causing to be disseminated, by any means, any advertisement or any statement made on the product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any representation prohibited by Paragraph IV(A), above.

V

It is further ordered, That respondent C.E.B. Products, Inc., a corporation, its successors and assigns, and said respondent's officers, agents, representatives, and employees (but not Charlotte E. Barth or Herman Goldenberg in their individual capacities, nor A. Eicoff & Co., a corporation) directly or through any corporation, subsidiary, division, or other device, within 30 days from the entry of this order:

A. Correct (1) each and every previously disseminated point-of-purchase advertisement and cooperative print advertising copy for Dark-Eyes Lash and Brow Tint in the possession of any wholesaler, distributor or retail store (hereinafter referred to as "retailer") at the time of the entry of this order, and (2) each and every product package for said product which has been sold or otherwise distributed by respondent or its agents, distributors, wholesalers or chain headquarters, to wholesalers, distributors and retailers, which has not been sold to the ultimate consumer at the time of entry of this order, which contains the statements or representations prohibited in Paragraph I(A) of this order or which fails to contain the specific disclosure required in Paragraph I(B) of this order. The provisions of this Paragraph shall be fulfilled as follows:

i. With respect to cooperative print advertising copy, respondent shall (a) recall and retrieve such copy, or (b) instruct directly (or in the case of chain retailers, through chain headquarters) each and every

such wholesaler, distributor or retailer to destroy such copy, and obtain from each such wholesaler, distributor and retailer a signed statement acknowledging the fact of said destruction.

ii. With respect to point-of-purchase advertising and product packages, respondent shall:

(a) Recall and retrieve said packages and advertising; or

(b) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every such wholesaler, distributor and retailer corrected product packages and advertising, instruct them that the packages and advertising which fail to comply with Paragraphs I(A) or (B) of this order are to be destroyed, and obtain from each such wholesaler, distributor and retailer, a signed statement acknowledging the fact of said destruction; or

(c) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every such wholesaler, distributor and retailer gummed strips to be placed on advertising and product packages, to obscure any representations prohibited by Paragraph I(A) of this order, and to include the disclosure required by Paragraph I(B) of this order, and obtain from each such wholesaler, distributor and retailer a signed statement acknowledging the fact of the placement of said gummed strips; or

(d) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every retailer to which respondent or its agents, distributors, wholesalers, or chain headquarters, sold or otherwise distributed Dark-Eyes Lash and Brow Tint, the point-of-purchase display attached hereto as Appendix A, (printed on any pastel colored paper), instruct each and every such retailer that such display is required to be prominently displayed adjacent to the packages of the product offered for sale by such retailer for such period of time as any package of Dark-Eyes Lash and Brow Tint which does not contain such disclosure required by Paragraph I(B) of this order is offered for sale or is on display in the store of such retailer, and obtain from each such retailer a signed statement acknowledging that such display has been placed as hereinbefore described;

Provided, however, That if respondent is unable to secure from any such wholesaler, distributor or retailer such a signed statement, it shall forthwith provide to the Commission an affidavit setting forth (a) the name of such wholesaler, distributor or retailer, (b) a description of respondent's attempts to secure such a signed statement and (c) the reasons for respondent's inability to secure such a signed statement; *Provided further, however,* That if respondent is unaware of the identity of any such retailer, it shall forthwith provide to the Commission an affidavit setting forth (a) a description of respondent's

attempts to ascertain the identity of such retailer, and (b) the reasons for respondent's inability to ascertain the identity of such retailer.

B. Mail to each and every individual, partnership, corporation, or other entity to which said respondent or any of its officers, employees, or agents, including but not limited to A. Eicoff & Co., has, since Jan. 1, 1972, represented by letter that Dark-Eyes Lash and Brow Tint contains 1 percent silver nitrate, or has otherwise inaccurately or incompletely stated the formulation for Dark-Eyes Lash and Brow Tint, a letter correctly stating the complete formulation for each color of said product and include in said letter, a statement that the Federal Trade Commission had determined that Dark-Eyes Lash and Brow Tint can cause severe pain and irritation for a substantial period of time to the eyes of users of Dark-Eyes Lash and Brow Tint.

VI

It is further ordered, That notwithstanding the foregoing, Parts II, III, and IV, hereof shall not apply to the individual respondents Charlotte E. Barth and Herman Goldenberg, as an individual or as an agent of any corporation other than respondent C.E.B. Products, Inc., its successors or assigns, in her or his capacity as sales representative, jobber or in other similar capacities in which she or he sells, distributes, or disseminates packages or advertising, the claims or representations over which she or he has no control; *Provided, however*, That this exemption shall not apply to oral or written statements or representations originated by said individual respondents or those which she or he knew, at the time made to be false.

It is further ordered, That, notwithstanding the foregoing, Parts I, II, III, IV, and V, hereof, shall not apply to statements or representations, including but not limited to, statements or representations made in advertising or contained on or within the product package, which are or were disseminated or caused to be disseminated solely outside of the United States or its territories; *Provided, however*, That all "labeling" (as that term is defined in Section 201(m) of the Food, Drug and Cosmetic Act) shall comply with Section 801(d) of the Food, Drug and Cosmetic Act, as amended, and regulations thereto.

VII

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

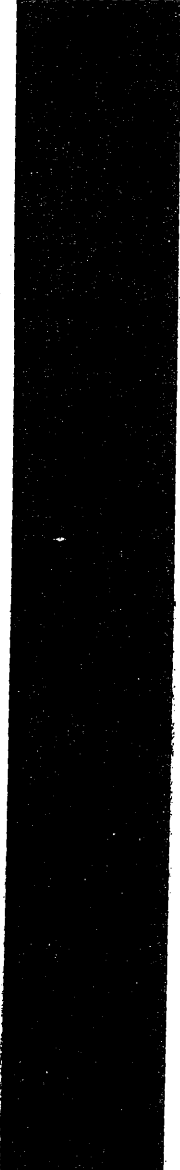
It is further ordered, That the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a

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 each respective individual respondent named herein promptly notify the Commission of the discontinuance of his or her present business or employment and/or his or her affiliation with a new business or employment in which he or she is involved in a management, policymaking or ownership capacity. Such notice shall include his or her current business address and a statement as to the nature of the business or employment in which he or she is engaged, as well as a description of his or her 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.

APPENDIX A



WARNING: 'Dark - Eyes'
can cause severe pain to
the eye for a substantial
period of time.



Complaint

IN THE MATTER OF

A. EICOFF & CO.

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

Docket C-2651. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Chicago, Ill., advertising agency, among other things to cease disseminating advertising material or product packaging which fails to provide consumers with warning information regarding use of the product when necessary.

Appearances

For the Commission: *Stewart A. Block* and *Marvin R. Lange*.

For the respondent: *P. W. O'Brien* and *W. T. Braithwaite*.

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 A. Eicoff & Co., 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. For purposes of this complaint, the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act;
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act;
3. "Dark-Eyes" means the product "Dark-Eyes Lash and Brow Tint" in each formulation in which it is packaged and sold to the public.
4. "Product package" means the package in which "Dark-Eyes Lash and Brow Tint" is contained and sold.

PAR. 2. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 520 N. Michigan Ave., Chicago, Ill.

PAR. 3. Respondent is now, and for all times relevant to this complaint has been, an advertising agency of C.E.B. Products, Inc., and now, and for all times relevant to this complaint, has prepared and placed for publication and has caused the dissemination of the