

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

television advertisements referred to herein, to promote the sale of a liquid eyelash and eyebrow darkener, sold and distributed by C.E.B. Products, Inc., and 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 has disseminated, or has caused to be disseminated, in commerce, advertisements for the purpose of inducing, or which are likely to induce, the purchase of "Dark-Eyes," and has disseminated or has caused to be disseminated advertisements for the purpose of inducing, or which are likely to induce, the purchase, in commerce, of "Dark-Eyes."

PAR. 5. 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

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

Complaint

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A. EICOFF & COMPANY

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

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|---|--|
| 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. 6. Through use of the advertisements set forth in Paragraph Five, and other advertisements not specifically set forth herein, respondent has 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. 7. In truth and in fact the application process depicted and described in the advertisements set forth in Paragraph Five 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. 8. Therefore, the statements and representations set forth in Paragraph Six are false and misleading in a material respect and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 9. By use of the advertisements set forth in Paragraph Five, and other advertisements not specifically set forth herein, respondent has presented demonstrations of the process of application of "Dark-Eyes." For the reasons set forth in Paragraph Seven, 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. 10. Therefore, the advertisements set forth in Paragraph Five, 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. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The aforesaid acts and practices of respondent, 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 respondent's competitors, and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or

practices in commerce, in violation of Section 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 respondent named in the caption hereof, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent had 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 A. Eicoff & Co., 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.

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

ORDER

For the purposes of the 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 relation to storage of a product. ("Refrigerate after opening." "Store in a cool dry place." "Keep out of reach of children.")

(b) Actions proscribed or prescribed 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.")

I

It is ordered, That respondent A. Eicoff & Co., a corporation, its successors and assigns and said respondent's 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 drug, cosmetic 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 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; *Provided, however,* That it shall not be a violation of this provision to present no more than a single still depiction of any 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.

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 statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, or visual depiction, which, directly or by implication, contradicts, negates, or is inconsistent with the disclosure required by Paragraph I(A), above, or in any way obscures the meaning of such disclosure.

C. 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 fails to contain the disclosures required by Paragraph I(A), above, or which contains any representation prohibited by Paragraphs I(A) or I(B) above.

II

It is ordered, That respondent A. Eicoff & Co., a corporation, its successors and assigns and said respondent's 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 II(A), above.

III

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

It is further ordered, That the 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 the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.
