

Complaint

86 F.T.C.

IN THE MATTER OF
ALLIED STORES CORPORATION T/A THE BON
MARCHE, ET AL.

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

Docket C-2760. Complaint, Nov. 3, 1975-Decision, Nov. 3, 1975

Consent order requiring a New York City department store chain and its wholly-owned subsidiary in Boise, Idaho, among other things to cease making unsubstantiated effectiveness claims for cosmetic skin care preparations. Respondents are required to have in their possession a written certification from a reliable source that there is a reasonable scientific basis for claims made and a summary of the reasonable basis.

Appearances

For the Commission: *Dennis D. McFeeley.*

For the respondents: *David Rigney, Sullivan & Cromwell, New York City.*

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 Allied Stores Corporation, dba The Bon Marche, and C. C. Anderson Stores Company, corporations, 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. Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1114 Avenue of the Americas, New York, N.Y.

C. C. Anderson Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 918 Idaho St., Boise, Idaho. C. C. Anderson Stores Company is a wholly-owned subsidiary of Allied Stores Corporation.

PAR. 2. Respondent Allied Stores Corporation is now, and for some time last past has been, a full-line department store chain. It operates 161 retail outlets throughout the United States and its gross sales for 1972 were \$1,311,775,590. Allied Stores Corporation owns and operates

full-line department stores doing business under the name "The Bon Marche" in the States of Washington, Oregon, and Idaho.

Respondent C. C. Anderson Stores Company owns full-line department stores doing business under the name "The Bon Marche" in the States of Idaho and Utah.

Among other products, respondents have advertised for sale, sold, and distributed, drug and cosmetic skin preparations, as "drug" and "cosmetic" are defined in Sections 15(c) and 15(e) of the Federal Trade Commission Act, as amended.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused to be disseminated certain advertisements and other written statements by United States mails and by other means in, or having an effect upon, commerce, as "commerce" is defined in the Federal Trade Commission Act. These advertisements and written materials have been disseminated for the purpose of inducing or with the likelihood of inducing, directly or indirectly, the purchase of drug and cosmetic skin preparations or for the purpose of inducing or with the likelihood of inducing, directly or indirectly, the purchase of drug and cosmetic skin preparations in, or having an effect upon, commerce.

PAR. 4. Typical and illustrative, but not all inclusive, of the statements and representations made in some of said advertisements and written materials pertaining to various products are the following:

A. Wrinkles are an accumulation of dead skin which can be removed with a gentle new creme product * * *;

B. Smile lines, aging-lines, laugh-lines, thought-lines are minimized and subtracted gently;

C. [The product] was created to help overcome crepey skin on the neck, lines over the lips, pitting and blackheads, blotching and discoloration;

D. * * * Welcome to a demonstration of the process which removes the horny outer layer of skin * * * which is responsible for * * * broken capillaries, dark spots, general flaking, enlarged and clogged pores, certain allergies, etc.;

E. * * * is * * * completely harmless you could use it 500 times a day;

F. [The product is] between a medical and cosmetic treatment;

G. * * * will slow down the aging process by 40 percent;

H. Age is a disease and it has to be combated like any other;

I. Women's faces * * * age 50 percent faster than men's * * *;

J. * * * how smooth, soft and blissfully younger-looking your skin will seem * * * [the product's] power to defeat signs of lines and dryness is nothing short of incredible;

K. It smooths little lines into seeming non-existence. Helps keep new ones from happening;

L. Penetrates 6 layers deep for a lasting smoothness;

M. Actually makes wrinkles, lines and crows feet disappear from sight for up to 6 to 8 hours or longer. Did you ever wonder why models and movie personalities seem to look 10 to 15 years younger than they really are?; and

N. It actually makes wrinkles vanish completely for hours at a time.

PAR. 5. At the time respondents made the representations set forth

in Paragraph Four, and other generally similar representations, respondents had no reasonable basis in their possession which would substantiate the representations or implications of the said representations.

Therefore, the statements and representations of respondents set forth in the above paragraph were, and are, deceptive and unfair acts or practices and are misleading in material respects.

PAR. 6. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of drug and cosmetic skin preparations.

PAR. 7. The use by respondents of the aforesaid deceptive and unfair statements and representations has the capacity and tendency to induce members of the public to rely thereupon and to purchase from respondents substantial quantities of drug and cosmetic skin preparations.

PAR. 8. Respondents' aforesaid acts and practices are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair, deceptive, and false acts and practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

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 Seattle 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 days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1114 Avenue of the Americas, New York, N.Y.

Respondent C. C. Anderson Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 918 Idaho St., Boise, Idaho. C. C. Anderson Stores Company is a wholly-owned subsidiary of Allied Stores Corporation.

B. 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 respondent Allied Stores Corporation, a corporation, doing business as The Bon Marche or under any name or style successor to The Bon Marche, and C. C. Anderson Stores Company, a corporation (hereinafter "respondents"), their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device engaged in the advertising, offering for sale, sale or distribution of any cosmetic skin care product, or skin care product which is both a drug and cosmetic product (hereinafter "products"), as "drug" and "cosmetic" are defined in Sections 15(c) and 15(e) of the Federal Trade Commission Act, marketed by respondent C. C. Anderson Stores Company or The Bon Marche Division of Allied Stores, or any successor divisions thereof, in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products or for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce in said products, do forthwith cease and desist from:

Disseminating any affirmative representation in any advertising or other written promotional material, including leaflets or other written promotional material prepared by respondents or others (but excluding

labels or labeling, as defined in 21 U.S.C. §§321(k) and (m)) (hereinafter "advertisement") which represent, directly or indirectly, that:

- A. Such products will remove or prevent age wrinkles or age lines on the face, hands or other parts of the body;
- B. Such products will remove or prevent discolorations, broken capillaries or other disorder of the skin;
- C. Unlimited amount of use of such products is safe and beneficial;
- D. Such products are drugs (unless such products are registered or labeled as drugs);
- E. Such products will retard the aging process in humans;
- F. Age is a disease; or
- G. Women's faces age 50 percent faster than men's, or at any other differential rate;

without having in their possession before the time an advertisement containing such representation is first disseminated to the public by respondents, a written certification from the manufacturer, proprietor or licensee of the brand name, or qualified testing laboratory, that there is a reasonable scientific basis, or reasonable scientific bases, for the making of such representation; *Provided*, That such certification shall include a summary of the nature of the reasonable scientific basis (or bases) for such representation; *Provided, further*, That respondents neither know nor have reason to know that such scientific basis does not in fact substantiate such representation.

Provided, further, That respondents shall maintain the certification described herein for a period of three years from the date an advertisement containing a representation described herein is first disseminated to the public and shall upon reasonable notice make such certification available to authorized representatives of the Federal Trade Commission at respondents' premises in Seattle, Wash.

II

It is further ordered, That respondents shall distribute a copy of this order to each of their affected operating divisions, subdivisions, and subsidiaries and to each of the affected officers, agents, representatives or employees of said respondents who are engaged in the preparation or placement of advertisements or distribution of advertisements prepared by others.

III

It is further ordered, That respondents notify the Commission at

1079

Complaint

least thirty days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, or any other changes in said respondents which may materially affect compliance obligations arising out of the order.

IV

It is further ordered, That respondents shall, within sixty days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.
