

IN THE MATTER OF
LUSTRASILK CORPORATION OF AMERICA, INC., ET
AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2784. Complaint, Jan. 27, 1976—Decision, Jan. 27, 1976

Consent order requiring a St. Louis Park, Minn., manufacturer of cosmetics, among other things to cease misrepresenting that its hair conditioners are safe and from making other false claims; and further requiring the firm to include a health hazard warning in advertising and labeling for the products.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *Edward A. Zimmerman*, Edina, Minn.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lustrasilk Corporation of America, Inc., a corporation, and D. C. Smith and Guenther Roth, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Lustrasilk Corporation of America, Inc. is a Minnesota corporation with its office and principal place of business located at 6989 Oxford St., St. Louis Park, Minnesota.

Respondents D. C. Smith and Guenther Roth are officers and principal shareholders of Lustrasilk Corporation of America, Inc. They formulate, direct and control the acts and practices of said corporation, including those hereinafter set forth. Their address is the same as that of Lustrasilk Corporation of America, Inc.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondents engage in the manufacturing, advertising, offering for sale, sale, and distribution of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit, which are "cosmetics" as that term is defined in Section 15 of the Federal Trade Commission Act. The Lustrasilk solution is a liquid which contains ethylene glycol, acid and other ingredients. The solution is applied to the hair and, while wet, the hair is straightened with a pressing comb. This process is used

by consumers and professional beauticians for the purpose of straightening curly hair.

PAR. 3. Respondents create, prepare and place for publication and dissemination advertisements, including but not limited to the advertisements referred to herein, to promote the sale of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit.

PAR. 4. In the course and conduct of their business, the respondents cause the aforementioned Lustrasilk products, when sold, to be sent from their place of business in Minnesota to retail stores and beauty salons and other purchasers located in various other States of the United States and the District of Columbia. Thus, respondents maintain a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their business, respondents disseminate and cause to be disseminated certain advertisements concerning Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit, (1) by United States mails, magazines of interstate circulation, and by various other means in or having an affect upon commerce, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the aforementioned Lustrasilk products, or (2) by various means, for the purpose of inducing, or which are likely to induce the purchase in or having an affect upon commerce of the aforementioned Lustrasilk products, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. Typical and illustrative of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

In magazines:

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Complaint

If you can't use chemical relaxers this is for you!

So gentle, it's NEVER RINSED OUT.

Lustrasilking is the only known patented, completely safe hair straightening process for super-curly hair.

Guaranteed safe — even for children.

Can Lustrasilking cause hair damage or loss?

Absolutely not.

Lustrasilking is good for your hair. Each application is actually a conditioning treatment.

A hot comb and gentle straightening solution are used for Lustrasilking.

PAR. 7. Through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set forth herein, respondents represent, directly or by implication, that:

A. The Lustrasilk solution contains no harmful ingredients, is gentle, and is completely safe.

B. The Lustrasilking process does not and cannot cause hair damage or loss.

C. The Lustrasilking process is beneficial to hair and improves its condition and appearance.

D. The Lustrasilk solution aids in the hair straightening process or helps maintain the straightened effect longer than would be possible if the pressing comb were used alone.

PAR. 8. In truth and in fact:

A. The Lustrasilk solution is not free of harmful ingredients, nor is it gentle or safe. It contains ingredients which irritate and injure eyes and, in some instances, irritate skin.

B. The Lustrasilking process can cause hair damage or loss. If used at an excessive temperature, the pressing comb can burn the hair, weakening it and causing breakage.

Therefore, the advertisements, statements and representations referred to in Paragraphs Six and Seven (A) and (B) are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and are false, misleading and deceptive.

PAR. 9. At the time the representations set forth in Paragraph Seven (A), (C) and (D) were made, respondents lacked a reasonable basis to support such representations. Therefore, the advertisements, state-

ments and representations set forth in Paragraphs Six and Seven (A), (C) and (D) are deceptive and unfair.

PAR. 10. Respondents advertise Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit without disclosing that:

A. Lustrasilk can cause skin irritation and eye injury.

B. Directions must be followed carefully.

Such facts are "material" as defined in Section 15 of the Federal Trade Commission Act, and if known to consumers would be likely to affect their decision to purchase the aforementioned Lustrasilk products. Therefore, failure to disclose such material facts is misleading and deceptive and such advertisements constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 11. In the further course and conduct of their business, respondents utilize the product names "Lustrasilk Home Permanent" and "Lustrasilk 4 Application Home Perm Kit." The use of said product names has the tendency and capacity to lead potential consumers to believe that use of such products will make the hair stay straight for a period of weeks or months, as do chemical hair straightener permanents.

In truth and in fact, hair straightened by the Lustrasilk process reverts to its former curly condition when exposed to moisture. Therefore, respondents' use of the words "permanent" and "perm" in their product names is deceptive and unfair.

PAR. 12. In the further course and conduct of their business respondents offer for sale, sale and distribute the aforementioned Lustrasilk products without disclosing on the retail product package of said products the following information:

WARNING:

1. The hair culture solution contains ingredients which can cause skin irritation and eye injury. Follow directions carefully.
2. Do not use if scalp is irritated or injured.
3. If the hair culture solution causes skin or scalp irritation, rinse out immediately. If irritation persists, consult a physician.
4. If the hair culture solution gets into eyes, rinse immediately and consult a physician.

Such facts are material and, if known to potential customers, would be likely to affect their decision to purchase the aforementioned Lustrasilk products. Furthermore, knowledge of such facts by consumers would tend to reduce the hazards of skin and eye injury posed by the use of said products. Therefore, failure to disclose said material facts on the retail product label of the aforementioned Lustrasilk products is an unfair and deceptive act or practice.

PAR. 13. The use by respondents of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and substantiated, and into the purchase of substantial quantities of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit by reason of said erroneous and mistaken belief.

PAR. 14. In the course and conduct of their business respondents are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as are sold by respondents.

PAR. 15. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements," are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts or 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.

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 Lustrasilk Corporation of America, Inc. is a Minnesota corporation with its office and principal place of business located at 6989 Oxford St., St. Louis Park, Minnesota.

Respondents D. C. Smith and Guenther Roth are officers and principal shareholders of Lustrasilk Corporation of America, Inc. They formulate, direct and control the acts and practices of said corporation, and their address is the same as that of said 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 respondents Lustrasilk Corporation of America, Inc., a corporation, its successors and assigns, and its officers, and D. C. Smith and Guenther Roth, individually and as officers of Lustrasilk Corporation of America, Inc., and respondents' 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 Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit or any cosmetic in or affecting commerce, as "cosmetic" and "commerce" are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in writing, orally, visually, or in any other manner, directly or by implication, that:

1. Any hair straightening product is gentle or safe, unless at the time the representation is made respondents have a reasonable basis, consisting of competent and reliable controlled tests, to support such representation, and unless at the time and in the place such representation is made respondents also state: "Warning: The Lustrasilk process uses a pressing comb which may damage hair or scalp if not properly used."

2. Any hair straightening product or process does not or cannot cause hair damage or loss, unless at the time the representation is made respondents have a reasonable basis, consisting of competent and reliable controlled tests, to support such representation, and unless at the time and in the place such representation is made respondents also state: "Warning: The Lustrasilk process uses a pressing comb which may damage hair or scalp if not properly used."

3. Any such product is beneficial to hair or improves its condition or

appearance, unless at the time the representation is made, respondents have a reasonable basis, consisting of competent and reliable controlled tests, to support such representation.

4. Any such product is a hair straightener or aids in maintaining the straightened effect achieved by application of a pressing comb, unless at the time the representation is made, respondents have a reasonable basis, consisting of competent and reliable controlled tests, to support such representation.

B. Representing, in any manner, the safety or efficacy of any cosmetic, or the ingredients therein, unless at the time such representation is made respondents have in their possession a reasonable basis, consisting of competent and reliable controlled tests, to support such representation; or misrepresenting in any manner the nature of any such product or its ingredients or the effect of any such product or its ingredients on hair or skin or any other structure of the body.

C. Disseminating or causing to be disseminated any advertisement of Lustrasilk Home Permanent or Lustrasilk 4 Application Home Perm Kit or any similar product which fails to disclose, clearly and conspicuously with nothing to the contrary or in mitigation thereof, the following statement exactly as it appears below:

WARNING: This product may cause skin and eye irritation. Follow directions carefully.

Provided, however, That if competent and reliable controlled tests indicate that such product does not cause skin irritation, respondents shall substitute for the first sentence of the warning statement above, the following:

This product may cause eye irritation.

D. Using the words "permanent" and "perm" or words of similar import and meaning in the trade names Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit and trade names of any similar product, unless at the time the representation is made respondents have a reasonable basis, consisting of competent and reliable controlled tests, to support such representation;

Provided, however, That respondents may continue the use of such words on retail packages of the home use product until January 1, 1976 and on retail packages of the professional use product until April 1, 1976.

E. Failing to include clearly and conspicuously on an information panel of the retail product package, on the package insert, and on the label of the solution container of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit and any similar product, with

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nothing to the contrary or in mitigation thereof, the following disclosures exactly as they appear below:

WARNING:

1. The hair culture solution may cause skin and eye irritation. Conduct a preliminary patch test according to enclosed instructions before using this product. Follow directions carefully.
2. Do not use if scalp is irritated or injured.
3. If the hair culture solution causes skin or scalp irritation, rinse out immediately. If irritation persists, consult a physician.
4. If the hair culture solution gets into eyes, rinse immediately. If irritation persists, consult a physician.

Provided, however, That if competent and reliable controlled tests indicate that such product does not cause skin irritation, respondents shall substitute for the first warning statement above, the following:

The hair culture solution may cause eye irritation. Follow directions carefully.

Respondents shall comply with Paragraph I.E. of this order by August 15, 1975, or by the date this order becomes effective, whichever shall occur first;

Provided, however, That respondents may use existing solution containers until exhausted or until April 1, 1976, whichever shall occur first.

F. Failing to include in the instructions for use of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit and any similar product which, according to competent and reliable controlled tests, may cause skin irritation, instructions for a skin patch test which enables the user to determine whether such product will irritate his or her skin.

II

It is further ordered, That respondents Lustrasilk Corporation of America, Inc., a corporation, its successors and assigns, and its officers, and D. C. Smith and Guenther Roth, individually and as officers of Lustrasilk Corporation of America, Inc., and respondents' 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 Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit, or any cosmetic, as "cosmetic" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mails or by any means in or having an effect upon commerce, as

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"commerce" is defined in the Federal Trade Commission Act, as amended, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

III

It is further ordered, That respondents shall distribute a copy of this order to their present and future officers, directors, and operating divisions and that respondents secure from each such person a signed statement acknowledging receipt of the order.

IV

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

V

It is further ordered, That the corporate respondent notify the Commission at least thirty days prior to any proposed change in respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, a change in corporate name or address, or any other change in the corporation which may affect compliance obligations arising out of this order.

VI

It is further ordered, That each individual respondent promptly notify the Commission of the discontinuance of his present business or employment and/or his affiliation with a new business or employment at any time within the next five years, or, if such new affiliation is with any business associated with the cosmetic industry, then such notice shall be promptly given whenever such new affiliation occurs. Such

notice shall include the 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.

VII

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.

IN THE MATTER OF
THE PERMA-STRATE COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2785. Complaint, Jan. 27, 1976—Decision, Jan. 27, 1976

Consent order requiring a Memphis, Tenn., manufacturer of hair care cosmetics, among other things to cease misrepresenting that its hair conditioners are safe and from making other false claims; and further requiring the firm to include a health hazard warning in advertising and labeling for the products.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *Eugene Bernstein, Gerber, Bernstein, Gerber & Winestone, Memphis, Tenn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Perma-Strate Company and Merrill Kremer, Inc., corporations, and Jeannette Goldner, individually and as an officer of The Perma-Strate Company, and Allyn S. Goldner, individually and as sole shareholder and chairman of the board of directors of The Perma-Strate Company, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent The Perma-Strate Company is a Tennessee corporation with its office and principal place of business located at 3442 Summer Ave., Memphis, Tennessee.

Respondent Jeannette Goldner is an officer of The Perma-Strate Company. She formulates, directs and controls the acts and practices of The Perma-Strate Company, including those hereinafter set forth. Her address is the same as that of The Perma-Strate Company.

Respondent Allyn S. Goldner is a former officer, the sole shareholder and chairman of the board of directors of The Perma-Strate Company. He formulates, directs and controls the acts and practices of The Perma-Strate Company, including those hereinafter set forth. His address is the same as that of The Perma-Strate Company.

Respondents The Perma-Strate Company, Jeannette Goldner and Allyn S. Goldner are sometimes referred to collectively herein as "the Perma-Strate respondents."

Respondent Merrill Kremer, Inc. is a Tennessee corporation with its