

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

office and principal place of business located at 641 South Cooper, Memphis, Tennessee.

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

PAR. 2. The Perma-Strate respondents engage in the manufacturing, advertising, offering for sale, sale and distribution of Perma Strate Cream Hair Straightener (hereinafter "Perma Strate straightener"), a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act. The straightener is a liquid which contains as its active ingredient ammonium thioglycolate. The liquid is combed through the hair, rinsed from the hair and neutralized with a special shampoo. The straightener and neutralizing shampoo are used by consumers and professional beauticians for the purpose of straightening curly hair.

PAR. 3. Respondent Merrill Kremer, Inc. is the advertising agency for The Perma-Strate Company and in such capacity creates, prepares, places for publication, and causes the dissemination of advertisements, including but not limited to the advertisements referred to herein, to promote the sale of Perma Strate straightener.

PAR. 4. In the course and conduct of their business, the Perma-Strate respondents cause Perma Strate straightener, when sold, to be sent from their place of business in Tennessee to retail stores and beauty salons and other purchasers located in various other States of the United States and in the District of Columbia. Thus, the Perma-Strate respondents maintain a substantial course of trade in Perma Strate straightener 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 businesses, respondents disseminate and cause to be disseminated certain advertisements concerning Perma Strate straightener, (1) by United States mail, magazines of interstate circulation, radio broadcasts of interstate transmission, and by various other means in or having an effect upon commerce, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Perma Strate straightener, or (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase in or having an effect upon commerce of Perma Strate straightener, as "commerce" is defined in the Federal Trade Commission Act, as amended.

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

On radio:

There are lots of ways to straighten your hair, but the easiest — safest — longest-lasting way is with Perma Strate.

There's nothing strong or harsh in it to harm your hair or hurt your skin. Gentle, mild, Perma Strate gives you natural-looking straight hair that is soft, and easy to manage for three months or longer.

In magazines:

So safe and gentle even little girls of five can have their perm, and smooth styling.

Thousands of beauticians use it with complete confidence — even on bleached or tinted hair — with no risk of breakage.

No-lye, no-risk, no-complaint straightener!

It's formulated with ammonium thioglycolate, NOT the caustic sodium hydroxide (LYE) found in most other relaxers. The PH factor is only 9.2, well inside the safe range.

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

A. Perma Strate straightener is safe, gentle and mild and its ingredients cannot harm hair or skin.

B. Perma Strate straightener may be used on bleached or tinted hair without risk of hair breakage.

C. Thousands of beauticians use Perma Strate straightener with complete confidence that it will not damage hair.

D. Hair straightened with Perma Strate remains straight longer than hair straightened with other products or methods.

PAR. 8. In truth and in fact:

A. Perma Strate straightener is not safe, gentle or mild and it contains ingredients which are harmful to skin and hair. Ammonium thioglycolate, the active ingredient in Perma Strate straightener, straightens hair by breaking down the cells of the hair shaft. It is also a primary skin irritant which breaks down the cells which form the epidermis. The straightening process weakens hair, and in some instances, makes it brittle and causes partial or total hair loss. In some instances Perma Strate straightener causes skin and scalp irritation and burns.

B. Perma Strate straightener may not be used on bleached or tinted hair without risk of hair 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, deceptive and unfair.

PAR. 9. At the time the representations set forth in Paragraph Seven (C) and (D) were made, respondents lacked a reasonable basis to support such representations. Therefore, the advertisements, statements and representations set forth in Paragraphs Six and Seven (C) and (D) are deceptive and unfair.

PAR. 10. Respondents advertise Perma Strate straightener without disclosing that:

A. Perma Strate straightener can cause skin and scalp irritation, hair breakage and eye injury.

B. Directions must be followed carefully.

Such facts are material and, if known to consumers, would be likely to affect their decision to purchase Perma Strate straightener. Therefore, respondents' advertisements of said product 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. 11. In the further course and conduct of their business, the Perma-Strate respondents offer for sale, sell and distribute Perma Strate straightener without disclosing on the retail product package of said product the following information:

A. The product contains caustic ingredients. It can cause skin and scalp burns, hair loss, and eye injury. Directions must be followed carefully.

B. The product should not be used if scalp is irritated or injured.

C. The product should not be used on hair that is bleached, dyed or tinted. If hair has been relaxed previously, apply only to new growth.

D. If the straightener causes skin or scalp irritation, it should be rinsed out immediately and neutralized with the shampoo in the kit. If irritation persists, a physician should be consulted.

E. If the straightener gets into eyes, the eyes should be rinsed immediately and a physician should be consulted.

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

PAR. 12. 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 and professional beauticians into the erroneous and mistaken belief that said statements and representations are true and substantiated, and into the purchase of substantial quantities of Perma Strate straightener by reason of said erroneous and mistaken belief.

PAR. 13. In the course and conduct of their businesses, 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. 14. 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 The Perma-Strate Company is a Tennessee corpora-

tion 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 for 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.

Respondent Merrill Kremer, Inc. is a Tennessee corporation with its office and principal place of business located at 641 South Cooper, Memphis, Tennessee.

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 The Perma-Strate Company and Merrill Kremer, Inc., corporations, their successors and assigns, and their officers, and Jeannette Goldner, individually and as an officer of The Perma-Strate Company, and Allyn S. Goldner, individually and as sole shareholder and as chairman of the board of directors of The Perma-Strate Company, 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 Perma Strate straightener 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 safe, gentle or mild or its ingredients cannot or do not harm hair or skin.
2. Any hair straightening product may be used on bleached or tinted hair without risk of hair damage.
3. Beauticians use any such product or approve, recommend or endorse such product in any way, unless at the time the representation is made respondents have a reasonable basis, consisting of competent and reliable survey data, to support such representation.

4. Any such product is longer-lasting than any other product, unless at the time such representation is made respondents have a reasonable basis, consisting of competent and reliable tests or evidence, 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 Perma Strate straightener 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: Follow directions carefully to avoid skin and scalp irritation, hair breakage and eye injury.

Provided, however, That Paragraph I of this order shall apply to respondent Merrill Kremer, Inc. only with respect to Perma Strate straightener and any cosmetic manufactured by respondent The Perma-Strate Company, and any hair straightening product or process.

II

It is further ordered, That respondents The Perma-Strate Company and Merrill Kremer, Inc., corporations, their successors and assigns, and their officers, and Jeannette Goldner, individually and as an officer of The Perma-Strate Company, and Allyn S. Goldner, individually and as sole shareholder and as director of The Perma-Strate Company, 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 Perma Strate straightener 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 "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 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 on commerce, as "commerce" is defined in the Federal Trade Commission Act, 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.

Provided, however, That Paragraph II of this order shall apply to respondent Merrill Kremer, Inc. only with respect to Perma Strate straightener and any cosmetic manufactured by respondent The Perma-Strate Company, and any hair straightening product or process.

III

It is further ordered, That respondents The Perma-Strate Company, its successors, assigns and officers, and Jeannette Goldner, individually and as an officer of The Perma-Strate Company, and Allyn S. Goldner, individually and as sole shareholder and as director of The Perma-Strate Company, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale, or distribution of Perma Strate Straightener or any similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from 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 straightener container of any such product, with nothing to the contrary or in mitigation thereof, the following disclosures exactly as they appear below:

WARNING:

1. This product contains caustic ingredients. You must follow directions carefully to avoid skin and scalp burns, hair loss, and eye injury.
2. Do not use if scalp is irritated or injured.
3. Do not use on bleached, dyed or tinted hair. If hair has been relaxed previously, apply only to new growth.
4. If the straightener causes skin or scalp irritation, rinse out immediately and neutralize with the shampoo in the kit. If irritation persists or if hair loss occurs, consult a physician.
5. If the straightener gets into eyes, rinse immediately and consult a physician.

Respondents shall comply with this provision by Aug. 15, 1975 or by the effective date of this order, whichever shall occur first.

IV

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 this order.

V

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.

VI

It is further ordered, That the corporate respondents 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 change in the corporations which may affect compliance obligations arising out of this order.

VII

It is further ordered, That each individual respondent 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. Such notice shall include the respondent's current 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 or responsibilities.

VIII

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.

Complaint

87 F.T.C.

IN THE MATTER OF
SOFT SHEEN COMPANY, INC., ET AL.

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

Docket C-2786. Complaint, Jan. 27, 1976—Decision, Jan. 27, 1976

Consent order requiring a Chicago, Ill., 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: *Jon O. Nelson, Molinair, Allegretti, Newitt & Witcoff* and *Rickey J. Ament*, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that Soft Sheen Company, Inc., and Franklin Lett Associates, corporations, and Edward G. Gardner and Betty Gardner, individually and as officers of Soft Sheen Company, Inc., 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 Soft Sheen Company, Inc. is an Illinois corporation with its office and principal place of business located at 7126-30 South Chicago Ave., Chicago, Illinois.

Respondents Edward G. Gardner and Betty Gardner are officers and principal shareholders of Soft Sheen Company, Inc. They formulate, direct and control the acts and practices of Soft Sheen Company, Inc., including those hereinafter set forth. Their address is the same as that of Soft Sheen Company, Inc.

Respondents Soft Sheen Company, Inc. and Edward G. Gardner and Betty Gardner are sometimes referred to collectively herein as "the Soft Sheen respondents."

Respondent Franklin Lett Associates is an Illinois corporation with its office and principal place of business located at 120 South Riverside Plaza, Chicago, Illinois.

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

PAR. 2. The Soft Sheen respondents engage in the manufacturing,