

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,

advertising, offering for sale, sale and distribution of the hair care products Mr. Cool Hair Relaxer and Miss Cool Hair Relaxer, "cosmetics" as that term is defined in Section 15 of the Federal Trade Commission Act. The relaxer is an emulsion which contains as its active ingredient potassium hydroxide, commonly known as lye. The emulsion is applied to the hair, rinsed from the hair, and neutralized with a special shampoo. The relaxer and neutralizing shampoo are used by consumers and professional beauticians for the purpose of straightening curly hair.

PAR. 3. Respondent Franklin Lett Associates is in the advertising agency for Soft Sheen Company, Inc., and in such capacity creates, prepares, and places for publication, and causes the dissemination of advertisements, including but not limited to the advertisements referred to herein, to promote the sale of Mr. Cool Hair Relaxer and Miss Cool Hair Relaxer.

PAR. 4. In the course and conduct of their business, the Soft Sheen respondents cause their aforementioned products when sold, to be sent from their place of business in Illinois to retail stores and beauty salons and other purchasers located in various other States of the United States and the District of Columbia. Thus, the Soft Sheen 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 businesses, respondents disseminate and cause to be disseminated certain advertisements concerning the aforementioned Soft Sheen products, (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 Soft Sheen 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 Soft Sheen 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:

Getting heads together * * * beautifully * * * comfortably * * * easily, with Mr. Cool and Miss Cool Hair Relaxers. The no-base hair relaxing kits that give you today's "hip" hair styles with fuller body keeping it smoother, and softer. And you get the extra needed time to style your hair the "no-burn perm" way with *Mr. Cool* and *Miss Cool Hair Relaxing kits*.

On radio:

Music

Announcer: A broad check on Mr. Cool. If you've seen those hip hair styles for men, you've seen some of Mr. Cool's work. That's Mr. Cool Hair Relaxer, one of the hippest men's hair relaxers for all grades of hair. It's a comfortable hair relaxer. Mr. Cool is known as the "no burn" perm. That's right! No rushing, no hurrying. You can relax as your hair relaxes with that extra working time. And each Mr. Cool no-base hair relaxer kit has a neutralizer shampoo, an excellent hair relaxer setting lotion and a time chart telling you how to relax different grades of hair. Following the directions, you will get you hair together with Mr. Cool Hair Relaxer.

Now for the ladies there is Miss Cool, one of the hippest hair relaxers around. Miss Cool gives the same comfortable relaxing action with no hurrying, no rushing. Miss Cool also provides something extra. An instant protein conditioner for healthier hair. Mr. Cool and Miss Cool no-base hair relaxers are products of Soft Sheen, the hair care people, producers of fine hair products.

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. Mr. Cool and Miss Cool hair relaxers do not burn the hair and may be used safely on all types of hair.

B. Mr. Cool and Miss Cool hair relaxers are in all instances comfortable on the skin and do not burn the skin.

C. Mr. Cool and Miss Cool hair relaxers provide the user

1. time adequate to complete application, and

2. more time for application than is available with other chemical hair straighteners.

PAR. 8. In truth and in fact:

A. Mr. Cool and Miss Cool hair relaxers can and, in some instances, do burn the hair, and cannot be used safely on all types of hair. Potassium hydroxide, the active ingredient in said products, straightens hair by breaking down the cells of the hair shaft. The relaxing process weakens hair, and, in some instances, makes it brittle and causes partial or total hair loss.

B. Mr. Cool and Miss Cool hair relaxers are not, in all instances, comfortable on the skin and, in some instances, they burn the skin. The potassium hydroxide in said products is a primary skin irritant. It is caustic to skin and breaks down the cells which form the epidermis. Mr. Cool and Miss Cool hair relaxers in some instances cause skin and scalp irritation and burns, which may produce scars and permanent follicle damage. Said products also may cause eye irritation and may impair vision.

C. Mr. Cool and Miss Cool hair relaxers do not provide extra

working time. In many instances it is difficult for the non-professional user to complete application, combing and smoothing within the time dictated by his or her individual hair type for satisfactory results. Furthermore, said products do not provide application times longer than those provided by other chemical hair straighteners.

Therefore, the advertisements, statements and representations referred to in Paragraphs Six and Seven 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 were made, respondents had no reasonable basis from which to conclude that such representations were true.

Therefore, the advertisements and representations set forth in Paragraphs Six and Seven are deceptive and unfair.

PAR. 10. Respondents advertise Mr. Cool and Miss Cool hair relaxers without disclosing that:

A. Said products 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 Mr. Cool and Miss Cool hair relaxers. Therefore, respondents' advertisements of said products 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 Soft Sheen respondents offer for sale, sell and distribute Mr. Cool and Miss Cool hair relaxers without disclosing on the retail product package of said products the following information:

A. The products contain potassium hydroxide (lye). They can cause skin and scalp burns, hair loss and eye injury. Directions must be followed carefully.

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

C. The products should not be used on bleached, dyed or tinted hair. If hair is already relaxed, relaxer should be applied only to new growth, as described in the directions.

D. If the relaxer 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 relaxer 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 Mr. Cool and Miss Cool hair relaxers. Furthermore, knowledge of such facts by consumers would tend to reduce the hazards of hair, skin and eye injury posed by the use of Mr. Cool and Miss Cool hair relaxers. 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 Mr. Cool and Miss Cool hair relaxers 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 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.

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 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. and their address is the same as that of said corporation.

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

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 Soft Sheen Company, Inc., and Franklin Lett Associates, corporations, and their successors and assigns, and their officers, and Edward G. Gardner and Betty Gardner, individually and as officers of Soft Sheen Company, 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 Mr. Cool and Miss Cool hair relaxers 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, comfortable, or does not burn the hair or skin.
2. Any hair straightening product may be used on all grades or types of hair.
3. Any hair straightening product provides the user

- a. time adequate to complete application, or
- b. more time for application than is available with other hair straightening products,

unless at the time the representation is made, respondents have a reasonable basis, consisting of competent and reliable tests or other 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 tests or other evidence, 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 Mr. Cool and Miss Cool hair relaxers 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 Franklin Lett Associates only with respect to Mr. Cool or Miss Cool hair relaxers, and any cosmetic manufactured by Soft Sheen Company, Inc., and any hair straightening product or process.

II

It is further ordered, That respondents Soft Sheen Company, Inc. and Franklin Lett Associates, corporations, and their successors and assigns and their officers, and Edward G. Gardner and Betty Gardner, individually and as officers of Soft Sheen Company, 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 Mr. Cool and Miss Cool hair relaxers 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, as amended, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertise-

ment which contains a representation prohibited by Paragraph One of this order or which omits a disclosure for such product required by Paragraph One 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 One of this order or which omits a disclosure for such product required by Paragraph One of this order.

Provided, however, That Paragraph II of this order shall apply to respondent Franklin Lett Associates only with respect to Mr. Cool or Miss Cool hair relaxers, and any cosmetic manufactured by Soft Sheen Company, Inc., and any hair straightening product or process.

III

It is further ordered, That respondents Soft Sheen Company, Inc., a corporation, and its successors, assigns and officers, and Edward G. Gardner and Betty Gardner, individually and as officers of Soft Sheen Company, Inc., 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 Mr. Cool and Miss Cool hair relaxers 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, the package insert, and the label of the relaxer 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 potassium hydroxide (lye). 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 you have previously relaxed your hair, relax only the new growth, as described in the directions.
4. If the relaxer 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 relaxer gets into eyes, rinse immediately and consult a physician.

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

IV

It is further ordered, That the Soft Sheen respondents shall recall and retrieve, from each beauty salon which sells or uses Mr. Cool and Miss Cool hair relaxers, each display advertisement for Mr. Cool and Miss Cool hair relaxers which contains any word or representation prohibited by Paragraph I of this order or which omits a disclosure for such products required by Paragraph I of this order.

V

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.

VI

It is further ordered, That respondents maintain at all times in the future 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.

VII

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 other change in the corporations which may affect compliance obligations arising out of this order.

VIII

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.

IX

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
AMERICAN IMAGE CORPORATION, ET AL.

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

Docket C-2787. Complaint, Feb. 2, 1976—Decision, Feb. 2, 1976

Consent order requiring a New York City manufacturer and distributor of a skin preparation designated "Rebirth Beauty Masque," among other things to cease misrepresenting the cosmetic or beautifying effects of their product. Further, respondents are prohibited from making performance claims regarding their product without substantiating documentation in their possession backing up such claims.

Appearances

For the Commission: *Mark A. Heller.*

For the respondents: *Sheldon S. Lustigman, Bass & Ullman, 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 American Image Corporation, a corporation, and Marvin Schere, individually and as president 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 this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Image Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 276 Park Ave. So., New York, New York.

PAR. 2. Respondent Marvin Schere is an individual who is president of respondent American Image Corporation. He formulates, directs, and controls its acts, practices, and policies, including those hereinafter set forth. He cooperated in and effectuated the acts, policies, and practices of the corporation. His address is the same as that of the corporation.

PAR. 3. Respondents are now, and for some time past have been engaged in the manufacture, advertising, offering for sale, sale, and distribution of a skin preparation designated "Rebirth Beauty Mask" to retailers for resale to the consuming public.