

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.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for some time past have caused the said Rebirth Beauty Masque, when sold, to be shipped to purchasers thereof located in various States of the United States other than the State of origination, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said Rebirth Beauty Masque in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of their said Rebirth Beauty Masque, respondents have made numerous statements and representations in print advertising respecting the effect of said product in producing clear, unblemished skin.

PAR. 6. Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

"PEEL OFF" COMPLEXION PROBLEMS IN ONLY 15 MINUTES!

Now you can have a beautiful complexion, free of pimples, acne, blackheads, dry flaky skin with Rebirth Beauty Masque.

You'll do as thousands do: just smooth on soothing Rebirth * * * let it dry for 15 minutes * * * then simply LIFT AWAY complexion problems!

Dirt, bacteria, all those ugly skin blemishes peel off easily, harmlessly, naturally.

Dark circles around your eyes will vanish * * * lines will be less visible * * * blotches will fade * * * for a fresh, youthful skin.

Your face is clear, glowing, satin-smooth — your "hidden beauty," revealed at last! You'll smile and the world will smile back!

PAR. 7. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, and directly or by implication, that:

1. The use of Rebirth Beauty Masque will produce, within fifteen (15) minutes, skin that is free of acne, pimples, and blackheads for every individual who uses it;

2. Rebirth Beauty Masque will permanently remove dark circles from around the eyes within fifteen (15) minutes, on every individual who uses it;

3. The use of Rebirth Beauty Masque will cause skin blemishes to peel off, or lift away completely on every individual who uses it;

4. Tests or demonstrations which prove the representations numbered 1, 2, and 3 above have been conducted.

PAR. 8. In truth and in fact:

1. The use of Rebirth Beauty Masque will not produce, within fifteen (15) minutes, skin that is free of acne, pimples, and blackheads for every individual who uses it;

2. Rebirth Beauty Masque will not permanently remove dark circles from around the eyes of every individual who uses it, within fifteen (15) minutes.

3. The use of Rebirth Beauty Masque will not cause skin blemishes to peel off, or lift away completely on every individual who uses it;

4. Tests or demonstrations which prove the representations numbered 1, 2, and 3 above have not been conducted.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of skin preparations.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of Rebirth Beauty Masque by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION & ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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 such 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 respondent has

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, 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:

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 office and place of business at 276 Park Ave. So., New York, New York.

2. Respondent Marvin Schere, an individual, is president of said corporation. His business address is the same as that of the corporate respondent.

3. 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

It is ordered, That respondents American Image Corporation, a corporation, and its successors and assigns, and Marvin Schere, individually and as president of said corporation, and respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Rebirth Beauty Masque or any other skin creme, ointment or salve in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

1. Produces or helps to produce skin that is blemish-free, or is free of acne, pimples, or blackheads, or will cause skin blemishes to peel off or lift away, or to be removed or eliminated;

2. Removes or eliminates, or helps to remove or eliminate, circles from around the eyes;

3. Will perform in any given manner or is effective for any purpose unless such claims are true and have been substantiated.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 this order.

It is further ordered, That each respondent shall within sixty (60) days and at the end of six (6) months after the effective date of the order served upon them, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF
GROLIER INCORPORATED, ET AL.

Docket 8879. Order, Feb. 10, 1976

Respondents' motion to disqualify and remove administrative law judge denied; and denial of respondents' discovery requests relative to evidence which would subject administrative law judge to disqualification; request for oral argument also denied.

Appearances

For the Commission: *Edward D. Steinman, David C. Fix and Robert D. Friedman.*

For the respondents: *Frederick P. Furth and Cullinan, Burns & Holmer, San Francisco, Calif.*

ORDER DENYING MOTION TO DISQUALIFY ADMINISTRATIVE
LAW JUDGE

Administrative Law Judge Theodor P. von Brand informed the parties at a hearing on January 14, 1976, that he had been a legal advisor to Commissioner Everette MacIntyre from 1963 until January 1971. The law judge's disclosure was prompted by testimony by one of respondents' officials as to a meeting he had attended at which Mr. MacIntyre was present in 1966 or 1967.

Respondents now move under Section 3.42(g)(2) of the Rules of Practice to disqualify Judge von Brand on the ground that his presence on Commissioner MacIntyre's staff and his participation in this matter as administrative law judge violate the Administrative Procedure Act, 5 U.S.C. §554(d). The section prohibits an employee "engaged in the performance of investigative or prosecuting functions for an agency in a case" from participating or advising in the decision or recommended decision of that or a factually related case. Respondents also claim that the law judge's participation in this matter involves the appearance of impropriety.

During the time Judge von Brand was an advisor to Commissioner MacIntyre, the Commission had before it, among other things, the following matters involving respondents: a proposed complaint and proposed consent order, an assurance of voluntary compliance, and a resolution directing a non-public investigation.

The law judge has declined to disqualify himself and has submitted a response under Section 3.42(g)(2) in which he states that he has no recollection of having worked "on matters involving these respondents while serving as legal advisor to Commissioner MacIntyre," but that