

Complaint

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IN THE MATTER OF

JOHNSON PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2788. Complaint, Feb. 10, 1976—Decision, Feb. 10, 1976*

Consent order requiring a Chicago, Ill., manufacturer and distributor of cosmetics and its Omaha, Neb., advertising agency, among other things to cease misrepresenting that Ultra Sheen Permanent Creme Relaxer is "gentle," "cool to the scalp," and "easy to use"; and failing to disclose in advertising certain material facts concerning health hazards associated with the use of its products. Further, respondents are required to place clear and specific warnings as to the safety of the product upon all packaging, displays and advertising.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *George M. Burditt, Burditt & Calkins, Chicago, Ill. Felix H. Kent, Hall, Dickler, Lawler, Kent & Howley, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson Products Company, Inc., and Bozell & Jacobs, Inc., corporations, 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 Johnson Products Company, Inc. (Johnson Inc.) is a Delaware corporation with its office and principal place of business located at 8522 So. Lafayette Ave., Chicago, Illinois.

Respondent Bozell & Jacobs, Inc. is a Delaware corporation with its office and principal place of business located at 10250 Regency Circle, Omaha, Nebraska.

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

PAR. 2. Respondent Johnson Inc. engages in the manufacturing, advertising, offering for sale, sale, and distribution of Ultra Sheen Permanent Creme Relaxer (hereinafter "Ultra Sheen relaxer"), a "cosmetic" 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 sodium 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 Bozell & Jacobs, Inc. is the advertising agency for Johnson 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 Ultra Sheen relaxer.

PAR. 4. In the course and conduct of its business, Johnson Inc. causes Ultra Sheen relaxer, when sold, to be sent from its 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, Johnson Inc. maintains 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 Ultra Sheen relaxer, (1) by United States mails, magazines of interstate circulation, radio and television 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 Ultra Sheen relaxer, (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 Ultra Sheen relaxer, 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:

Why not give Mother Nature a little gentle help with Ultra Sheen Permanent Creme Relaxer?

It's the truly gentle no-base perm that offers you hair style possibilities you never enjoyed before.

Ultra Sheen Permanent Creme Relaxer. It makes changing your hair style — anyway from smooth and sleek to bouncy curls — as easy as changing your mind.

On Television:

Video

Audio

OPEN ON ACETYLENE TORCH CUTTING. STEEL STACK FALLS.
CUT TO INTERVIEWER WALKING FROM BEHIND SCULPTURE.
CUT TO TWO-SHOT.

MAN: Can we talk?

WOMAN: See something you like?

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MAN: Your hair.*WOMAN:* *What?**MAN:* No really. It's my job. How do you keep it looking so good?

BACK TO WOMAN MOVING AROUND SCULPTURES.

WOMAN: Ultra Sheen Relaxer and Conditioner and Hair Dress.

CU WOMAN.

MAN: Why Ultra Sheen?

CUT TO PRODUCT SHOT.

WOMAN: It works. The relaxer goes on cool while it really relaxes my hair. And the Conditioner and Hair Dress protects against moisture, so my hair doesn't go back.

BACK TO CU WOMAN.

LS OF STUDIO AND PEOPLE.

MAN: It looks great.

WOMAN REPLACES GOGGLES COOLY.

WOMAN: Thank you. See anything else you like?

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. Ultra Sheen relaxer is gentle to hair.

B. Ultra Sheen relaxer is gentle to skin and in all instances feels cool on the skin.

C. Ultra Sheen relaxer is easy to use.

PAR. 8. In truth and in fact:

A. Ultra Sheen relaxer is not gentle to hair. Sodium hydroxide, the active ingredient in Ultra Sheen relaxer, 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. Ultra Sheen relaxer does not feel cool on the skin of all users nor is it gentle to skin. The sodium hydroxide in Ultra Sheen relaxer is a primary skin irritant. It is caustic to skin and breaks down the cells which form the epidermis. Ultra Sheen relaxer in some instances causes skin and scalp irritation and burns, which may produce scars and permanent follicle damage. It also causes eye irritation and may impair vision.

C. Ultra Sheen relaxer is not easy to use.

1. The directions for use of said product warn against applying the relaxer to the scalp or allowing the relaxer to have contact with eyes or skin. Yet it is nearly impossible for the consumer who applies the relaxer to his or her own hair to keep it off scalp and face and out of eyes, where it may cause irritation and injury.

2. The directions for use of said product state that the relaxer should be left on the hair until the hair is adequately relaxed, between eight and eighteen minutes depending on individual hair type and characteristics. The non-professional user of Ultra Sheen relaxer lacks

the training and experience to make the evaluation of the proper timing of application for his or her individual hair type. Furthermore, 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.

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. Respondents advertise Ultra Sheen relaxer without disclosing that:

A. Ultra Sheen relaxer 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 Ultra Sheen relaxer. 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. 10. In the further course and conduct of its business, Johnson Inc. offers for sale, sells and distributes Ultra Sheen relaxer without disclosing on the retail product package of said product the following information:

A. The product contains sodium hydroxide (lye). 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 bleached, dyed or tinted hair. If hair has been relaxed, relaxer should be applied only to the 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, eyes should be rinsed immediately and a physician should be consulted.

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

PAR. 11. 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 Ultra Sheen relaxer by reason of said erroneous and mistaken belief.

PAR. 12. 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 sold by respondents.

PAR. 13. 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, 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 Johnson Products Company, Inc. (Johnson Inc.) is a Delaware corporation with its office and principal place of business located at 8522 So. Lafayette Ave., Chicago, Illinois.

Respondent Bozell & Jacobs, Inc. is a Delaware corporation with its office and principal place of business located at 10250 Regency Circle, Omaha, Nebraska.

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 Johnson Inc. and Bozell & Jacobs, Inc., corporations, their successors, assigns, officers, 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 Ultra Sheen relaxer, 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.
2. Any hair straightening product feels cool to skin or scalp.
3. Any hair straightening product is easy to use or to apply.

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 Ultra Sheen relaxer 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 Bozell & Jacobs, Inc. only with respect to Ultra Sheen relaxer, and any cosmetic manufactured by respondent Johnson Inc., and any hair straightening product or process.

Provided, further, That Paragraph I of this order shall not become effective prior to September 8, 1975.

II

It is further ordered, That respondents Johnson Inc. and Bozell & Jacobs, Inc., corporations, their successors and assigns, and their officers, 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 Ultra Sheen relaxer 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 mail 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 Bozell & Jacobs, Inc. only with respect to Ultra Sheen relaxer, and any cosmetic manufactured by respondent Johnson Inc., and any hair straightening product or process.

Provided, further, That Paragraph II of this order shall not become effective prior to September 8, 1975.

III

It is further ordered, That respondent Johnson Inc., a corporation, its successors, assigns, officers, 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 Ultra Sheen relaxer 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 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 [percentage] sodium 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 respondent Johnson Inc. shall instruct each beauty salon which sells or uses Ultra Sheen relaxer and each retail store and place of distribution of said product, to destroy each display advertisement for Ultra Sheen relaxer which contains any of the words or representations prohibited by Paragraph I of this order or which fails to make the affirmative disclosure for such product 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 the order.

VI

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.

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 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
EXXON CORPORATION, ET AL.

Docket 8934. Order, Feb. 17, 1976

Commission vacates the administrative law judge's order of Feb. 10, 1976, regarding document preservation.

Appearances

For the Commission: *Roger B. Pool, Roger J. McClure, Rhett R. Krulla, Anne R. Schenof, Ira S. Nordlicht, Phillip M. Dantes, James H. Thessin, Patrick J. Quinlan, David I. Haberman, Harold L. Cushenberry, Jr., Brian H. Siegal, Joseph H. Mattingly, Karen E. Chandler, Sheldon C. Hofferman, Barry A. Pupkin, Robert J. Enders, Joan F. Hartman and Lewis K. Wise.*

For the respondents: *William Simon*, Washington, D.C. for Exxon Corporation. *Robert F. McGinnis*, New York City for Texaco, Inc. *Jesse P. Luton*, Houston, Tex. for Gulf Oil Corporation. *J. Wallace Adair*, Washington, D.C. for Shell Oil Company.

ORDER VACATING TEMPORARY PRESERVATION ORDER

Upon consideration of the Application for Commission Review of Administrative Law Judge's Order of February 10, 1976 re Document Preservation, the Commission has determined that the order should not have issued *ex parte*. The Commission's decision is without prejudice to complaint counsel's reapplying for a preservation order on notice to respondents and upon the factual showing described at p. 38 of the opinion entered in *Exxon Corp. v. Federal Trade Commission*, Civil Action No. 75-167 (D. Del.) on January 30, 1976. The Commission does not assume that respondents will permit potentially relevant evidence to be destroyed. Accordingly,

It is ordered, That the aforesaid order of February 10, 1976, be, and it hereby is, vacated.