

Complaint

87 F.T.C.

IN THE MATTER OF

HAIR REPLACEMENT CENTERS OF BOSTON, INC., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2819. Complaint, May 17, 1976—Decision, May 17, 1976*

Consent order requiring a Newton, Mass., hair replacement firm, among other things to cease making false and misleading claims with respect to their hair implant process, and failing to disclose that their implant process involves surgical implantation of sutures which can cause pain, infection, scarring, and other disorders. Further, respondents are required to advise prospective customers to consult with a physician prior to contracting to undergo the process, and to provide customers a three-day cooling off period during which they may cancel their contract with full refund of all payments. In addition, respondents are required to devote 15 percent of their advertisements to warning prospective purchasers of the inherent dangers associated with the system of hair implant replacement.

*Appearances*For the Commission: *Harold F. Moody.*For the respondents: *Pro se.*

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 Hair Replacement Centers of Boston, Inc., a corporation, doing business as Hair Replacement Centers and Bruce S. Davis, individually and as an officer 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 its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hair Replacement Centers of Boston, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 850 Boylston St., Newton, Massachusetts.

Respondent Bruce S. Davis is an individual and an officer of corporate respondent Hair Replacement Centers of Boston, Inc. He formulates, directs and controls the acts and practices hereinafter set

forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the operation of the Hair Replacement Centers and promote on their own behalf, among others, a medical implant hair replacement system, (hereinafter sometimes referred to as the "system"). The system involves a surgical procedure whereby a prolene thread is used to stitch six to eight hollow metal cylinders or clips on to the scalp of respondents' customers. A net type base, to which wefts of hair have been attached, is then affixed to the cylinders or clips. Hair Replacement Centers (hereinafter sometimes referred to as Centers) sells and maintains the system, except that the surgical procedure itself is performed by a medical doctor.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of, advertisements concerning their said system by the United States mail and by various other means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general circulation, brochures and in oral sales presentations to prospective purchasers and purchasers, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said system, and respondents have also disseminated, and caused the dissemination of, advertisements concerning their system by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said system in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the system, respondents have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

Men, wouldn't you really like to have your own full head of hair once more?
— now you can. Quickly, simply, permanently.

* * * * *

If you're bald or balding — you can look and feel ten years younger with a full head of your own permanent hair in just two hours. Our revolutionary medical hair implant process is painless.

* * * * *

Complaint

87 F.T.C.

It is a simple cosmetic surgical technique which fastens a full head of replacement hair to your scalp — making it part of you.

* * * * *

Not hair weaving, not a transplant, not a toupee.

* * * * *

Do everything. Dive, stand on your head, walk through a jet stream.

* * * * *

Your present barber will be able to handle the maintenance of your hair without any problem, so long as he is aware of the fact that you are wearing surgically attached replacement hair.

* * * * *

Once the replacement hair is applied it becomes a full time solution to baldness. It goes with you everywhere you go — swimming, skiing, sailing, even into the shower and to bed.

PAR. 5. Through the use of the above statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, directly or by implication, that:

1. The system does not involve wearing a hairpiece or toupee.
2. The hair applied becomes a permanent part of the anatomy like natural hair and has characteristics of natural hair, including the following:
 - (a) The same appearance as natural hair upon normal observation and upon extreme closeup examination.
 - (b) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and shampooing may be performed on it in the same manner as a person might with natural hair.
 - (c) The wearer may engage in physical activities with as much disregard for his applied hair as a person might with natural hair.
3. After the system has been applied, the wearer can care for it himself and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur charges over and above the charge for installing the system.

PAR. 6. In truth and in fact:

1. The system does involve the wearing of a hairpiece or toupee, inasmuch as the affixing of the wefts of hair to the net type base creates what is essentially a hairpiece or toupee.
2. The hair applied does not become a permanent part of the anatomy like natural hair. The system involves prolene sutures which

are stitched into the scalp by a surgical procedure and which may be rejected by the body. The hair applied differs from natural hair in many respects, including the following:

(a) It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece or toupee upon normal observation, and upon extreme closeup examination.

(b) It cannot be cared for like natural hair, but requires special care and handling. Strong pulling on the applied hair, such as may be expected to occur in washing, combing, brushing, and shampooing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding, and may cause the sutures to pull out. As a consequence, washing the applied hair and scalp requires extra care. Unless extra care is taken while washing the hair and scalp, foreign particles and dead skin tissue tend to accumulate beneath the base and become a significant source of irritation. The hair styles into which the applied hair may be combed or brushed without professional treatments are limited.

(c) The wearer may not engage in physical activities with as much disregard for his applied hair as might a person with natural hair. The wearer must at all times be careful that the applied hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The wearer cannot in most instances care for the applied hair himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgical procedure or the continuing presence of prolene thread in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair under the hair applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance and a substantial additional charge for such service would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hair applied has been color-dyed, loss of dye through washing and normal wear; thus, replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

Therefore, respondents' statements, representations, acts and practices as set forth in Paragraph Four and Paragraph Five were and are false, misleading, unfair or deceptive acts and practices.

PAR. 7. In the course and conduct of their business respondents have represented in advertisements, brochures and by oral representations the asserted advantages of their system, as hereinbefore described. Respondents have represented their system to be painless, and in no case have respondents in their advertisements, brochures and oral representations disclosed:

(a) That clients may experience discomfort and pain as a result of the surgical procedure, from the prolene sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) That clients will be subject to the risk of irritation, infection, and skin diseases as a result of the surgical procedure and as a result of the prolene thread remaining in the scalp; and

(c) That permanent scarring to the scalp may result from the required surgical procedures, and as a result of the prolene thread remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur.

Therefore, the respondents' non-disclosure of material facts, as set forth in Paragraph Seven, was and is false, misleading, unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their hair replacement system, respondents entice members of the purchasing public to their Center with advertisements such as "NEW COSMETIC SURGICAL TECHNIQUE CREATES NATURAL NEW HAIR IN JUST A FEW HOURS," and like advertisements designed to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations.

In most cases respondents do not disclose details of their system unless and until a prospect visits the Center. When members of the purchasing public have visited the Center, they have been subjected to sales pressure, for the purpose of persuading them to sign a contract for the application of the system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the prolene thread in the scalp. Persons are urged to sign such contracts and make such downpayments, through the use of sales presentations employing the following practice, among others:

A. Inducing prospects to sign contracts and/or make downpay-

ments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the prolene thread being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery by which time the client is likely to feel pressured to go through with the application.

Therefore, respondents' statements, representations, acts and practices as set forth in Paragraph Eight, were and are false, misleading, unfair or deceptive acts or practices.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in or affecting commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair or deceptive statements, representations, acts, and practices and their failure to disclose material facts has had, and now has, the capacity and tendency to mislead consumers, and to unfairly induce consumers to hurriedly and precipitately sign contracts for the application of the system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease and disfigurement related thereto, and related to the continual presence of the prolene thread in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements" as herein alleged, were and are to the prejudice and injury of the purchasing public, and of respondents' competitors and constituted and now constitute unfair methods of competition in or affecting commerce, and unfair and deceptive acts and practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

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 Boston 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 (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 Hair Replacement Centers of Boston, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 850 Boylston St., Newton, Massachusetts.

Respondent Bruce S. Davis is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. 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 Hair Replacement Centers of Boston, Inc., a corporation, doing business as Hair Replacement Centers or any name or names, its successors and assigns, and its officers, and Bruce S. Davis, individually and as an officer of said corporation, 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 an implant hair replacement system (hereinafter sometimes referred to as the "system"), or other hair replacement product or process involving surgery, (hereinafter sometimes referred to as the "system") do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement by means of the United States mail, or by any means in or having an effect upon commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, which advertisement represents, directly or indirectly:

(a) That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

(b) That after the system has been applied, the hair applied will become a permanent part of the anatomy like natural hair, or will have the following characteristics of natural hair:

(i) The same appearance in all applications as natural hair, upon normal observation, and upon extreme closeup examination;

(ii) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and mussing might be performed on it in the same manner as a person might with natural hair.

(iii) The wearer may engage in physical activity and movement with the same disregard for his applied hair as he would if he had natural hair.

(c) That after the system has been applied, the customer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, or that the customer will not incur maintenance costs over and above the cost of applying the system.

2. Communicating orally or in writing, or in any other manner, directly or by implication, any of the representations prohibited in Paragraph 1 hereof.

3. Failing to disclose, clearly and conspicuously, in all advertising, brochures and promotional materials, and in all oral sales presentations, in offering for sale, selling or distributing the system, that:

(a) The system involves a surgical procedure resulting in the implantation of sutures in the scalp, to which hair is affixed.

(b) By virtue of the surgical procedure involving implantation of sutures in the scalp, and by virtue of the sutures remaining in the scalp, there is a risk of discomfort and pain, and some risk of infection, scarring and other skin disorders.

(c) Continuing special care of the system is necessary to minimize the risks referred to in subparagraph (b) of this paragraph, and such care may involve additional costs for medications and assistance.

(d) The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of

each advertisement or presentation to such disclosures. *Provided, however,* that in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves surgery whereby sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least ten point type.

4. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said system, in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, which advertisements contain any of the representations prohibited in Paragraph 1 hereof, or which fail to make any of the disclosures required by Paragraph 3 herein.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in Paragraph 3 of this order, subparagraphs (a) through (d), thereof, and that respondents advise such prospective purchasers, subsequent to receipt of such disclosure sheet, to consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the risks of discomfort and pain, and possible risks of infection, scarring, and other skin disorders.

It is further ordered, That no contract for application of respondents' system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed, and that:

1. Respondents shall clearly and conspicuously disclose orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding

Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not fail or refuse to honor any valid notice of cancellation by a purchaser and within 10 business days after receipt of such notice, to refund all payments made under the contract or sale and to cancel and return any negotiable instrument executed by the purchaser in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

4. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That whenever respondents perform the application of the system on a customer within 48 hours from the time of that customer's initial contact with respondents, said customer may rescind or cancel any contract or agreement executed and any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which the system was applied.

In the event of such cancellation, respondents shall refund all payments made within 10 business days after receipt of notice of such cancellation, *provided*, that said customer shall assume any cost incurred for the removal of the system.

It is further ordered, That respondents serve a copy of this order upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof. Respondents shall retain such acknowledgements for so long as such persons continue to participate in the application of respondents' system.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part

of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided*, that if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That respondents forthwith distribute a copy of this order to each of their operating divisions, offices, departments or affiliated corporations.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale or distribution of respondents' system or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include 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.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

PAY LESS DRUG STORES NORTHWEST, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2820. Complaint, May 17, 1976—Decision, May 17, 1976*

Consent order requiring a Maryland corporation with its principal place of business in Beaverton, Oreg., operating a chain of retail drug and general merchandise stores in Washington, Oregon, California and other States, to make advertised items readily available; to use shelf signs to indicate the location of items advertised below the regular shelf price; to mark customarily price-marked items with their advertised prices; to sell advertised merchandise at or below the advertised price; and to post in its stores copies of advertisements and notices of the availability of rain-checks for unavailable items or a substituted product of equal or better quality at the advertised price of the unavailable advertised item.

Appearances

For the Commission: *W. Lee Buck.*

For the respondent: *H. Stewart Tremaine, Black, Kendall, Tremaine, Boothe & Higgins*, Portland, Oreg.

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 Pay Less Drug Stores Northwest, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pay Less Drug Stores Northwest, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 10605 S.W. Allen Boulevard, Beaverton, Oregon.

PAR. 2. All allegations made in the present tense include the past tense.

PAR. 3. Respondent is engaged in the operation of retail drug and general merchandise stores in Washington, Oregon, California, and other States. Its volume of business is substantial. In the operation of its retail stores, respondent offers and sells to its customers an extensive line of products, including drugs, photographic equipment, groceries, fabrics, sporting goods, household articles, tools, and other