

FEDERAL TRADE COMMISSION DECISIONS

Complaint

87 F.T.C.

IN THE MATTER OF

LE CONTE COSMETICS, INCORPORATED, ET AL.

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

Docket 9031. Complaint, Apr. 29, 1975—Decision, May 27, 1976

Consent order requiring a Los Angeles, Calif., manufacturer and mail order seller and distributor of drug and cosmetic preparations, among other things to cease misrepresenting their products prevent baldness, stimulate hair growth, eliminate dandruff, and have Food and Drug Administration approval to be labeled "hair grow" or "growhair." Respondents are further required to institute a surveillance program to insure their franchisees and distributors comply with the provisions of the order.

Appearances

For the Commission: *Blanche R. Deight.*

For the respondents: *Louis W. Shaffer*, Los Angeles, Calif., *Pastoriza & Kelly*, Santa Monica, Calif.

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 Le Conte Cosmetics Incorporated, a corporation, trading and doing business under its own name and as Many Ways to Beauty Corporation, and Elton C. Toland, individually, and as an officer of said corporation, and trading and doing business as University Health & Beauty Discount Center, and Lamar Toland, and James Toland, individually and as officers of said corporation, hereinafter sometimes 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 Le Conte Cosmetics, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2520 South Main St., in the city of Los Angeles, State of California.

The corporate respondent trades and does business under its own name and as Many Ways to Beauty Corporation.

Respondent Elton C. Toland is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the

corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Elton C. Toland also trades and does business as University Health & Beauty Discount Center, a sole proprietorship with its principal office and place of business located at 837 Hunter St., N.W., Atlanta, Georgia.

Respondents Lamar Toland and James Toland are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

The spelling of the name of the corporate respondent in advertising is not standardized; for example, the name Le Conte sometimes appears as one word, "LeConte," and sometimes as two, "Le Conte," and the accent mark may or may not appear.

PAR. 2. Respondents are now, and for some time last past have been, engaged in manufacturing, selling and distributing drug and cosmetic preparations, as the terms "drug" and "cosmetic" are defined in the Federal Trade Commission Act, for external use in the treatment, care and improvement of conditions of the hair and scalp. Respondents sell said preparations to wholesalers who in turn sell to beauty parlors and to the public. Respondents sell said preparations directly to the public through mail order.

Respondent Elton C. Toland, doing business as University Health & Beauty Discount Center of Atlanta, Georgia, sells and distributes, and has sold and distributed, said preparations directly to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning their said products by the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements placed in newspapers of general circulation, national magazines, trade magazines, their own published magazines, brochures; and on packages, displays, and product labels; and on radio and television; and in ora

sales presentations to beauty supply dealers, prospective purchasers and purchasers, and others, for the purpose of inducing and which were likely to induce, directly, or indirectly, the purchase of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of numerous statements and representations contained in said advertisements, but not all inclusive thereof, are the following:

Never accept a substitute for LeConte;
Demand to know the ingredients in a product that have been proven to make hair grow. * * *

* * * * *

The remarkable Hormones Hair Grow Back Treatment GROW[S] BACK HAIR* * *GUARANTEED RESULTS!

* * * * *

For the last 35 years, the FDA has forbidden the use of the word "hair grow" as applied to the so-called hair-growing preparations. At the time this law was enacted, no known combination of ingredients were known to make hair grow. So the law was properly enacted.

In 1947, the cosmetic chemists of Le Conte' Cosmetics, Inc., discovered a combination of raw materials, which, when compounded with the right kind of hormones, in the proper proportion, promoted the growth of hair.

* * *Le Conte Hormones with Tolanol and Takanal, is the only hair care treatment on the market with this right combination of chemicals. This has been proven by Doctors and clinical testing to be effective.* * *

Takanal has recently been added to Le Conte' Growhair Treatment to regulate the metabolism which stimulates faster hair growth.

* * *AN EXAMPLE OF WHAT IS TAKING PLACE WITH HORMONES in hair products:

Without any kind of research, or knowledge of hormones; without any biological or clinical testing, the market exploiters are using the word "Hormones" on containers. Since the market exploiters DO NOT MEET the requirements of the FDA which requires proof of positive results for growing hair, they are trying to fool you. THEY DO THIS BY USING LETTERS THAT SPELL NOTHING. "GRO" is not a word like "GROW." GROW is a word with a meaningful definition. GRO means nothing.

* * *WHY GET "HAIR-NOTHING" WHEN YOU CAN GET LeCONTE GROW-HAIR TREATMENT, A TESTED AND PROVEN PRODUCT.

* * * * *

Only years of research on hormones and their behavior can qualify research chemists properly employ hormones in any product used by humans.

The incomparable quality found in LeConte Hormones with Tolanol growhair treatment is the result of 22 years of dedicated research.

* * * * *

Le Conte' chemists, through years of scientific investigation have isolated those hormones that are the most active in the growth and condition of human hair.

* * * * *

No other product has the quality of LeConte'.
PROVE IT TO YOURSELF!
Eliminate Dandruff.* * *

* * * * *

THE NEW ADDITION TAHANAL [sic]* * *PREVENTS FALLING HAIR AND
STOPS DANDRUFF.

* * * * *

Le Conte HAIRSPRAY with TOLANOL and HORMONES* * *goes three times
further than other sprays.

* * * * *

Everyone can use LeConte without fear of any harmful after effects.

* * * * *

The only one [hair care treatment on the market] with written documentary proof
from biological, clinical, and laboratory tests proving Le Conte safe, non irritating [sic],
and more effective.* * *

* * * * *

Only LeConte hair care products have documented proof by government standards to
be safe.

PAR. 5. By and through the use of the above-quoted statements and
representations, and others of similar import and meaning, but not
expressly set out herein, respondents have represented, and are now
representing, directly or by implication:

1. That respondents' product or products, or ingredients therein,
will cause human hair to grow or will regulate human metabolism so as
to stimulate hair growth.
2. That respondents' product or products, or ingredients therein,
constitute a medical treatment for conditions of the hair or scalp.
3. That respondents' product or products, or ingredients therein,
have met the requirements of the Food and Drug Administration in
proof of their effectiveness to grow hair, and have consequently
received the approval of the Food and Drug Administration to bear the
label "hair grow" or "growhair."
4. That tests by physicians, and clinical and biological tests have
proven the effectiveness, in a manner acceptable to the scientific

community, of respondents' product or products, or ingredients therein, to cause human hair to grow.

5. That respondents' products are the result of research by an authority on hormones, that is, a person or persons qualified by scientific training and experience to have special knowledge of or expertise in human hormones as such knowledge and expertise are recognized in the scientific community.

6. That the hormonal component of respondents' products applied topically in combination with other ingredients stimulates, or contributes to the stimulation of, human hair growth.

7. That respondents' product or products, or ingredients therein, eliminate dandruff.

8. That respondents' product or products, or ingredients therein, prevent the loss of hair.

9. That respondents' hair spray product provides the user with three times as much application as other hair sprays.

10. That everyone can use respondents' products without possibility of harmful consequences.

11. That respondents' hair care products are unique in that they have been tested for safety according to government or other standards.

PAR. 6. In truth and in fact:

1. Respondents' product or products, or ingredients therein, do not have the ability to cause hair to grow; nor does any such product or ingredient regulate human metabolism so as to stimulate hair growth.

2. Respondents' product or products, or ingredients therein, do not constitute a medical treatment for conditions of the hair or scalp.

3. Respondents' product or products, or ingredients therein, have not met the requirements of the Food and Drug Administration as to proof of effectiveness in growing hair, nor has the Food and Drug Administration approved the use of the words "growhair" or "hair grow" in respondents' labeling.

4. No tests by physicians, nor clinical or biological tests, have proven the effectiveness, in a manner acceptable to the scientific community, of respondents' product or products or ingredients therein, to cause human hair to grow.

5. The one person principally responsible for the development of the hormonal component in Le Conte products is not an authority on hormones; that is, he is not qualified by scientific training and experience to have special knowledge of or expertise in human hormones, as such knowledge and expertise are recognized in the scientific community.

6. The hormonal component of respondents' products applied

topically in combination with other ingredients does not stimulate or contribute to the stimulation of human hair growth.

7. Respondents' product or products, or ingredients therein, do not eliminate dandruff.

8. Respondents' product or products, or ingredients therein, do not prevent the loss of hair.

9. At the time of the representation respondents had no reasonable basis to support the claim that their hair spray product provided the user with three times as much application as other hair sprays in that respondents had no competent and reliable scientific evidence to support such representation.

10. At the time of the representation respondents had no reasonable basis to support the claim that everyone could use respondents' products without possibility of harmful consequences.

11. Respondents' hair care products are not unique in having been tested for safety according to government or other standards. In fact, the Food and Drug Administration recommends that all manufacturers conduct safety tests on their hair care products, and a significant number of manufacturers conduct such tests.

Therefore, the statements as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency 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 respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of 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 in or affecting commerce and unfair or deceptive acts or practices 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 issued its complaint on April 29, 1975, charging the respondents named in the caption hereof with

violation of Sections 5 and 12 of the Federal Trade Commission Act, and the respondents having been served a copy of that complaint together with a proposed form of order; and

The Commission having duly determined upon a joint motion of Counsel Supporting the Complaint and respondents' counsel that in the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication pursuant to Section 3.25(c) of the Commission's Rules; 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 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Le Conte Cosmetics, Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2520 South Main St., in the city of Los Angeles, State of California.

The corporate respondent trades and does business under its own name and as Many Ways to Beauty Corporation.

Respondent Elton C. Toland is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondent Elton C. Toland also trades and does business as University Health & Beauty Discount Center, a sole proprietorship with its principal office and place of business located at 837 Hunter St., N.W., Atlanta, Georgia.

Respondents Lamar Toland and James Toland are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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 Le Conte Cosmetics, Incorporated, a corporation, trading and doing business under its own name and as Many Ways to Beauty Corporation, and Elton C. Toland, individually, and as an officer of said corporation, and trading and doing business as University Health & Beauty Discount Center, and Lamar Toland, and James Toland, individually and as officers of said corporation, and respondents' agents, representatives and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or the transportation or distribution of any hair care products or any other products do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by means of the United States mail, or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or indirectly that:

1. Respondents' products, or any ingredients therein, will cause human hair to grow or regulate human metabolism so as to stimulate hair growth; or misrepresents in any manner the effect of respondents' products, or any ingredients therein, on the structure or on any function of the body.

2. Respondents' products, or any ingredients therein, constitute a treatment; or misrepresents in any manner that respondents' products are a specific for any disorder of the hair or scalp or for any other bodily disorder.

3. Respondents' products, or any ingredients therein, have met the requirements of the Food and Drug Administration in proof of their effectiveness to grow hair, or have received the approval of the Food and Drug Administration to bear the label "hair grow" or "grow hair"; or misrepresents in any manner that an approval of any of their products or an approval of advertising or labeling claims relating to any of their products has been obtained from any individual or organization.

4. Tests by physicians, clinical, biological or other tests have proven the effectiveness of respondents' products, or ingredients therein, to cause human hair to grow; or misrepresents in any manner the scientific or other basis of any claims as to their products' effect on humans.

5. Respondents' products are the result of research by an authority on hormones, or by anyone qualified by scientific training and

experience to have special knowledge of, or expertise in human hormones, as such knowledge and expertise are recognized in the scientific community; or misrepresents in any manner the qualifications of the person or persons performing research on any of their products, or the relevance of such qualifications or research to the findings claimed:

Provided, however, respondents may state their years of experience in the compounding, blending, and manufacturing of cosmetics, including products with hormone ingredients.

6. The hormonal component of respondents' products has any effect on the stimulation of human hair growth; or misrepresents in any manner the effect of such hormonal component.

7. Respondents' product or products, or any ingredients therein, eliminate dandruff; or misrepresents in any manner the beneficial effect of such products or ingredients on dandruff or any scalp disorder.

8. Respondents' products, or any ingredients therein, prevent the loss of hair or baldness.

9. Respondents' hair spray product provides the user with three times as much application as other hair sprays; or represents in any manner the capacity for application of any of their products, unless at the time of such representation respondents have a reasonable basis to substantiate such representation.

10. Everyone can use respondents' products without possibility of harmful consequences; or represents in any manner the possibility of use of their products without harmful or allergic consequences, unless at the time of such representation respondents have adequate and reliable scientific documentation of such claims.

11. Respondents' hair care products are unique in that they have been tested for safety according to government or other standards; or misrepresents in any manner the uniqueness of their products.

B. 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 in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' hair care products, or any other products, which advertisements contain any of the representations prohibited in Paragraph A hereof.

C. Communicating orally, visually, in writing, by product labels, displays, or in any other manner, directly or by implication, any of the representations prohibited in Paragraph A hereof.

It is further ordered, That each individual respondent named herein shall promptly notify the Commission of each change in his business or

employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the business or employment as well as a description of the respondent's duties and responsibilities in that business or employment.

It is further ordered, That:

A. Respondents deliver a copy of this order to all present and future distributors, franchisees, licensees, and sales representatives and to any other person or entity connected with respondents engaged in the offering for sale or the sale of any of respondents' products, or in any aspect of preparation, creation, or placing of advertising for the offering for sale, sale, or distribution of respondents' products;

B. Respondents provide each person or entity described in Paragraph A above with a form, returnable to said respondents, clearly stating his or her intention to conform his or her business practices to the requirements of this order; respondents shall retain said statement during the period said person or entity is so engaged, and make said statement available to the Commission's staff for inspection and copying upon request;

C. Respondents inform each person or entity described in Paragraph A above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity, unless such person or entity agrees to and does file notice with said respondents that he or she will conform his or her business practices to the requirements of this order; and that said respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this order;

D. In the event such person or entity will not agree to file notice set forth in Paragraph B above with respondents and conform to the provisions of this order, respondents shall not use or engage or continue the use or engagement of such person or entity to sell, offer to sell, or promote the sale of respondents' products;

E. Respondents institute a program of continuing surveillance adequate to reveal whether the business practices of each of said persons or entities described in Paragraph A above conform to the requirements of this order; and

F. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any person or entity described in

Paragraph A above, respondents shall within 24 hours notify such person or entity by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said person or entity upon receipt by respondents of actual knowledge of any further violations of this order by such person or entity. Respondents shall obtain from such person or entity written acknowledgement of receipt of such Notice which acknowledgement shall indicate the date of receipt of such Notice. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this order, following a person or entity's receipt of the aforesaid Notice, respondents shall permanently cease dealing with such person or entity.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its 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 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
NEW PROCESS COMPANY, INC., ET AL.

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

Docket C-2824. Complaint, May 28, 1976—Decision, May 28, 1976

Consent order requiring a Warren, Pa., mail order seller and distributor of wearing apparel, among other things to cease failing to disclose the limitations of their "free" trial wear period; substituting inferior merchandise to that ordered without prior consumer authorization; misrepresenting their maintenance of a legal department; that collection letters are final notices before litigation; that nonpayment of debts will result in local credit investigations and legal action; and misrepresenting that in the event of litigation, debtors will be required to pay all court costs, and their properties may be seized to satisfy judgments if found guilty.

Appearances

For the Commission: *Thomas J. Keary* and *Alan L. Cohen*.

For the respondents: *Timothy J. May* and *E. Bruce Butler*, *Patton, Boggs, Blow, Verrill, Brand & May*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New Process Company, Inc., a corporation, and Robert P. Eaton, an individual, hereinafter sometimes 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 New Process Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 220 Hickory St., Warren, Pennsylvania.

Respondent Robert P. Eaton is an individual engaged in the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, with his office and principal place of business located at Warren National Bank Building, Suite 309, Warren, Pennsylvania.

The aforementioned respondents cooperate and act together to bring about some of the acts and practices which are hereinafter set forth.

PAR. 2. Respondent New Process Company, Inc. is now, and for some