

Complaint

95 F.T.C.

IN THE MATTER OF
HAYOUN COSMETIQUE, INC., ET AL.

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

Docket C-3019. Complaint, May 9, 1980—Decision, May 9, 1980

This consent order requires, among other things, a New York City marketer and advertiser of products known as Hayoun Miracle Lotion, Hayoun Drying Lotion, Hayoun Lemon Moisturizer and Hayoun Black Mask, and its corporate president, to cease disseminating advertising representing that the use of these products, alone or as part of the Hayoun Cosmetique Kit, will cure acne; eliminate acne scars and pockmarks; and result in a skin free of acne blemishes. Respondents are required to have a reasonable basis for representations relating to product characteristics, performance and efficacy; and maintain substantiating evidence for a period of three years. The order additionally requires that respondents conspicuously disclose that no product cures acne in every advertisement for the first six months of actual advertising of an acne preparation.

Appearances

For the Commission: *Mark A. Heller, Ira Nerken and Ross D. Petty.*

For the respondents: *Norman R. Grutman, Grutman & Schafarina,*
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 Hayoun Cosmetique, Inc., (hereafter "Cosmetique") a corporation and Edouard Hayoun, (hereafter "Hayoun") as an individual and corporate officer, at times referred to as respondents, having 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. Cosmetique is a corporation organized existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 212 E. 68 St., New York, New York.

PAR. 2. Hayoun is an individual and corporate president of Cosmetique. He formulates, directs and controls the acts and practices of said corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

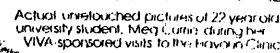
The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 3. Respondents are now and for some time have been engaged in the business of marketing and advertising health-related products including but not limited to products known as Hayoun Miracle Lotion, Hayoun Drying Lotion, Hayoun Lemon Moisturizer and Hayoun Black Mask. The aforesaid products are and were offered alone and as part of a program for the treatment of acne known as the Hayoun Cosmetique Kit (sometimes hereafter "Kit"). In connection with the manufacture and marketing of said products, respondents have disseminated, published and distributed, and now disseminate, publish and distribute, advertisements and promotional material for the purpose of promoting the sale of said products for human use. These products, as advertised, are "drugs" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning the Kit and/or any of the individual components thereof through the United States mails and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to the insertion of advertisements in magazines and newspapers with national circulations for the purpose of inducing and which were likely to induce, directly, or indirectly, the purchase of said products in commerce.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof are the following:

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FEVER

1. The *Journal of Management Education* is a peer-reviewed journal that publishes research, theory, and practice in the field of management education. It is published by the American Management Education Association (AMEA).
 2. The journal is published quarterly, with issues in January, May, September, and December.
 3. The journal is published in print and online formats.
 4. The journal is published in English.
 5. The journal is published in the United States.

For your Haydon Costumebook, please send money order or check for \$29.95 plus \$2.00 for postage and handling (New York residents add appropriate sales tax) to Haydon Costumebook, 212 E. 68th Street, New York, New York 10021. Allow four weeks for delivery.

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Complaint

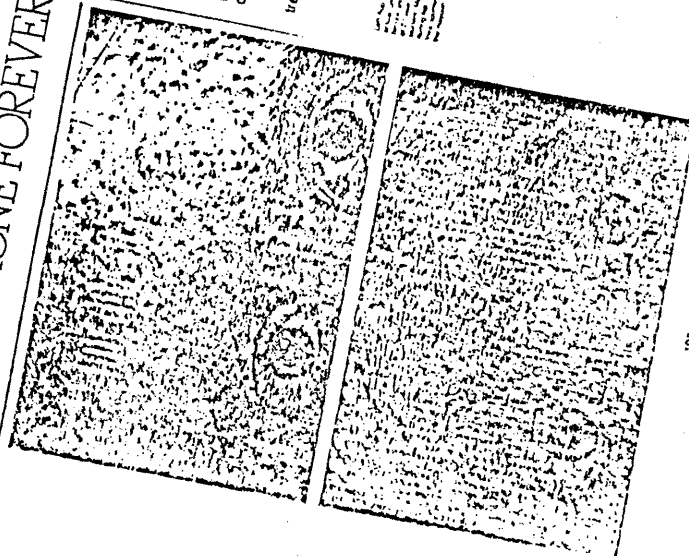
Scientifically reconstituted for optimum effectiveness in home use. It comes complete in a handy, easily transportable 5 1/2" X 7" X 2 1/4" kit with four boxed preparations and full directions as to their simple application and use. By devoting approximately twenty minutes per day, the treatment will normally take from four to six weeks. The treatment is unconditionally guaranteed to immediately arrest, reduce, or most violent and tenacious active condition—including the scars and pockmarks normally left behind.

One of the world's foremost authorities on beauty and skin care, Edward Hayoun, has perfected a unique, non-surgical answer to the physically and psychologically destructive nature of common acne. This remedy featured editorially in *Viva* magazine, has an unerring history of success with all of the many men, women, and children Hayoun has personally treated over more than two and one-half decades.

Now, this extraordinary treatment has been



BANISH ACNE FOREVER



PAR. 6. Through the use of said advertisements and others referred to in Paragraphs Four and Five, respondents represented, and now represent, directly or by implication that:

- a. Use of the Hayoun Cosmetique Kit will cure acne.
- b. Use of the Hayoun Cosmetique Kit will eliminate the scars and pockmarks caused by acne regardless of the severity of the condition.

PAR. 7. In truth and in fact:

- a. Use of the Hayoun Cosmetique Kit or any of its components either alone or as part of said Kit will not cure acne.
- b. Use of the Hayoun Cosmetique Kit or any of its components either alone or as part of said Kit will not eliminate the scars and pockmarks which may result from acne.

Therefore, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, false advertisements and the statements and representations set forth in Paragraph Six were and are false, misleading or deceptive.

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent that use of the Hayoun Cosmetique Kit will be effective in the treatment of acne.

PAR. 9. In truth and in fact, there existed at the time of the first dissemination of the representations in Paragraphs Six and Eight no reasonable basis for making them in that respondent lacked competent and reliable scientific evidence to support each such representation. Therefore, the making and dissemination of said representations as alleged constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 11. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertis-

ments, 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 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 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 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 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 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 Hayoun Cosmetique, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 212 E. 68 St., New York, New York.

2. Respondent Edouard Hayoun is an individual and corporate officer of Hayoun Cosmetique, Inc., and maintains an office at 212 E. 68 St., New York, New York.

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.

FEDERAL TRADE COMMISSION DECISIONS

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Decision and Order

ORDER

I

It is ordered, That respondents, Hayoun Cosmetique, Inc., a corporation, its successors and assigns, and its officers, and Edouard Hayoun, individually and as a corporate officer, and the respondents' agents, representatives, and employees, directly or through any corporation, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisements by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of products known as Hayoun Miracle Lotion, Hayoun Drying Lotion, Hayoun Lemon Moisturizer and Hayoun Black Mask either alone or as part of the Hayoun Cosmetique Kit (hereinafter "Kit") or any other acne product or regimen will cure acne or any skin condition associated with acne.
2. Represents use of Kit or any of its components either alone or as part of Kit or any other acne product or regimen will eliminate the scars and/or pockmarks which result from acne or any other associated condition.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. represents that use of the Kit or any of its components or any other product or regimen will result in skin free of pimples, blackheads, whiteheads or other acne blemishes or will be efficacious in the treatment of acne;
2. represents that use of the Kit or any of its components or any other product or regimen will reduce or eliminate scars or pockmarks.

unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). "Competent and reliable scientific or medical evidence" shall be defined as evidence in the form of at least two well-controlled double-blind clinical studies which are conducted by different persons, independently of each other. Such persons shall be dermatologists who

are qualified by scientific training and experience to treat acne and conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for each such representation(s).

II

It is further ordered, That within sixty (60) days of the acceptance of this order, respondents shall cease and desist from disseminating or causing the dissemination of advertisements for the Kit or any of its components or any other acne product or regimen, unless, during their first six (6) months of actual advertising beginning sixty (60) days after this order becomes final, respondents clearly and conspicuously disclose in every advertisement the corrective message that no product can cure acne. Nothing in any part of each such advertisement shall in any way obscure or contradict the clear meaning of this disclosure. The obligation to run corrective advertisements shall not in any way alleviate other order obligations. Furthermore such advertisements shall not represent, directly or indirectly, that the Federal Trade Commission approves, recommends or in any manner endorses the advertised product or product advertising.

III

It is further ordered, That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That each respondent 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 after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

It is further ordered, That each respondent shall maintain files and

records of all substantiation related to the requirements of Parts IB and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to that portion of the order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written request for such materials.

Modifying Order

IN THE MATTER OF

CADENCE INDUSTRIES CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1918. Decision, May 13, 1971—Modifying Order, May 12, 1980*

This order reopening and modifying an order to cease and desist issued on May 13, 1971, 36 FR 11912, 78 F.T.C. 990, substitutes the name Cadence Industries Corporation for Perfect Film & Chemical Corporation and replaces paragraph 21 of the order with a new paragraph in keeping with orders issued against their competitors and the fact that some magazine publishers do not accept short-term subscriptions transferred from the lists of discontinued publications.

ORDER MODIFYING CEASE AND DESIST ORDER

In their request filed on January 22, 1980, the respondents petitioned the Commission, pursuant to Section 2.51 of its Rules of Practice, to reopen the proceedings and modify the order of May 13, 1971, entered in Docket Number C-1918. Respondents ask that the name Cadence Industries Corporation be substituted for Perfect Film & Chemical Corporation and that numbered paragraph 21 of the order be modified. The paragraph in question reads as follows:

21. Substituting, requesting substitution or permitting substitution, except at the request of the customer, at any time during the collection period of the contract, of any magazine or publication for any magazine or publication covered by the contract without first providing the subscriber an option in writing, as stated in the subscription contract, to reduce his future payments by the pro rata portion of the remaining payments due on the cancelled magazine or other publication; provided, that respondents may offer to those subscribers with paid-in-full contracts an option to either lengthen already existing subscriptions or to select from among all of respondents' then currently offered magazines or publications, a magazine or publication as a substitute for the remaining period of the subscription.

In support of their request, respondents state that the name of Perfect Film & Chemical Corporation was duly changed to Cadence Industries Corporation on October 22, 1970, by filing said change with the Secretary of State of Delaware. Respondents have also advanced a number of considerations intended to show changed conditions of fact since the order was issued and to show that the public interest will best be served by granting their request. They allege that they cannot fully comply with paragraph 21 of the order because certain magazine publishers will not accept short term subscriptions transferred from the lists of discontinued publications. They point out that the proviso in paragraph 21 requires that they offer to subscribers with paid-in-ful