

IN THE MATTER OF

JEROME RUSSELL COSMETICS, U.S.A., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3341. Complaint, Aug. 21, 1991—Decision, Aug. 21, 1991*

This consent order prohibits, among other things, a California-based cosmetic company and its owner from representing that any product containing a Class I ozone-depleting substance will not damage the ozone layer, and from making unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Robert E. Reimer*, Los Angeles, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Jerome Russell Cosmetics, U.S.A., a corporation, and David Jerome Marcus, individually and as an officer of said corporation hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Jerome Russell Cosmetics, U.S.A., Inc. is a California corporation, with its office and principal place of business located at 19515 Business Center Drive, Northridge, California.

Respondent David Jerome Marcus is an officer of the corporate respondent named herein. He formulates, directs, and controls the acts and practices of the corporate respondent as hereinafter set forth. His address is the same as that of the corporation.

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

PAR. 2. Respondents have advertised, offered for sale, sold and distributed certain products containing the chemical 1,1,1 - Trichloroethane to the public, including but not limited to the following:

Jerome Russell Fluorescent Ultra Hair Glo, Jerome Russell Hair and Body Glitter Spray, Jerome Russell Hair Color, and Jerome Russell Fluorescent Color or Glitter (hereinafter "respondents' products").

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondents have disseminated or have caused to be disseminated promotional materials for their products. Typical examples of respondents' promotional materials and product labeling, but not necessarily all inclusive thereof, are attached as Exhibits A through C.

The aforesaid promotional material and product labeling (Exhibits A through C) includes the following statements:

Ozone Friendly, Ozone Safe - Contains no Fluorocarbons,
NO FLUOROCARBONS OZONE SAFE

PAR. 5. Through the use of statements referred to in paragraph four in promotional materials and product labeling, respondents have represented, directly or by implication, that:

1. There are no ingredients in respondents' products which will deplete the earth's ozone layer.

2. Because respondents' products contain no fluorocarbons, they will not deplete the earth's ozone layer.

PAR. 6. In truth and in fact, respondents' products contain 1,1,1 - Trichloroethane, a harmful chemical which will deplete the earth's ozone layer. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the statements and representations referred to in paragraphs four and five, respondents have represented, directly or by implication, that at the time they made such representations, respondents possessed and relied upon a reasonable basis for such representations.

PAR. 8. In truth and in fact, at the time respondents made such representations, respondents did not possess and rely upon a reasonable basis for such representations. Therefore, the representations set forth in paragraph seven were, and are, false and misleading.

PAR. 9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

Complaint

114 F.T.C.

EXHIBIT A



514

Complaint

EXHIBIT B

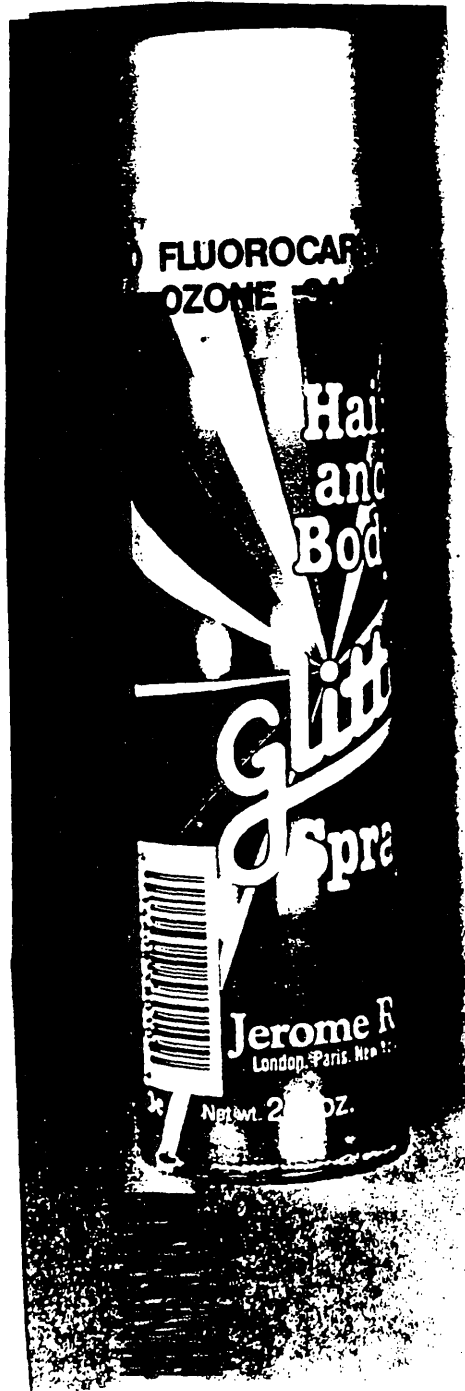


EXHIBIT C

SPRAY ON FLUORESCENT HAIR COLOR FOR HALLOWEEN

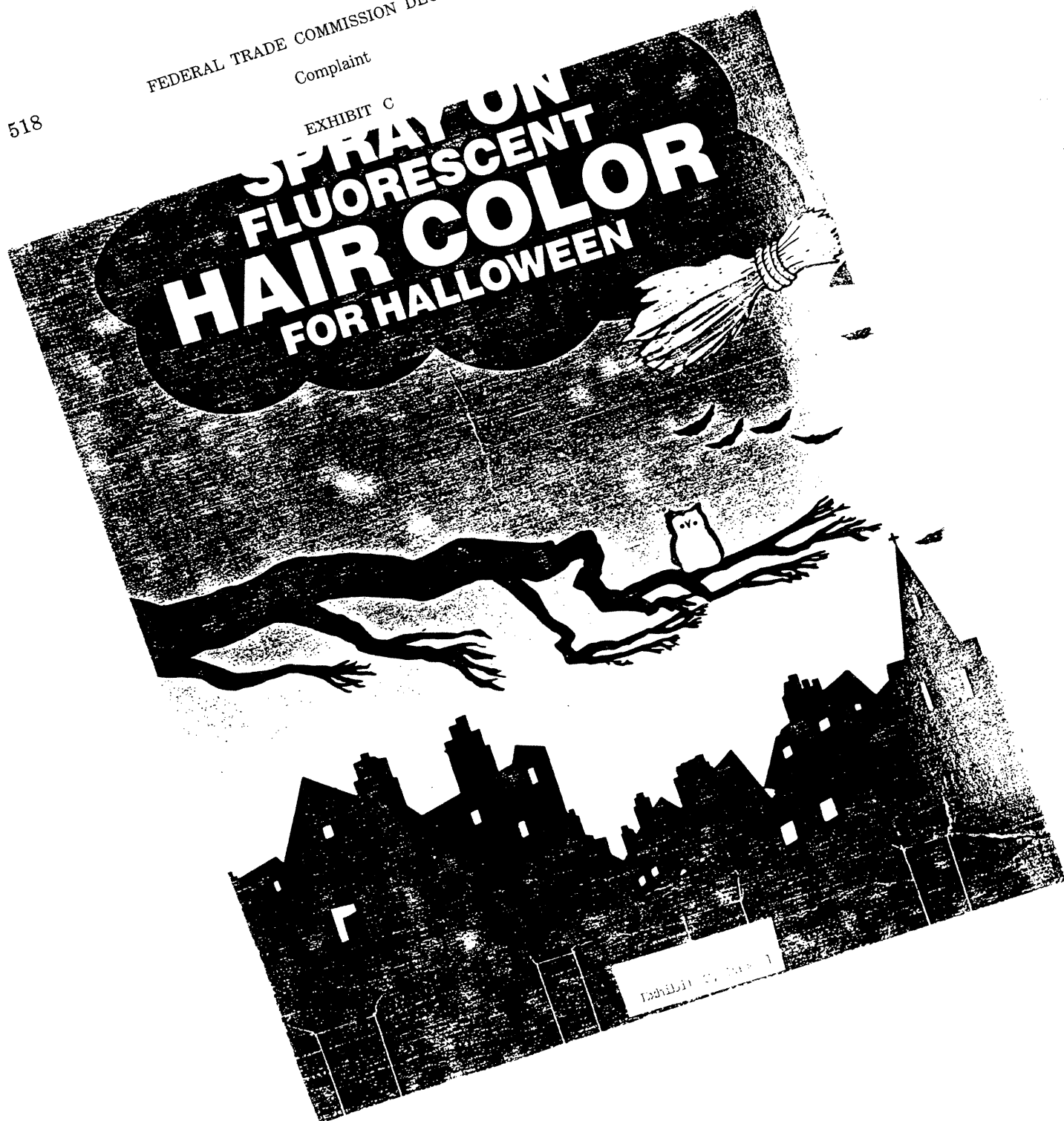
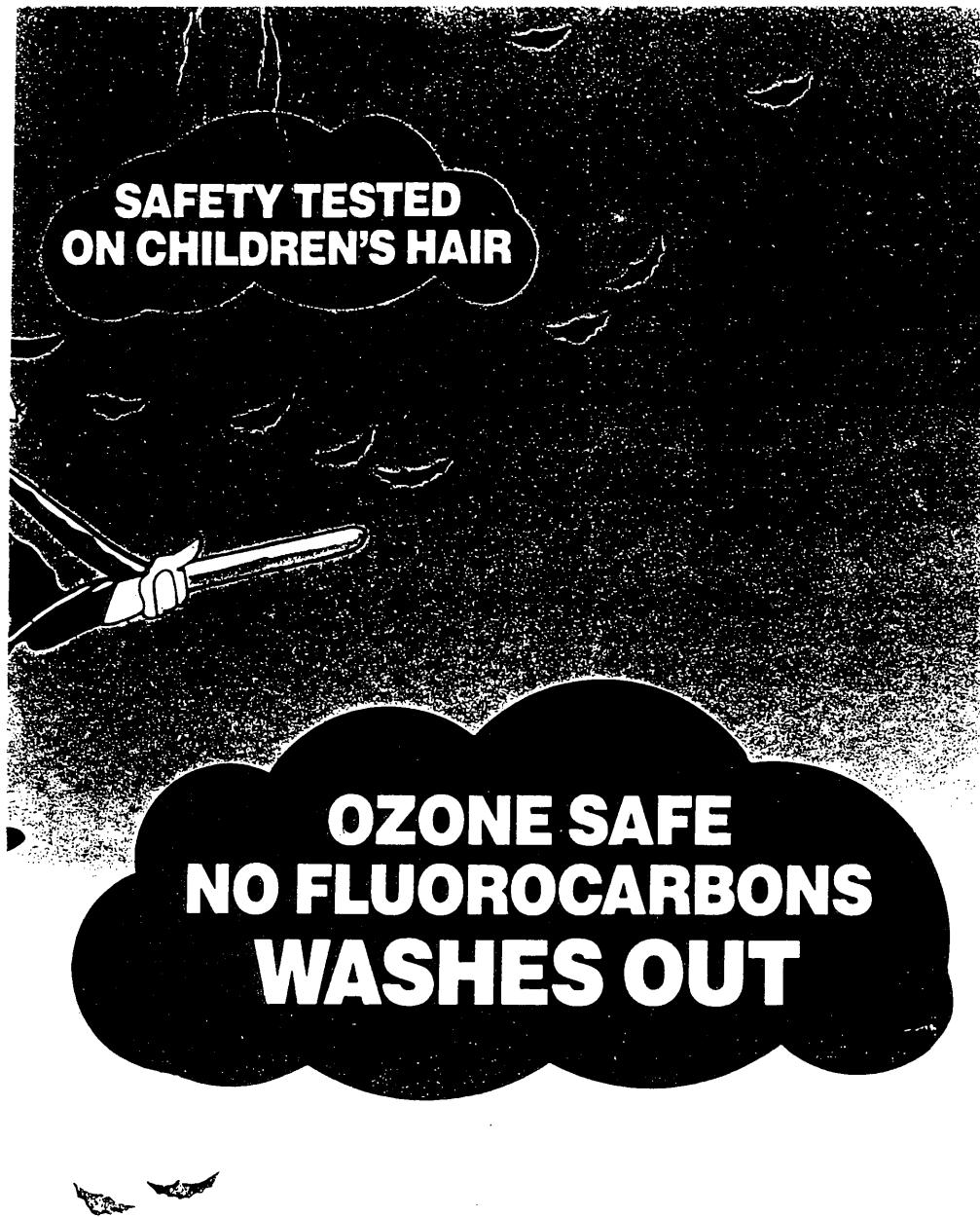


Exhibit C, Page 1



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents Jerome Russell Cosmetics, U.S.A., Inc., a corporation, and David J. Marcus, individually and as an officer of said corporation, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection 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 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, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Jerome Russell Cosmetics, U.S.A., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Jerome Russell Cosmetics, U.S.A., Inc. has its offices and principal place of business at 19515 Business Center Drive, Northridge, California.

2. Respondent David J. Marcus is an officer of said corporation. He formulates, directs, and controls the acts and practices of said corporation as set forth in the complaint and his address is the same as that of Jerome Russell Cosmetics, U.S.A., Inc.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of the order, the following definitions shall apply:

“Competent and reliable scientific evidence” means such tests, analyses, research, studies, or other scientific evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

“Class I ozone depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1 - Trichloroethane.

“Class II ozone depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered, That respondent Jerome Russell Cosmetics, U.S.A., Inc. (hereinafter “Jerome Russell”), a corporation, its successors and assigns, and its officers, and David Jerome Marcus, individually and as an officer of said corporation, and respondents’ representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols that any product containing any Class I ozone depleting substance is “ozone safe,” “ozone friendly,” or through the use of any substantially similar term or expression, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondent Jerome Russell, a corporation, its successors and assigns, and its officers, and David Jerome Marcus, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols that any product containing any Class I ozone depleting substance or any Class II ozone depleting substance, or any other ozone depleting substance, offers any environmental benefits, including but not limited to any environmental benefit claims concerning the atmosphere, upper atmosphere, stratosphere or the ozone layer, unless at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation.

III.

It is further ordered, That for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondents relied upon in disseminating any representation covered by this order.
2. All tests, reports, studies or surveys in respondents' possession or control or of which they have knowledge that contradict any representation of respondents covered by this order.

IV.

It is further ordered, That the corporate respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

VI.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution and/or manufacturing of cosmetic products or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution and/or manufacturing of cosmetic products. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII.

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

Commissioner Yao not participating.

IN THE MATTER OF
ELECTRONIC DATA SYSTEMS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 615 OF THE FAIR CREDIT REPORTING ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3342. Complaint, Aug. 21, 1991—Decision, Aug. 21, 1991

This consent order requires, among other things, the respondent to mail to applicants—denied employment based on a consumer report from a consumer credit reporting agency since January 1, 1989—letters stating the reason for the denial, and the name and address of the consumer reporting agency that supplied the respondent with the report. In addition, the order requires the respondent to comply with the consumer disclosure provisions of the Fair Credit Reporting Act (FCRA) for future job applicants and to maintain various documents demonstrating compliance with the FCRA for the next five years.

Appearances

For the Commission: *Cynthia S. Lamb* and *Jean Noonan*.

For the respondent: *Richard Shlakman*, *Electronic Data Systems Corp.*, Dallas, TX. and *Ronald K. Perkowski*, *Electronic Data Systems Corp.*, Herndon, VA.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Electronic Data Systems Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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:

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms “consumer,” “consumer report,” and “consumer reporting agency” shall be defined as provided in Sections 603(c),