

IN THE MATTER OF

DR. SCOTT M. ROSS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3363. Complaint, January 9, 1992--Decision, January 9, 1992*

This consent order requires, among other things, a Minneapolis cosmetic surgeon, d/b/a Mpls. Center for Cosmetic and Laser Surgery, to disclose in certain advertisements the existence of risks from -- and the expected recovery period following -- his cosmetic surgery services, and to have scientific evidence supporting results claims.

Appearances

For the Commission: *Richard Kelly, Walter C. Gross, III, and Melissa Feinberg.*

For the respondent: *James Taylor, Jr., Dorsey & Whitney, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, ("respondent" and "MPLS"), has violated certain provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et. seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, is a resident of Minnesota with his principal office and place of business located at 910 E. 26th Street, Suite 425, Abbott Northwestern Medical Campus, Minneapolis, Minnesota.

PAR. 2. Respondent is a medical doctor who is currently, and has for some time, engaged in the sale and the offering for sale of

services in connection with liposuction and other cosmetic surgery procedures.

PAR. 3. Respondent has placed, or caused to be placed, advertisements for MPLS in various periodicals that are in general circulation to the public, including but not limited to the advertising material referred to in paragraphs five through ten of this complaint, to promote his services in liposuction to patients and prospective patients.

PAR. 4. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce.

PAR. 5. MPLS's advertisements contain representations as to the safety and efficacy of liposuction for patients who purchase MPLS's services. Typical of these advertisements, but not necessarily all-inclusive thereof, is an advertisement that respondent ran in newspapers of general circulation under the headline, "LIPO (FAT) SUCTION." The ad prominently features two side-by-side rear view photographs of the buttocks, hips and thighs of an unidentified person or persons with the statement "43 years" appearing directly under the left photograph and the statement "25 minutes" directly underneath the right photograph, and further contains the following statement:

"It's a fact; the unwanted fat that we all get as we age on our hips, waist, thighs, knees, stomach, ankles and chin, can be removed safely and permanently in a matter of minutes."

PAR. 6. Through the use of the photographs and statements referred to in paragraph five, respondent has represented, directly or by implication, that the difference between the configurations depicted in the two side-by-side photographs fairly represents the results that can be typically achieved in an actual 25 minute liposuction procedure.

PAR. 7. In truth and in fact the difference between the configurations depicted in the two side-by-side photographs does not fairly represent the results that can be typically achieved in an actual 25 minute liposuction procedure.

PAR. 8. Through the use of the statements and representations referred to in paragraphs five and six, respondent has represented, directly or by implication, that at the time respondent made those

representations, respondent possessed and relied upon a reasonable basis for said representations.

PAR. 9. In truth and in fact, at the time respondent made those representations, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph eight was and is false and misleading.

PAR. 10. Through the use of the photographs and statements referred to in paragraph five, respondent has further represented, directly or by implication, that liposuction of the hips or thighs is a minor medical procedure, with no risk of serious adverse complications and not involving significant discomfort or the need for a lengthy recovery period.

PAR. 11. In truth and in fact, liposuction of the hips or thighs is an invasive, surgical procedure with potential serious adverse complications and risks that include shock, infection, and embolism as well as the risks that accompany any procedure that involves the use of anesthesia, and, furthermore, there is usually significant discomfort and the need for a recovery period of several weeks.

PAR. 12. Accordingly, the representations set forth in paragraph five were and are false and misleading.

PAR. 13. The acts and practices of respondent alleged in this complaint constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 Scott M. Ross, M.D. is a Minnesota resident doing business as the Mpls. Center for Cosmetic and Laser Surgery, with his principal place of business located at: 910 E. 26th Street, Suite 425, Abbott Northwestern Medical Campus, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITION

For purposes of this order, the phrase, "advertising, promotion or offering for sale," does not include any statement made by respondent or his representatives, agents or employees to a patient after the patient has agreed to purchase the service represented.

I.

It is ordered, That respondent, Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, and his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising,

promotion, or offering for sale of liposuction or any surgical procedures, do forthwith cease and desist from:

(1) Representing, directly or by implication, that results depicted in advertising are typical of results that can actually be obtained through a cosmetic surgery procedure unless such is the case;

(2) Representing, directly or by implication, through any advertisement containing before-and-after photographs, that said photographs accurately depict the results of actual surgical procedures unless he possesses a reasonable basis for such representation, which shall, at a minimum, consist of documentary evidence that the photographs appearing in the advertisement depict actual results of surgical procedures, without enhancement through makeup, padding or other non-surgical improvements in the photographs;

(3) Otherwise misrepresenting, in any manner, directly or by implication, the results that can be achieved with liposuction or any other cosmetic surgical procedure;

(4) Representing, through any advertisement, directly or by implication, that liposuction, or any other cosmetic surgery procedure that entails risk of serious medical complications, is safe unless said representation is accompanied by a clear and prominent disclosure that the procedure is a surgical procedure involving the risk of adverse medical complications;

(5) Representing, through any advertisement, directly or by implication, that any cosmetic improvement through surgery can be obtained in any specified period of time unless said representation includes the length of the typical post-operative recovery period or is accompanied by a clear and prominent disclosure of the typical length of said recovery period; and

(6) Otherwise misrepresenting, in any manner, directly or by implication, either the recovery times or the likelihood of serious adverse complications associated with liposuction or any other cosmetic surgery procedure.

II.

It is further ordered, That respondent shall distribute a copy of this order to all of respondent's present and future officers, agents, representatives, and employees of respondent having responsibilities with respect to the subject matter of this order.

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in his possession or control or of which he has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to 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 the respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That respondent shall, within sixty (60) days after the service of this order, submit to the Commission a report, in writing, setting forth in detail the manner and form in which respondent has complied with all requirements of this order.

Commissioner Yao not participating.

Complaint

115 F.T.C.

IN THE MATTER OF

THE PINKERTON TOBACCO COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF
1986 AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket, C-3364. Complaint, Jan. 9, 1992--Decision, Jan. 9, 1992

This consent order prohibits, among other things, the Virginia-based company from advertising any smokeless tobacco product on any broadcast medium, including television, in connection with the broadcast of any Pinkerton-sponsored event, and requires the respondent to distribute a copy of the order to each operating division, manager, officer, agent, or employee engaged in advertising or sponsorship activities, the production of sponsored events, or other sales materials.

Appearances

For the Commission: *Anne Maher and Judy Wilkenfeld.*

For the respondent: *William C. McClure, III, Richmond, VA.
James R. Loftis, III and T. Michael Jankowski, Collier, Shannon &
Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the Pinkerton Tobacco Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent the Pinkerton Tobacco Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Pinkerton's office and principal place of business is located at 6630 W. Broad Street, P. O. Box 1158, Richmond, VA.