

IN THE MATTER OF

ST. IVES LABORATORIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS.
5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3366. Complaint, Jan. 24, 1992--Decision, Jan. 24, 1992*

This consent order prohibits, among other things, a California company from representing that its skin cream or any other non-prescription skin cream is, contains, or has the same wrinkle-removing effect as the prescription drug tretinoin or from representing that its cosmetic products are, contain, or have the same effect as another manufacturer's prescription drug. Respondent also is prohibited from representing that its skin product is new or that it helps reduce the visible signs of aging. In addition, respondent is required to pay \$100,000 to be deposited into the United States Treasury.

Appearances

For the Commission: *Pamela J. Wood.*

For the respondent: *James B. Swire, Townley & Updike, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that St. Ives Laboratories, Inc., a corporation, ("respondent"), has 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 St. Ives Laboratories, Inc. is a Delaware corporation, with its office or principal place of business located at 8944 Mason Avenue, Chatsworth, California.

PAR. 2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 3. Respondent has advertised, offered for sale, sold or distributed health and beauty aids and cosmetics, including a skin care product known at different times as "Retinyl-A" or "St. Ives A® Retinyl Palmitate Treatment Cream" ("St. Ives A® skin cream").

PAR. 4. St. Ives A® skin cream is a "cosmetic" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 5. Respondent has disseminated or caused to be disseminated advertisements for St. Ives A® skin cream by various means in or affecting commerce, including magazines and newspapers distributed across state lines, for the purpose of inducing the purchase of St. Ives A® skin cream by members of the public.

PAR. 6. Between April and December 1988, respondent marketed two different styles of bottles of St. Ives A® skin cream before introducing the current style of bottle. Photocopies of the front and back labels of the two different styles of bottles at issue in this complaint appear in Exhibit A. (The current style of bottle is not the subject of this complaint.)

PAR. 7. Respondent's advertisements, packaging, and promotional material for St. Ives A® skin cream, including the bottles shown in Exhibit A and the advertisements attached as Exhibits B and C, portray the product with a large red "A" next to the words "RETINYL PALMITATE," with "RETINYL" enlarged and "PALMITATE" reduced. In addition, on the original package the product is actually called "Retinyl-A" on the back label. Respondent's advertisements, packaging, and promotional material use the explicit or implied name "Retinyl A" in conjunction with representations that the product is "a breakthrough in skin care!", "new", an "advance", and that it "helps reduce the visible signs of aging."

PAR. 8. Through the use of the explicit or implied name "Retinyl A" in conjunction with the statements and depictions referred to in paragraph seven (including package design), among others, respondent has represented, directly or by implication, that St. Ives A® skin cream is the same as, contains, or has the same wrinkle-removing effect as, the prescription drug tretinoin (currently marketed as Retin-A).

PAR. 9. In truth and in fact, St. Ives A® skin cream is not the same as, does not contain, and does not have the same effect on wrinkles as, the prescription drug tretinoin. Therefore, the representations set forth in paragraph eight are false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constituted and now constitute unfair and deceptive acts or practices in or affecting commerce and false advertising in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

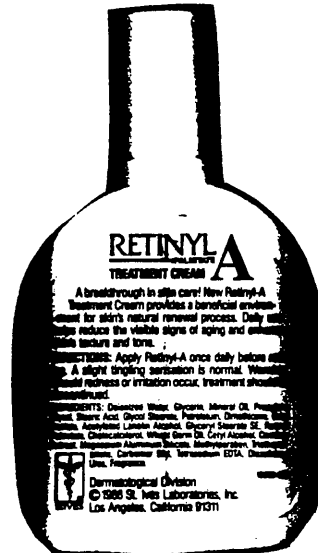
Commissioner Yao not participating.

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Complaint

EXHIBIT A

EXHIBIT A



Complaint

115 F.T.C.

EXHIBIT B

book at 88

EXHIBIT B

An Advance in Skin Care

From ST. IVES LABORATORIES



Helps reduce the
visible signs of aging

I am not capable of superhuman feats or drugs
and I am not a doctor for \$2.50 + \$1.00 postage
St. Ives Laboratories, Inc. - Palm Beach
8944 Indian Avenue, Cherry
FL 33411

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Complaint

EXHIBIT C

New!

A Breakthrough in Skin Care

Helps reduce
the visible signs
of aging.




Available at


FOOD WAREHOUSE


Fred Meyer


WAREMART


THRIFTWAY


WAREMART

If you cannot find your area distributor, St. Ives Retinyl A Treatment Cream, you may still obtain the product by sending \$4.95 plus 1.50 postage and handling to St. Ives Laboratories, Inc., Dermatology Division, 2040 Mission Avenue, Champaign, CA 91911.

EXHIBIT C

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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 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, St. Ives Laboratories, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8944 Mason Avenue, Chatsworth, California.
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

I.

It is ordered, That respondent St. Ives Laboratories, Inc., a corporation, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of "ST. IVES A® Retinyl Palmitate Treatment Cream" (hereinafter referred to as "ST. IVES A®") or any other non-prescription skin cream in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from representing in any manner, contrary to fact, directly or by implication, that such product is, contains, or has the same wrinkle-removing effect as the prescription drug tretinoin (currently known as "Retin-A"). As used in this paragraph, the term "representing" shall not apply to the act, without more, of manufacturing products for third parties.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of ST. IVES A® or any successor product, do forthwith cease and desist from creating a direct visual association between the terms "RETINYL" or "RETINOL" and "A" in such a way that the term "RETINYL" or "RETINOL" immediately precedes the term "A", through the use of any design features (including without limitation spacing, letter size, color, or capitalization).

III.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or

through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of ST. IVES A® or any successor product where the words "RETINYL" or "RETINOL" are prominently featured on the package, in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, do forthwith cease and desist from claiming or representing, directly or by implication, that such product is "new," that it is a "breakthrough" or "advance" in skin care, or that it "helps reduce the visible signs of aging."

IV.

It is further ordered, That respondent, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling, or distributing of any product which is solely a cosmetic in or affecting commerce, as "cosmetic" and "commerce" are defined in Sections 4 and 15 of the Federal Trade Commission Act, 15 U.S.C. 44 and 55, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that its cosmetic product is, contains, or has the same effect as another manufacturer's prescription drug. As used in this paragraph, the term "representing" shall not apply to the act, without more, of manufacturing products for third parties.

V.

It is further ordered, That respondent, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from distributing or selling any package of ST. IVES A® that displays the labeling or packaging shown in Exhibit A attached hereto.

VI.

It is further ordered, That respondent and its successors and assigns shall deliver to the Federal Trade Commission a certified check for One Hundred Thousand Dollars (\$100,000) payable to the "Treasurer of the United States" within ten calendar days of written notice of this order. This amount shall be deposited into the United States Treasury. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

VII.

It is further ordered, That respondent and its successors and assigns shall distribute a copy of this order to all present and future officers, to each of its operating divisions, and to each and every employee involved in managerial or marketing activities in connection with the sale of cosmetics in any business organization owned, directed or controlled, directly or indirectly, by respondent for a period of five (5) years from the date of entry of this order.

VIII.

It is further ordered, That for a period of five (5) years from the date of entry of this order, respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change 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 the order.

IX.

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

Commissioner Yao not participating.

PAR. 2. Respondents are now, and at all times relevant to this complaint have been, engaged in the advertising, promotion, offering for sale, sale, or distribution of automobiles.

PAR. 3. Respondents have disseminated or caused to be disseminated advertisements for automobiles by various means in or affecting commerce, including but not limited to national magazines and television broadcasts across state lines.

PAR. 4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical and illustrative of respondents' advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A and B. These advertisements depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars with the exception of a Volvo 240 station wagon, which remains intact.

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five (hereinafter, "the monster truck advertisements"), and others in advertisements not specifically set forth herein, respondents have represented, directly or by implication, that the monster truck event included unaltered cars, which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions.

PAR. 7. In truth and in fact, the monster truck event did not include unaltered cars subjected to equal treatment and the results shown did not accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. Among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subjected to less severe treatment than the competing cars by the monster truck. Therefore, the representations set forth in paragraph six were, and are, false and misleading.

PAR. 8. The dissemination of the aforesaid false and misleading representations by respondents as alleged in this complaint

constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act .

Commissioner Yao not participating.

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 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Volvo North America Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 535 Madison Avenue, New York, NY.

Volvo Cars of North America is a division of Volvo North America Corporation, with its headquarters located at Rockleigh Industrial Park, Northvale, New Jersey.

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

For purposes of this order, "*automobile*" shall mean any automobile or light truck, including but not limited to any pick-up truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I.

It is ordered, That respondents Volvo North America Corporation, a corporation, and Volvo Cars of North America, a division of Volvo North America Corporation, their successors and assigns, and their officers, 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 any automobile or automobile part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;

2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;

3. The use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or

4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

II.

It is further ordered, That within five (5) days of the date of service of this order, respondents, their successors and assigns, shall pay \$150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall also pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III.

It is further ordered, That within fifteen (15) days of the date of service of this order, respondents shall distribute a copy of this order to each of their operating divisions engaged in the advertising, offering for sale, sale or distribution of any automobile or automobile part, to each of their officers, and to each of their agents, represent-

atives or employees who perform discretionary functions and are engaged in the preparation or placement of advertising or other materials covered by this order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the order.

IV.

It is further ordered, That respondents, their successors and assigns, for three (3) years after the date of the last dissemination of the representation, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondents to a television network or to any other individual or entity, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondents, their successors and assigns, for three (3) years after the date of service of this order, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation or division which may affect compliance obligations arising out of this order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

VI.

It is further ordered, That respondents shall, within sixty (60) days after service 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.

Commissioner Yao not participating.

Decision and Order

115 F.T.C.

EXHIBIT A

VOLVO

EXHIBIT A

TITLE: "BEAR FOOT"
 LENGTH: 25/30 SECONDS

PRODUCT: CORE VALUES
 CODE NO.: OVSM1632/1623



(SFX-CROWD CHEERS) P.A.
 ANNCR. We're getting ready



for a wild and exciting



day out here



as he brings it to the line.



(SFX-ENGINE REVVING TIRES
 SCREECHING)



There he goes!



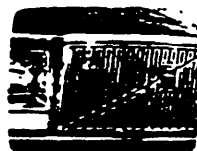
He's off and running



(SFX-CRASH-GLASS BREAKING)



Whoa! We've got one car



still standing out there.



(SFX-CRASH-CROWD SCREAMS)



That car refuses to go down.



(SFX-CROWD BOOS-SCREAMS)



ANNCR (VO) Apparently, not
 everyone appreciates the
 strength



of a Volvo



(SILENT)

(ALSO AVAILABLE IN 45

100010

EXHIBIT B



IN THE MATTER OF

SCALI, MCCABE, SLOVES, INC.

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

Docket C-3368. Complaint, Jan. 28, 1992 -- Decision, Jan. 28, 1992

This consent order requires, among other things, the New York advertising agency of Volvo North America Corporation to pay \$150,000 to the U.S. Treasury as disgorgement, and prohibits respondent from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or auto part, or the safety of a vehicle occupant in a collision.

Appearances

For the Commission: *Lisa B. Hellerman and Joel Winston.*

For the respondent: *Lewis R. Clayton, Paul, Weiss, Rifkind, Wharton & Garrison, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Scali, McCabe, Sloves, Inc. has 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 is a New York corporation, with its principal office and place of business at 800 Third Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Volvo North America Corporation, and prepared and disseminated advertisements to promote the sale of Volvo automobiles.