

Complaint

116 F.T.C.

IN THE MATTER OF

CONAIR CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3431. Complaint, June 14, 1993--Decision, June 14, 1993*

This consent order prohibits, among other things, a Connecticut-based manufacturer of personal health care and consumer electronic products from representing that sound waves emitted by the California Facial Skin Rejuvenating System, or by any substantially similar product that uses sound waves with a frequency of no more than 20 kilohertz, will firm and tone facial muscles or improve the efficacy of a facial skin clarifying toner or scrub. The order requires the respondent to have competent and reliable scientific evidence to support certain future representations it makes regarding sound waves emitted from any product.

Appearances

For the Commission: *Sylvia Kundig and Jeffrey Klurfeld.*

For the respondent: *Andrew Krulwich, Wiley, Rein & Fielding,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Conair Corporation ("respondent"), a corporation, 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. Conair Corporation is a Delaware corporation, with its principal office or place of business at 1 Cummings Point Road, Stamford, Connecticut.

PAR. 2. Respondent is a manufacturer of personal health care products and consumer electronic and kitchen appliances. It has

advertised, labelled, offered for sale, sold, and distributed the "California Facial Skin Rejuvenating System" ("the System").

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. The System consists of a hand-held, sound wave device, a clarifying toner, an exfoliating scrub, and a moisture lotion. The individual uses the sound wave device to apply the clarifying toner and the exfoliating scrub. The System also includes instructions for facial exercises to be performed with the sound wave device.

PAR. 5. As advertised, the sound wave device referenced in paragraph four is a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. As advertised, the clarifying toner, the exfoliating scrub, and the moisture lotion are "cosmetics" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 6. Respondent has disseminated or has caused to be disseminated advertisements for the System including, but not necessarily limited to, a telephone promotion, a transcription of which is attached hereto as Exhibit A, a magazine advertisement which is attached hereto as Exhibit B, and a program-length television commercial, excerpts of which are attached hereto as Exhibit C. The advertisements contain the following statements:

A. "Surface treatments only get surface results. [The System] is designed to work on and beneath the surface of the skin, to help stimulate skin renewal, and maintain muscle tone. ... More importantly, sound waves help firm and tone facial muscles that have lost their elasticity." (Exhibit A).

B. "Best of all, [the System] firms underlying facial muscles for greater elasticity." (Exhibit B).

C. "[I]ntrasound waves penetrate to help tone and firm my face." (Exhibit C).

D. "[the sound wave device] helps the muscles that you are exercising to achieve the maximum benefit." (Exhibit C).

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph six, including but not

necessarily limited to the attached Exhibits A, B, and C, respondent has represented, directly or by implication, that the sound waves emitted by the sound wave device will "firm" and "tone" the user's facial muscles.

PAR. 8. In truth and in fact, the sound waves emitted by the sound wave device will not "firm" and "tone" the user's facial muscles. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph six, including but not necessarily limited to the advertisements attached as Exhibits A, B and C, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph seven, respondent possessed and relied upon a reasonable basis that substantiated the representation.

PAR. 10. In truth and in fact, at the time respondent made the representation set forth in paragraph seven, respondent did not possess and rely upon a reasonable basis that substantiated the representation. Therefore, the representations set forth in paragraph nine was, and is, false and misleading.

PAR. 11. The advertisements attached hereto as Exhibits A and B contain the following statements:

A. "In addition, this unique skin-care system comes with three sonically-activated lotions to exfoliate, tone, and minimize the appearance of fine lines, for a radiant, younger-looking complexion." (Exhibit A).

B. "Sonically-activated lotions also help California Facial work its magic-cleansing, exfoliating and minimizing the appearance of fine lines." (Exhibit B).

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that the sound waves emitted by the sound wave device improve the efficacy of the lotions.

PAR. 13. In truth and in fact, the sound waves emitted by the sound wave device will not improve the efficacy of the lotions. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. Through the use of the statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time the respondent made the representation set forth in paragraph twelve, it possessed and relied on a reasonable basis that substantiated the representation.

PAR. 15. In truth and in fact, at the time the respondent made the representation set forth in paragraph twelve, respondent did not possess and rely on a reasonable basis that substantiated the representation. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The acts or practices of respondent, as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

Welcome to the world of California Facial. The only sound wave skin rejuvenating system. Surface treatments only get surface results. California Facial is designed to work on and beneath the surface of the skin, to help stimulate skin renewal, and maintain muscle tone. California Facial uses sound wave vibrations to help improve blood flow, bringing a rich, nutritive oxygen supply to skin and muscle cells. More importantly, sound waves help firm and tone facial muscles that have lost their elasticity. In addition, this unique skin care system comes with three sonic activated lotions to exfoliate, tone and minimize the appearance of fine lines, for a radiant, younger-looking complexion. California's Facial brings out what's hidden deep in your face, the potential to look your youthful best.

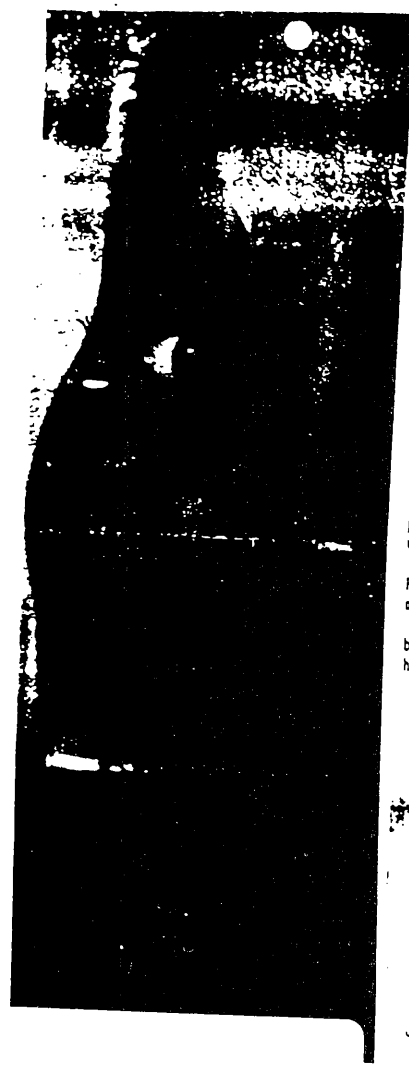
To hear a location near you, press 1. To speak to a representative, press 2. To end this call, press 3. ("3" pressed).

California Facial is available at the following local stores: K-Mart, Wal Mart, Target, JC Penny, Sears, Price Club, and Costco. Thank you for calling!

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EXHIBIT B



*The Secret
of
Youthful Skin
is
Hidden Deep
in
Your Face*

Now there's a skin care system that penetrates so deeply, it goes where even the most advanced moisturizers have never reached.

It's the California Facial Skin Regenerating System.

By using sound waves that work layers below the surface of your skin, California Facial stimulates skin renewal and brings a rich source of oxygen to plump up muscles and skin. Best of all, it firms underlying facial muscles for greater elasticity.

Sonically-activated lotions also help California Facial work its magic—cleansing, exfoliating and retexturizing the appearance of fine lines.

So before you buy another "miracle" skin cream, bring home California Facial. And discover what's hidden deep in your face. Your youth.

CON

CALIFORNIA FACIAL



SOUND WAVE
Skin Rejuvenating System

For more information call the Consumer Complaint Center at 1-800-725-3879

Ad Code 12702

EXHIBIT C

Excerpts from the program-length commercial "Conair Presents: Innovations in Health and Beauty."

[SUBSCRIPT] 1-800-527-5800

UNIDENTIFIED WOMAN: I'm 30-something! I used to spend a fortune and tons of time on professional facials to look younger, until I found California Facial. Love it! Feels more effective. The intra sound waves penetrate to help tone and firm my face. My skin looks younger. Imagine what a lifetime of facials would cost!

[SUBSCRIPT] INTRASOUND WAVES

NARRATOR: California Facial from Conair, the at-home professional facial.

UNIDENTIFIED WOMAN: And he thinks I'm 20-something!

NARRATOR: To order, call now. Your California Facial includes the sound emitter, two attachments, three special lotions, instruction book and application pad, equal to \$1,000 in salon facials, an incredible value for only \$49.95 plus shipping and handling. Order today and receive our free video on how to give yourself a California Facial. For fastest delivery, call now, or send check or money order to the address shown. Your California Facial comes with a 30-day money back guarantee.

PRINTED: 49.95 plus \$9.95 S&H
Add applicable sales tax (No CODs)
1-800-527-5800
Or send Check or Money Order to:
California Facial
PO Box 10472
Waterbury, CT 06725-0472
30 day money back guarantee

...

MARIO GONZALEZ, Director of Marketing, Conair: Yes. The tone and firmness of your face not only depends on the skin, but also on the underlying facial structure, the muscles.

COLLEEN GALIGHER, Host: Right, right.

GONZALEZ: Those muscles need to be kept in shape. They need to be worked out. California Facial provides a series of very simple and easy exercises highlighted in this booklet that are done in conjunction with the unit and this attachment.

In doing the exercises, you simply place the unit

GALIGHER: [unintelligible]

GONZALEZ: -- in place -- yes, you leave it in place, uh, and it helps the muscles that you are exercising to achieve the maximum benefit.

GALIGHER: Through the intrasound waves, is that what happens?

GONZALEZ: That is correct. Yes. So there you have it. California Facial is really very simple to use, it is a common sense system, and it is the combination of the sound waves, the creams and the exercises that make it so unique.

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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 San Francisco Regional office 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 makes the following jurisdictional findings and enters the following order:

1. Respondent Conair Corporation is a Delaware corporation. Its principal office or place of business is at 1 Cummings Point Road, Stamford, Connecticut.
2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.
3. 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 Conair Corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of "The California Facial Skin Rejuvenating System" or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication that: (1) sound waves can or will firm or tone an individual's facial muscles, and (2) sound Waves will improve the efficacy of a facial skin clarifying toner or exfoliating scrub. For purposes of this order, "substantially similar product" shall mean any skin care product, or combination of products that includes a skin care product, that use sound waves emitting a frequency of no more than 20 (twenty) kilohertz.

II.

It is further ordered, That respondent Conair Corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or combination of products that use sound waves, including but not limited to intrasound or ultrasound, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication that sound waves can or will firm or tone an individual's muscles, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the

representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

III.

It is further ordered, That respondent Conair Corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or combination of products that use sound waves, including but not limited to intrasound or ultrasound, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication that sound waves can or will improve the efficacy of a topically applied product, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

IV.

It is further ordered, That the provisions of this order shall not apply to the printing on approximately 40,000 tubes of "Deep Penetrating Body Creme" and 40,000 tubes of "Muscle Soothing Gelle" which were manufactured prior to July 1, 1992, and shipped by respondent to distributors or retailers prior to January 10, 1993.

V.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered, That the respondent shall, for ten (10) years from the date of entry of this order, distribute a copy of this order to each current and future officer, employee, agent, and/or representative engaged in the preparation or placement of advertising or other promotional materials covered by this order and shall obtain from each such person a signed and dated statement acknowledging receipt of the order.

VII.

It is further ordered, That respondent shall notify the Commission, at least thirty (30) days prior to the proposed change, of any proposed change in the 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 that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That respondent shall within sixty (60) days after the date of service of this order upon it 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 it has complied with this order.

IN THE MATTER OF

FONE TELECOMMUNICATIONS, INC.

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

Docket C-3432. Complaint, June 14, 1993--Decision, June 14, 1993

This consent order prohibits, among other things, a New York marketer of "900" number information services from misrepresenting premium offers, requires a preamble statement at the beginning of each children's message giving the child a chance to hang up without charge, and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children. In addition, the consent order prohibits the respondent from misrepresenting the ease with which a premium is obtainable and requires the disclosure of all material terms and conditions for obtaining any premium offers.

Appearances

For the Commission: *Toby M. Levin* and *Carol A. Kando*.

For the respondent: *Joel R. Dichter, Seham, Klein & Zelman*,
New York, N. Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Fone Telecommunications, 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 Fone Telecommunications, Inc., is a New York corporation, with its principal office or place of business at 444 Madison Avenue, Suite 212, New York, New York.

PAR. 2. Respondent has advertised, offered for sale and sold information services to consumers, including children. Accessed by