

Complaint

123 F.T.C.

IN THE MATTER OF

ZALE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3738. Complaint, April 28, 1997--Decision, April 28, 1997*

This consent order prohibits, among other things, the Texas-based chain of retail jewelry stores from misrepresenting the composition or origin of any imitation, cultured or natural pearl product. The consent order requires the respondent to include a word such as "artificial," "imitation," or "simulated" in close proximity to any representation that an imitation pearl product contains pearls; and to include a word such as "cultured" or "cultivated" in close proximity to any representation that a cultured pearl product contains pearls. In addition, the consent order requires the respondent, for three years, to make available to consumers in their stores an information sheet that describes the origin of imitation, cultured or natural pearls.

Appearances

For the Commission: *Matthew Gold.*

For the respondent: *Alan P. Shor*, in-house counsel, Irving, TX.

COMPLAINT

The Federal Trade Commission, having reason to believe that Zale Corporation, 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:

1. Respondent Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas.

2. Respondent operates the country's largest chain of retail jewelry stores with more than 1,200 locations throughout the United States, Guam, and Puerto Rico.

3. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed the "Ocean Treasures" line of imitation pearl jewelry, and numerous other lines of cultured pearl jewelry, to the public. These lines of jewelry have included bracelets, earrings, pendants, rings and strands. None of respondent's jewelry products has included natural pearls.

4. Federal Trade Commission industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. The Federal Trade Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR Part 23, 61 F.R. 27212 (May 30, 1996), state as follows:

A. Section 23.2 Misleading Illustrations. It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

B. Section 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations. It is unfair or deceptive to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

C. Section 23.19 Misuse of the word "pearl." (c) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

5. 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.

6. Respondent has disseminated or has caused to be disseminated advertisements for its Ocean Treasures imitation pearl jewelry products, including but not necessarily limited to the attached Exhibits A through B. These advertisements contain the following statements and depictions:

1. "ZALES THE DIAMOND, SEMI-PRECIOUS AND PEARL STORE™
Ocean Treasures™ Fine Jewelry
Created by nature, enhanced by man."
[Depictions of necklace, earrings, rings, and pendants, all of which appear to contain pearls or cultured pearls](Exhibit A)

2. "Ocean Treasures™ Fine Jewelry
Created by nature, enhanced by man."
[Depictions of necklace, earrings, and pendant, all of which appear to contain pearls or cultured pearls] (Exhibit B)

7. Through the means described in paragraph six, respondent has represented, expressly or by implication, that the Ocean Treasures line of jewelry is composed of cultured pearls.

8. In truth and in fact, the Ocean Treasures line of jewelry is not composed of cultured pearls, but rather is composed exclusively of imitation pearls. A cultured pearl is a pearl formed by a mollusk as a result of an irritant placed in the mollusk's shell by humans. An imitation pearl is a manufactured product that is designed to simulate in appearance a pearl or cultured pearl. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondent 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.

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EXHIBIT A

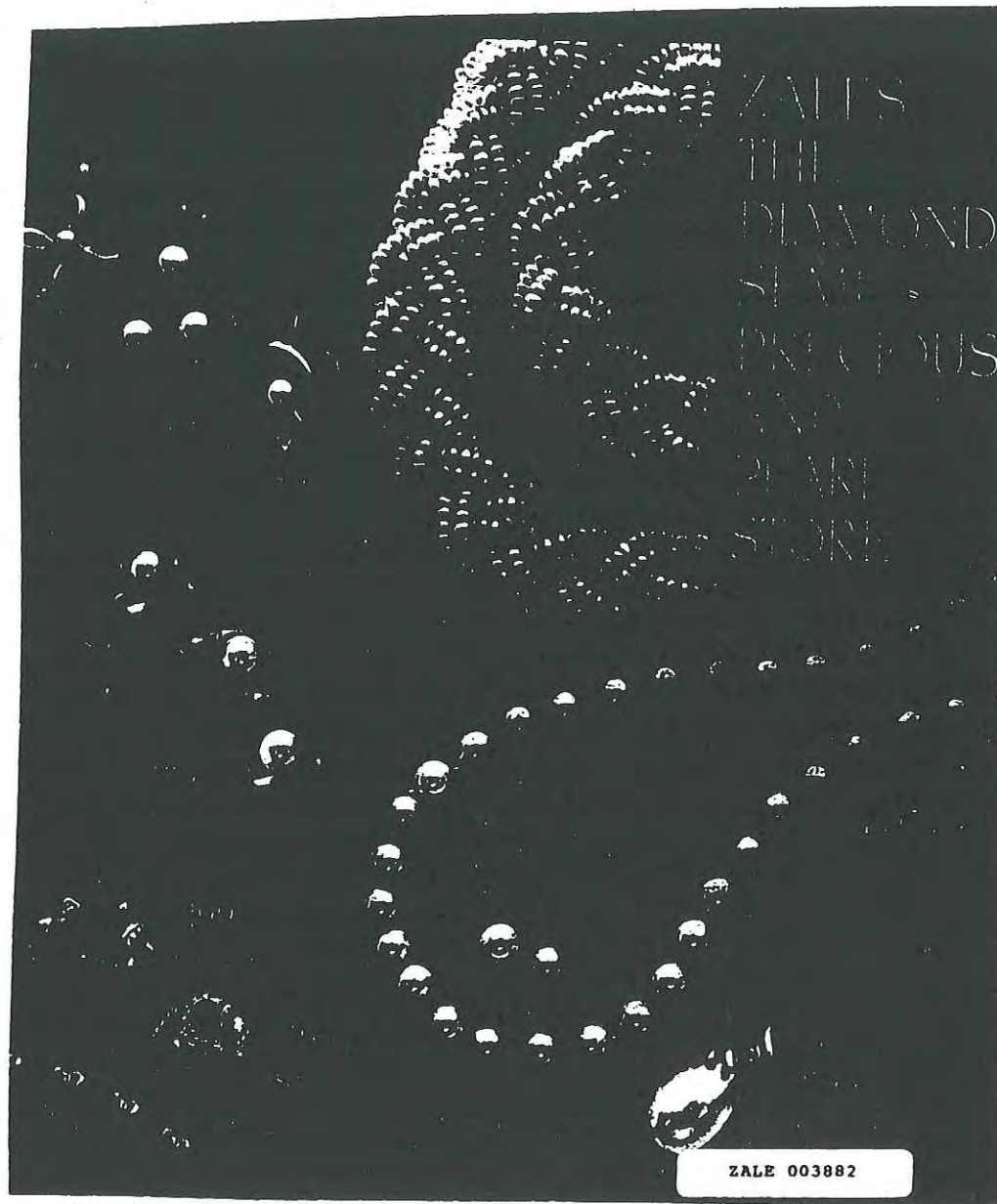


EXHIBIT A

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 the complaint that the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, and

The respondent, its attorneys, 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 the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 a 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 Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas.

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

DEFINITIONS

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

1. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, or on any in-store sign or display, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. "*Natural Pearl*" shall mean a calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

3. "*Cultured Pearl*" shall mean the composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

4. "*Imitation Pearl*" shall mean a manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

5. Unless otherwise specified, "*respondent*" shall mean Zale Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

6. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of imitation pearl jewelry, in or affecting commerce, shall not represent that imitation pearls are cultured pearls.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of imitation pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more imitation pearls, by describing such product as "artificial," "imitation," or "simulated," or with another word or phrase of like meaning.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of cultured pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more cultured pearls, by describing such product as "cultured" or "cultivated," or with another word or phrase of like meaning.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls, shall not misrepresent the composition or origin of such product.

V.

It is further ordered, That, for a period of three (3) years from the date of service of this order, respondent, directly or through any corporation, subsidiary, division, or other device, shall make available, in a place and manner calculated to attract the attention of consumers, an information sheet in the form set forth in Appendix A to this order at each store that offers for sale any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

VI.

It is further ordered, That respondent, and its successors and assigns, shall, for five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, business records demonstrating its compliance with the terms and provisions of this order, including but not limited to:

A. All advertisements and promotional materials for jewelry containing one or more natural pearls, cultured pearls, or imitation pearls;

B. All brochures, hang tags or other in-store displays relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls; and

C. All invoices and order forms relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls.

VII.

It is further ordered, That respondent, and its successors and assigns, shall deliver a copy of this order, or a summary in the form

set forth as Appendix B to this order, to all current and future principals and directors; to all current and future officers and managers with responsibilities or duties affecting compliance with the terms of this order; and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order, or a summary in the form set forth as Appendix B to this order, to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

X.

This order will terminate on April 28, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade

Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

Your Guide to

Pearls

Natural Pearls

A pearl formed in the wild by the random intrusion of a natural irritant into a mollusk's shell, without the intervention of man. There are few natural pearls on the general consumer jewelry market today.

Cultured Pearls

A cultured pearl is also grown by nature but with the assistance of man. This patented process involves the insertion of a "nucleus" into the oyster. The oyster is then carefully nurtured for the desired type of pearl. The quality of cultured pearls varies and is judged by the pearl's lustre, surface, shape, color and size.

Imitation Pearls

A manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

Decision and Order

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APPENDIX B

[To be printed on Zale Corporation letterhead]

[date]

Dear Zale employee:

This letter is to inform you that Zale Corporation recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain alleged claims for our "Ocean Treasures" line of imitation pearl jewelry. We deny the FTC's allegations, but in order to avoid protracted litigation we have entered into a settlement agreement. As part of that settlement, we are required to summarize the requirements of the settlement for our directors and officers, and for employees and others who sell our products to consumers.

The FTC alleged that Zale advertisements falsely claimed, expressly or by implication, that Ocean Treasures jewelry was composed of cultured pearls. Our settlement with the FTC contains the following requirements:

1. Zale may not represent that imitation pearls are cultured pearls.
2. Zale may not represent that imitation pearl jewelry contains pearls unless we specifically describe the jewelry as "artificial," "imitation," "simulated," or with another word or phrase of like meaning.
3. Zale may not represent that cultured pearl jewelry contains pearls unless we specifically describe the jewelry as "cultured" "cultivated," or with another word or phrase of like meaning.
4. Zale may not misrepresent the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.
5. Zale must make available to consumers for a period of three years, in each store that offers for sale natural pearl, cultured pearl, or imitation pearl jewelry, an information sheet that describes the difference among natural pearls, cultured pearls, and imitation pearls. This information sheet, which we are providing to each store, must be made available in a place and manner that is calculated to attract the attention of consumers.

Requirements 1-4, above, apply to all representations made in advertising, labeling, promotion, offering for sale, sale and distribution, including individual sales transactions.

Thank you for your assistance. If you have any questions about the requirements contained in this letter, please call _____.

Sincerely,

[Zale Official]
[Title]

IN THE MATTER OF

AMERICAN CYANAMID COMPANY

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

Docket C-3739. Complaint, May 12, 1997--Decision, May 12, 1997

This consent order prohibits, among other things, a New Jersey-based distributor of agricultural herbicides and insecticides from conditioning the payment of rebates or other incentives on the resale prices its dealers charge for their products, and from agreeing with its dealers to control or maintain resale prices. The consent order requires the respondent, for three years, to post clearly and conspicuously a statement, on any price list, advertising or catalogue that contains a suggested resale price, that dealers remain free to determine on their own the prices at which they sell the company's products. In addition, the respondent must mail a letter containing this statement to all current dealers, distributors, officers, management employees and sales representatives.

Appearances

For the Commission: *Michael Antalics and Sarah O. Allen.*

For the respondent: *Daniel K. Mayers, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Cyanamid Company, a corporation (hereinafter "Am Cy" or "respondent"), has violated the provisions of Section 5 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, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent American Cyanamid Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at One Campus Drive, Parsippany, New Jersey. Respondent is a wholly-owned subsidiary of American Home Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Five Giralda Farms, Madison, New Jersey.