

IN THE MATTER OF

PHYSICIANS FORMULA COSMETICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3909. Complaint, Dec. 10, 1999--Decision, Dec. 10, 1999*

This consent order, among other things, prohibits Physicians Formula Cosmetics, Inc., the California-based seller and distributor of cosmetics and skin-care products, from misrepresenting the extent to which any of its products are made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss, Elaine Kolish,*
and *Keith Anderson.*

For the respondent: *Tammy Berry, Pierre Fabre, Azusa, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Physicians Formula Cosmetics, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Physicians Formula Cosmetics, Inc. is a Delaware corporation with its principal office or place of business at 1055 W. Eighth Street, Azusa, California.

2. Respondent has labeled, offered for sale, sold, and distributed products to the public, including cosmetics, cosmetics brushes, and skin-care products.

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.

4. Respondent has disseminated or has caused to be disseminated packaging and labeling for its cosmetics, cosmetics brushes, and skin-care products, including but not necessarily limited to the attached Exhibits A through G. The packaging and labeling contain the following statements:

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A. Exhibit A, product card for Pull-Up Powder Brush

"MADE IN USA"

B. Exhibit B, product card for Eyebrightener Liner Brightening Liquid Eyeliner

"Made in USA"

C. Exhibit C, product card for Deluxe Cosmetic Brush

"MADE IN USA"

D. Exhibit D, product card for AquaWear Conditioning Mascara

"Made in USA"

E. Exhibit E, product packaging for Translucent Loose Powder

"Made in USA"

F. Exhibit F, product packaging for Translucent Pressed Powder

"MADE IN USA"

G. Exhibit G, product label for Shine Away Acne Control Primer

"MADE IN USA"

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that certain of its cosmetics, cosmetics brushes, and skin-care products are made in the United States, *i.e.*, that all, or virtually all, of the component parts of such products are made in the United States, and that all, or virtually all, of the labor in manufacturing such products is performed in the United States.

6. In truth and in fact, a significant portion of the components of certain of respondent's cosmetics, cosmetic brushes, and skin-care products is, or has been, of foreign origin. Therefore, the representations set forth in paragraph five were, and are, false or misleading.

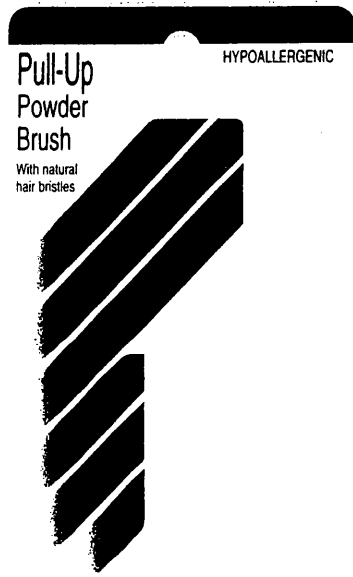
7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Leary not participating.

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EXHIBIT A



**PHYSICIANS
FORMULA**

(front)

Contents:
One Brush

**PHYSICIANS
FORMULA**

**Pull-Up
Powder Brush**

Pull-Up Powder Brush has natural hair bristles and a full shape to make it ideal for use with loose powder. The brush's pull-up design allows you to re-cap the brush without damaging the natural hair bristles. Clean and convenient for home, purse, or travel.

Hypoallergenic. Purity sealed.

DIRECTIONS: Dip brush in powder and tap off excess. Dot on face and blend, using large sweeping strokes. Can also be used to dust off excess powder after using a powder puff to pat powder on face.

TO OPEN: Remove cap. Push down protective sleeve.

TO CLOSE: Pull up protective sleeve, re-cap, and push down.

TO CLEAN: Wash gently in soap and warm water. Blot, then air-dry thoroughly.

Important: Dermatologists recommend brushes and all other cosmetic applicators be cleaned frequently to avoid skin irritation or problems.



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Physicians Formula and the P
design are registered trademarks.

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AZUSA, CA 91702
SINCE 1937: 1-800-227-0333 MADE IN USA
D-15157-01 Pierre Fabre Dermatology, France



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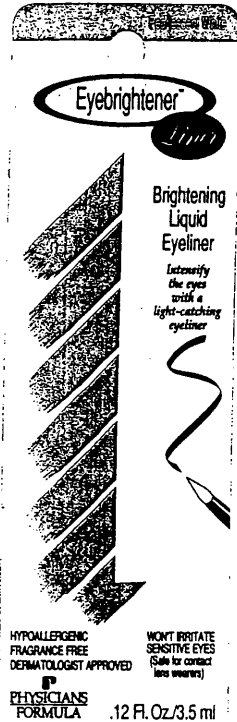
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EXHIBIT A

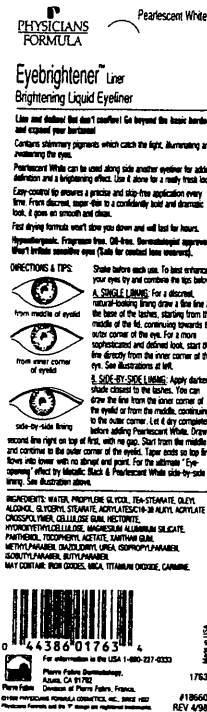
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EXHIBIT B



(front)



(back)

EXHIBIT B

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EXHIBIT C



(front)

**PHYSICIANS
FORMULA**

**Deluxe
Cosmetic Brush**

Plush natural hair bristles give this brush a feather-soft touch. Won't streak.

TO USE WITH BLUSHER: Start on the upper part of your cheek bones and sweep outwards and upwards in one stroke. Move down the cheek with sweeping outward strokes. Apply in several thin layers for a more natural look. Sweep lightly over temple, hairline for added color.

TO USE WITH LOOSE POWDER: Dip brush in powder and dot on forehead, nose, cheeks, chin. Then blend over foundation, using outward and upward strokes.

TO CLEAN BRUSH: Wash gently in soap and warm water. Blot, then air-dry thoroughly. Store with bristles up. To help prevent skin problems, Physicians Formula® recommends that you clean your brushes and all other cosmetic applicators frequently.



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IRVINDALE, CA 91706
SINCE 1937 1-800-227-0333 MADE IN USA
Division of Pierre Fabre Cosmétique, Paris, France 183998

(back)

EXHIBIT C

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EXHIBIT D



(front)

MIDNIGHT BLACK

**PHYSICIANS
FORMULA**

AquaWear Conditioning Mascara extends and thickens even the finest lashes without smearing, smudging or running. The unique "Teddy Bear" brush separates lashes to prevent flaking and clumping for a smooth, even application. This advanced waterproof formula is ideal for active lifestyles and safe for sensitive eyes and contact lens wearers. Contains soy protein to moisturize and prevent lashes from becoming dry and brittle.

Hypoallergenic. Fragrance free.

Dermatologist approved.

DIRECTIONS: Apply 1-2 coats as desired on bottom of upper lashes. For added thickness, apply final coat on top of upper lashes. For bottom lashes, glide the tip of the brush from inner to outer corner.

TO REMOVE: Can be easily washed off with soap and water or removed with Physicians Formula Eye Makeup Remover Pads or Lotion.

Physicians Formula mascaras are tested for purity. Do not add anything to this mascara. Close cap tightly after use. Never lend or borrow mascara. Do not transfer applicators between mascaras. Do not use if eyes are already irritated.

INGREDIENTS: C11-12 ISOPARAFFIN, WATER, CANDELLA WAX, AMMONIUM LAMOLATE, CARNAUBA, BEESWAX, AMMONIUM ACRYLATES, COPOLYMERS, PROPYLENE GLYCOL, POTASSIUM OCTOXYMOL-12 PHOSPHATE, NONOXYMOL-10, SEQUITE, HYDROLYZED SOY PROTEIN, PEG-20 SORBITAN BEESWAX, TETRASODIUM EDTA, DIAZOLURYL UREA, METHYLPHARMER, PROPYLPHARMER, BUTYLPHARMER, PHENETHYL ALCOHOL. MAY CONTAIN: IRON OXIDES, TITANIUM DIOXIDE, TALC, ULTRAMARINES.

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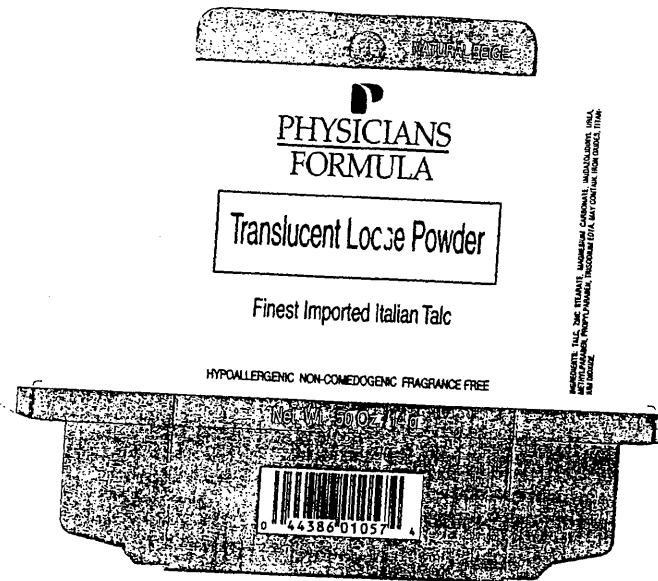
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EXHIBIT D

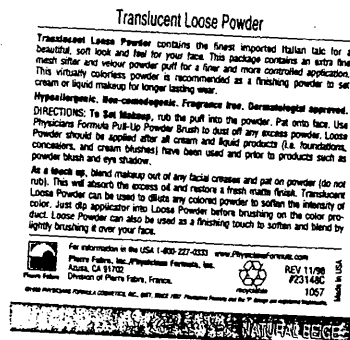
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EXHIBIT E



(front)



(back)

EXHIBIT E

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EXHIBIT F



Complaint

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EXHIBIT G

Shine Away™ Acne Control Primer is a medicated facial lotion clinically proven to help regulate oil production and prevent and clear blemishes.

Hypoallergenic. Oil free. Non-comedogenic.

DIRECTIONS: Apply daily to acne-prone areas and let dry.

WARNING: For external use only. Avoid contact with eyes. Using other topical acne medications at the same time may increase dryness or irritation of the skin. If this occurs, only one medication should be used. Keep out of reach of children.

ACTIVE INGREDIENT: SALICYLIC ACID. OTHER INGREDIENTS: WATER, POLYACRYLAMIDE (AND) C13-14 ISOPARAFFIN (AND) LAURETH-7, CAPRYLIC/CAPRIC TRIGLYCERIDE, C12-15 ALKYL BENZOATE, ACETAMIDE MEA, ZINC PCA, POLYMETHYLMETHACRYLATE, BHT, SAW PALMETTO EXTRACT, TETRASODIUM EDTA, TRIETHANOLAMINE, ISOPROPYLPARABEN (AND) ISOBUTYLPARABEN (AND) BUTYLPARABEN, DIAZOLIDINYL UREA, PHENOXYETHANOL. Physicians Formula and the "P" design are registered trademarks. ©1996 PHYSICIANS FORMULA COSMETICS, INC., AZUSA, CA 91702. SINCE 1937. 1-800-227-0333. MADE IN USA. Division of Pierre Fabre Dermo-Cosmétique, Paris, France.

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(enlarged 55%)

EXHIBIT G

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 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 violations 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, and admission by the respondent of all the jurisdictional facts set forth in the draft 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, 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 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 Physicians Formula Cosmetics, Inc. is a Delaware corporation with its principal office or place of business at 1055 W. Eighth Street, Azusa, 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, Physicians Formula Cosmetics, Inc., a corporation, 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, marking, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall not misrepresent, in any manner, expressly or by implication, the extent to which any such product is made in the United States.

Provided, however, that a representation that any such product is made in the United States will not be in violation of this order so long as all, or virtually all, of the component parts of the product are made in the United States and all, or virtually all, of the labor in manufacturing the product is performed in the United States.

Provided, further, that nothing in this order shall prohibit respondent from depleting its inventory of products bearing a marking or labeling otherwise prohibited by this order and existing on the date this order is signed, in the normal course of business, provided that no such existing inventory is shipped later than 120 days after the date that this order becomes final.

II.

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

A. All labeling, packaging, advertisements, and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

It is further ordered, That respondent Physicians Formula Cosmetics, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors,

and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver 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.

IV.

It is further ordered, That respondent Physicians Formula Cosmetics, Inc., 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. 20580.

V.

It is further ordered, That respondent Physicians Formula Cosmetics, Inc., and its successors and assigns, 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.

VI.

This order will terminate on December 10, 2019, 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 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.

Commissioner Leary not participating.

IN THE MATTER OF

CASTROL NORTH AMERICA INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3910. Complaint, Dec. 13, 1999--Decision, Dec. 13, 1999*

This consent order, among other things, prohibits Castrol North America Inc., a New Jersey-based advertiser and distributor of motor vehicle additive products and fuel system treatments, from making any representation regarding the performance, benefits, efficacy, attributes, superiority or use of such products, unless the respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Participants

For the Commission: *Michael Dershowitz, Sydney Knight, Joel Winston, C. Lee Peeler, Lisa Daniel and Susan Braman.*

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

COMPLAINT

The Federal Trade Commission, having reason to believe that Castrol North America Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Castrol North America Inc. is a Delaware corporation with its principal office or place of business at 1500 Valley Road, Wayne, New Jersey.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed motor vehicle additive products to the public, including Castrol Syntec Power System, a fuel system treatment designed to be poured into an automobile's gas tank every 3,000 miles.

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.