

Complaint

IN THE MATTER OF

L'OCCITANE, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4445; File No. 122 3115
Complaint, March 27, 2014 – Decision, March 27, 2014

This consent order addresses L'Occitane, Inc.'s advertising, marketing, and sale of "Almond Beautiful Shape" and "Almond Shaping Delight." The complaint alleges that respondent represented, in various advertisements, that topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks; topical use of Almond Beautiful Shape significantly slims the user's thighs and buttocks; topical use of Almond Beautiful Shape significantly reduces cellulite; and topical use of Almond Shaping Delight significantly slims the body in just four weeks. The complaint also alleges that respondent represented, in various advertisements, that scientific tests prove that topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks; scientific tests prove that topical use of Almond Beautiful Shape significantly reduces cellulite; and scientific tests prove that Almond Shaping Delight significantly slims the body in just four weeks. The consent order requires respondent to pay four hundred and fifty thousand dollars (\$450,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. The order also prohibits respondent from making any representation that use of a drug or cosmetic reduces or eliminates cellulite or affects body fat or weight, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Participants

For the *Commission*: Matthew D. Gold and Evan Rose.

For the *Respondent*: Richard P. Jacobson, Colucci & Umans;
Georgia Ravitz, Arent Fox LLP; and Thomas Perrelli, Jenner &
Block.

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that L'Occitane, 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 L'Occitane, Inc., is a New York corporation with its principal office or place of business at 1430 Broadway, Second Floor, New York, New York 10018.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including "Almond Beautiful Shape" and "Almond Shaping Delight." Almond Beautiful Shape and Almond Shaping Delight are "drugs" and/or "cosmetics" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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. Almond Beautiful Shape and Almond Shaping Delight are skin creams that contain almond extracts and other ingredients. Respondent promotes Almond Beautiful Shape and Almond Shaping Delight as able to slim and reshape the body.

5. Respondent disseminated or caused to be disseminated advertisements for Almond Beautiful Shape and Almond Shaping Delight, including but not necessarily limited to the attached Exhibits A to D. These advertisements contain the following statements:

- a. Shape magazine advertisement (Exhibit A)

***Body Sculpting Solved
with L'OCCITANE***

L'OCCITANE has harnessed nature's secret, with body sculpting almond extracts cultivated in the south of France. We've teamed up with the Shaping Experts

Complaint

to bring you a firmer, smoother body... and it's all just
4 weeks away!

....

Almond
Shaping Delight
3 out of 4 women saw
firmer, lifted skin.*

This luxuriously lightweight
massage gel instantly melts
into the skin to help visibly {SCULPTING EXPERT}
refine and sculpt the
silhouette.

*Reported by 25 women after 4 weeks.

....

Almond Beautiful Shape
Trim 1.3 inches in just 4 weeks.*

This ultra-fresh gel-cream helps to visibly
reduce the appearance of cellulite, while
smoothing and firming the skin.

*Centimetric loss measurement of thigh
circumference.

{CELLULITE FIGHTER}

- b. Direct mail advertisement (Exhibit B)

TIME TO SHAPE UP!
NEW Almond Shaping Delight

CLINICALLY PROVEN
SLIMMING EFFECTIVENESS

....

A noticeably **slimmer, firmer, you...**
(in just 4 weeks!)

Complaint

NEW! ALMOND SHAPING DELIGHT

SCULPTING EXPERT

**3 OUT OF 4 WOMEN SAW
FIRMER, LIFTED SKIN.***

This luxuriously lightweight massage gel instantly melts into the skin to help visibly refine and sculpt the silhouette. Almond bud extracts and almond proteins naturally slim, smooth and lift the skin's surface.

*Reported by 25 women after 4 weeks.

NEW! ALMOND BEAUTIFUL SHAPE

CELLULITE FIGHTER

**TRIM 1.3 INCHES
IN JUST 4 WEEKS.***

Concentrated in a powerful combination of Almond and a NEW lemon micro-exfoliating extract, this ultra-fresh gel-cream helps to visibly reduce the appearance of cellulite, while smoothing and firming the skin.

*Centimetric loss measurement of thigh circumference.

c. Almond Beautiful Shape packaging (Exhibit C)

This ultra-fresh gel-cream helps to visibly reduce the appearance of cellulite and to slim the thighs and buttocks, while smoothing and firming the skin.

....

• **ANTI-FAT STORAGE:** slows the appearance of new fat cells on the thighs and buttocks with Peruvian liana, quinoa extract and carrot essential oil.

Complaint

• **FAT RELEASE:** releases existing fat cells particularly with almond tree buds, rich in draining flavonoids, natural caffeine, immortelle, palmarosa and peppermint essential oils.

. . . .

Effectiveness clinically proven on the Beautiful Shape formula:

- Trims up to 3,3cm from the circumference of thighs
- Cellulite is significantly reduced

d. Almond Shaping Delight packaging (Exhibit D)

This fresh massage gel instantly melts into the skin to contribute to visibly refine and reshape the silhouette, to resculpt and tone the body contours.

. . . .

Slimming effectiveness clinically proven*

. . . .

*25 women after 28 days

6. Through the means described in Paragraph 5, respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks;
- b. Topical use of Almond Beautiful Shape significantly slims the user's thighs and buttocks;
- c. Topical use of Almond Beautiful Shape significantly reduces cellulite; and

Complaint

- d. Topical use of Almond Shaping Delight significantly slims the body in just four weeks.

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the means described in Paragraph 5, respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Scientific tests prove that topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks;
- b. Scientific tests prove that topical use of Almond Beautiful Shape significantly reduces cellulite; and
- c. Scientific tests prove that Almond Shaping Delight significantly slims the body in just four weeks.

10. In truth and in fact:

- a. Scientific tests do not prove that topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks;
- b. Scientific tests do not prove that topical use of Almond Beautiful Shape significantly reduces cellulite; and
- c. Scientific tests do not prove that Almond Shaping Delight significantly slims the body in just four weeks.

Complaint

Among other things, the evidence relied on by respondent for its representations concerning Almond Beautiful Shape consisted primarily of results from a single unblinded, uncontrolled clinical trial. Moreover, respondent exaggerated the results of the trial; the average reported reduction in thigh circumference was less than one quarter of an inch, and only one participant out of fifty was reported to have achieved a reduction of 1.3 inches. The evidence relied on by respondent for its representation concerning Almond Shaping Delight consisted primarily of results from a single nonrandomized, unblinded, uncontrolled clinical trial. Therefore, the representations set forth in Paragraph 9 were, and are, false or misleading.

11. The acts and 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.

THEREFORE, the Federal Trade Commission this twenty-seventh day of March, 2014, has issued this complaint against respondent.

By the Commission

Complaint

Exhibit A

Exhibit A: *Shape* magazine advertisement

ADVERTISEMENT

The *Shape Up* Plan

Peel off the layers of winter and reveal a sleek new you just in time for Spring



**{RENEW}
YOUR SPIRIT}**

Out with the negative, in with the positive. Learn to lighten up, and let go of the emotional build up. Replace each negative thought with a positive affirmation and see what a difference it makes in your state of mind.



**{REFRESH}
YOUR LOOK}**

Get a more polished look by paring down your closet to essential pieces that you can mix and match to make an array of stylish outfits for every occasion. Multi-tasking "musts" like a white button down shirt or a neutral colored cardigan will be easier to pair up than last year's trendy top.



**{REFINE}
YOUR DIET}**

Consuming a healthy, balanced diet and eliminating refined foods (white bread and rice, sugary cereals and pastries) from your diet may lower your overall body fat percentage and can help to reduce the appearance of unsightly dimples. The high fiber content in whole grains also helps to treat and prevent cellulite, according to the University of Maryland Medical Center.



**{RESULPT}
YOUR BODY}**

Strong, toned muscles increase your metabolism and burn calories more than cardio-only workouts, walking or stair climbing. Incorporate core strengthening exercises and resistance training into your usual workout. Be sure to pay attention to your form so you get the best results.

Exhibit A-1

Complaint

ADVERTISEMENT

Body Sculpting Solved with L'OCCITANE

L'OCCITANE has harnessed nature's secret, with body sculpting almond extracts cultivated in the south of France. We've teamed up with the Shaping Experts to bring you a firmer, smoother body... and it's all just 4 weeks away!



Almond Shower Oil
Use as a cleanser or a shaving base to leave skin silky, supple and ready for application of your targeted shaping experts.

**{BEST
SELLER!}**



Almond Milk Concentrate
96% of women saw smoother skin.*
This velvety, multi-tasking body cream for daily use nourishes, firms and tones the skin.
*Consumers tested product on 25 women after 28 days of use.

**{BODY
SMOOTHER}**



Almond Shaping Delight
3 out of 4 women saw firmer, lifted skin.*
This luxuriously lightweight massage gel instantly melts into the skin to help visibly refine and sculpt the silhouette.
*Reported by 25 women after 4 weeks.

**{SCULPTING
EXPERT}**



Almond Beautiful Shape
Trim 1.3 inches in just 4 weeks.*
This ultra-fresh gel-cream helps to visibly reduce the appearance of cellulite, while smoothing and firming the skin.
*Consumers saw product results at their L'Occitane store.

**{CELLULITE
FIGHTER}**

Mark Your Calendar

Exclusive event with L'OCCITANE and SHAPE!



WHEN: Thursday, April 5th

WHAT: Enjoy an exclusive party with expert tips and detoxifying beauty treatments. Plus, receive a special gift with any \$25 purchase.

WHERE: To find an event near you, visit usa.loccitane.com/ShapeUpEvent



Your Gift!
A \$40 Value

Exhibit A-2

Complaint

Exhibit B

Exhibit B: Direct mail advertisement



Exhibit B-1

Complaint

A noticeably slimmer, firmer you...
(in just 4 weeks!)

NEW! ALMOND SHAPING DELIGHT
\$48.70; #24622072

SCULPTING EXPERT

**3 OUT OF 4 WOMEN SAW
FIRMER, LIFTED SKIN***

This luxuriously lightweight massage gel instantly melts into the skin to help visibly refine and sculpt the silhouette. Almond bud extracts and almond proteins naturally skin smooth and lift the skin's surface.

NEW! ALMOND BEAUTIFUL SHAPE
\$44.67; #24622072

CELLULITE FIGHTER

**TRIM 1.3 INCHES
IN JUST 4 WEEKS***

Concentrated in a powerful combination of Almond and a NEW lemon micro-exfoliating extract, this ultra-fresh gel-cream helps to visibly reduce the appearance of cellulite, while smoothing and firming the skin.

SCHEME ALLEGRE
ALMOND SHAPING DELIGHT

*Reported by 35 women after 4 weeks.
Our products are available in our boutiques at us.boutiques.com or by phone at 888.621.2460. Prices may vary by location.
*Cellulite is the condition of lumpy skin.

Exhibit B-2

Complaint

**THE TRUE STORY OF
ALMOND BODY CARE**

A true customer favorite, Almond body care combines the sweet fragrance of sustainably cultivated almonds from Provence with incredibly firming and nourishing benefits. Just in time for spring, you can now reveal a firmer, smoother body!



ALMOND MILK CONCENTRATE
\$14.7 OZ. #26LC006A0

BODY SMOOTHER 96% OF WOMEN SAW SMOOTHER SKIN.*

This multi-tasking body cream nourishes, firms and tones the skin with the help of almond proteins and siliolium.

*Consider the difference on 13 women after 28 days of use.

YOUR EXCLUSIVE GIFT!
Shape-Up Ritual with any purchase at \$45 or more
HURRY! Limited quantities only.

L'OCCITANE EN PROVENCE
CONCENTRÉ DE LAIT
MILK CONCENTRATE
CORPS 8.4oz - 236g Net Wt. 0.28oz BODY

Exhibit B-3

Complaint

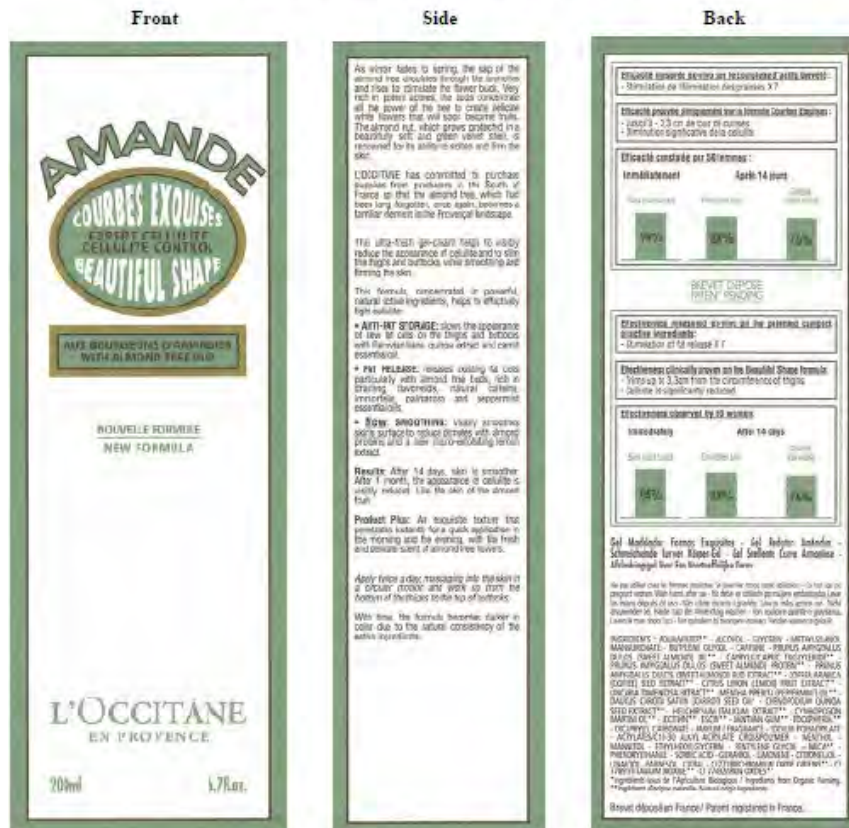


Exhibit B-4

Complaint

Exhibit C

Exhibit C: Almond Beautiful Shape packaging



Decision and Order

Exhibit D



Exhibit D-1

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent

Decision and Order

having been furnished thereafter with a copy of a draft of a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the 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 Consent Order ("consent agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent L'Occitane, Inc., is a New York corporation with its principal office or place of business at 1430 Broadway, Second Floor, New York, New York 10018.
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.

Decision and Order

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “respondent” shall mean L’Occitane, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Adequate and well-controlled human clinical study” means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.
- C. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “Covered Product” means any drug or cosmetic.
- E. “Drug” and “cosmetic” mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
- F. “Essentially Equivalent Product” means a product that contains the identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (e.g., orally, sublingually), as the Covered Product; *provided that* the Covered Product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Almond Beautiful Shape, Almond Shaping Delight, or any other topically applied product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in body size.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes weight or fat loss or a reduction in body size, unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. Respondent shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

Decision and Order

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product reduces or eliminates cellulite or affects body fat or weight, unless the representation is non-misleading, and, at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of the product are scientifically proven.

Decision and Order

V.

IT IS FURTHER ORDERED that nothing in this order shall prohibit respondent from making any representation for:

- A. Any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. Any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

IT IS FURTHER ORDERED that respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased Almond Beautiful Shape or Almond Shaping Delight from March 19, 2012 through the date of entry of this order, to the extent it has such information in its possession or control, including information available upon request from franchisees or others. Such file: (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission the sum of four hundred fifty thousand dollars (\$450,000). This payment shall be made in the following manner:

Decision and Order

- A. The payment shall be made by electronic funds transfer within ten (10) days after the date that this order becomes final and in accordance with instructions provided by a representative of the Federal Trade Commission.
- B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.
- C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers (which shall be the first priority for dispensing the funds set forth above) is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for

Decision and Order

return of the funds, directly or indirectly, through counsel or otherwise.

- E. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.
- F. In accordance with 31 U.S.C. § 7701, respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of respondent's relationship with the government.
- G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that respondent L'Occitane, 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 reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;

Decision and Order

- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its 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.

IX.

IT IS FURTHER ORDERED that respondent L'Occitane, Inc., and its successors and assigns shall deliver a copy of this order to all current and, for the next three (3) years, all future principals, officers, directors, and other employees having primary 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 L'Occitane, Inc., and its successors and assigns 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.

X.

IT IS FURTHER ORDERED that respondent L'Occitane, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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. Unless otherwise directed by a representative of the

Decision and Order

Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of L'Occitane, Inc., FTC File Number 122 3115. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

XI.

IT IS FURTHER ORDERED that respondent L'Occitane, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XII.

This order will terminate on March 27, 2034, 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

Analysis to Aid Public Comment

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.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from L’Occitane, Inc. (“respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising, marketing, and sale of “Almond Beautiful Shape” and “Almond Shaping Delight” (collectively, “the almond products”) by respondent. Respondent has marketed the almond products to consumers through its retail stores and website, and through third-party retail outlets.

The almond products are skin creams that contain almond extracts and other ingredients. According to the FTC complaint, respondent promoted the almond products as able to slim and reshape the body.

Specifically, the FTC complaint alleges that respondent represented, in various advertisements, that topical use of Almond Beautiful Shape trims 1.3 inches from the user’s thighs in just four weeks; topical use of Almond Beautiful Shape significantly

Analysis to Aid Public Comment

slims the user's thighs and buttocks; topical use of Almond Beautiful Shape significantly reduces cellulite; and topical use of Almond Shaping Delight significantly slims the body in just four weeks. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented, in various advertisements, that scientific tests prove that topical use of Almond Beautiful Shape trims 1.3 inches from the user's thighs in just four weeks; scientific tests prove that topical use of Almond Beautiful Shape significantly reduces cellulite; and scientific tests prove that Almond Shaping Delight significantly slims the body in just four weeks. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from claiming that the almond products or any other topically applied product causes substantial weight or fat loss or a substantial reduction in body size. Part I of the order is designed to fence in respondent by ensuring that extreme, scientifically unfeasible claims will not be made in the future.

Part II addresses the slimming claims at issue in this matter. It covers any representation, other than representations covered under Part I, that a drug or cosmetic causes weight or fat loss or a reduction in body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines "competent and reliable scientific evidence" as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making any representation, other than representations covered

Analysis to Aid Public Comment

under Parts I or II, that use of a drug or cosmetic reduces or eliminates cellulite or affects body fat or weight, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines “competent and reliable scientific evidence” as tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that topical use of Almond Beautiful Shape trims 1.3 inches from the user’s thighs in just four weeks; scientific tests prove that topical use of Almond Beautiful Shape significantly reduces cellulite; and scientific tests prove that Almond Shaping Delight significantly slims the body in just four weeks. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or misrepresenting that the benefits of the product are scientifically proven.

Part V of the proposed order states that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration (“FDA”), or under any new drug application approved by the FDA. This part of the proposed order also states that the order does not prohibit respondent from making representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VII of the proposed order requires respondent to pay four hundred and fifty thousand dollars (\$450,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief.

Analysis to Aid Public Comment

To facilitate the payment of redress, Part VI of the proposed order requires L'Occitane to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the almond products from March 19, 2012 through the date of entry of the order.

Parts VIII, IX, X, and XI of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Complaint

IN THE MATTER OF

**GOLDENSHORES TECHNOLOGIES, LLC
AND
ERIK M. GEIDL**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4446; File No. 132 3087
Complaint, March 31, 2014 – Decision, March 31, 2014*

This consent order addresses Goldenshores Technologies, LLC, and Erik M. Geidl’s marketing of the “Brightest Flashlight Free” mobile application to consumers for use on their Android mobile devices. The complaint alleges that fail to disclose, or adequately disclose, that, when users run the Brightest Flashlight App, the application transmits, or allows the transmission of, their devices’ precise geolocation along with persistent device identifiers to various third parties, including third party advertising networks. The complaint further alleges that the Brightest Flashlight App transmits, or causes the transmission of, device data as soon as the consumer launches the application and before they have chosen to accept or refuse the terms of the Brightest Flashlight EULA. The consent order requires respondents to give users of their mobile applications a clear and prominent notice and to obtain express affirmative consent prior to collecting their geolocation information; and to delete any “covered information” in their possession, custody, or control that they collected from users of the Brightest Flashlight App prior to the entry of the order. The order also prohibits respondent from misrepresenting (1) the extent to which “covered information” is collected, used, disclosed, or shared and (2) the extent to which users may exercise control over the collection, use, disclosure, or sharing of “covered information” collected from or about them, their computers or devices, or their online activities.

Participants

For the *Commission*: *Kerry O’Brien* and *Sarah Schroeder*.

For the *Respondents*: *Samuel T. Creason*, *Creason, Moore, Dokken & Geidl, PLLC*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Goldenshores Technologies, LLC, a limited liability company, and Erik M. Geidl, individually and as the managing member of the limited liability company (“respondents”), have violated the