

Complaint

IN THE MATTER OF

L'ORÉAL USA, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4489; File No. 122 3016**Complaint, September 24, 2014 – Decision, September 24, 2014*

This consent order addresses L'Oréal USA, Inc.'s advertising for its Lancôme Génifique (“Génifique”) and L'Oréal Paris Youth Code (“Youth Code”) facial skincare product lines. The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making unsubstantiated representations that Génifique boosts the activity of genes, thereby resulting in visibly younger skin in seven days, and that Youth Code targets specific genes to make skin look younger, act younger, and respond five times faster to aggressors such as stress, fatigue, and aging. The consent order prohibits L'Oréal from making claims that any Lancôme brand or L'Oréal Paris brand facial skincare product targets or boosts the activity of genes, thereby resulting in skin that looks or acts younger, or skin that responds five times faster to aggressors, without competent and reliable scientific evidence for these claims.

Participants

For the *Commission*: Katherine Campbell, Christine DeLorme, and Elizabeth Nach.

For the *Respondent*: Lydia Parnes, Wilson Sonsini Goodrich & Rosati PC; Jeremy Feigelson, Debevoise & Plimpton LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe L'Oréal USA, Inc. (“Respondent”), a corporation, 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'Oréal USA, Inc., is a Delaware corporation with its principal office or place of business at 575 Fifth Avenue, New York, NY 10017.

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2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to consumers, including the “Lancôme Génifique” and “L’Oréal Paris Youth Code” skincare products. These products are “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. Respondent has conducted research to identify skincare ingredients that increase activity of genes responsible for the production of proteins associated with skin function. As set forth herein, Respondent represented that the Lancôme Génifique and L’Oréal Paris Youth Code products boost the activity of or target such genes, thereby resulting in visibly younger skin.

Lancôme Génifique Products

5. Respondent has marketed the Lancôme Génifique line of products since February 2009, including Génifique Youth Activating Concentrate, Génifique Repair Youth Activating Night Cream, Génifique Cream Serum, and Génifique Youth Activating Eye Concentrate. The Génifique products are sold at prices ranging between \$60 and \$132 at Lancôme counters in department stores and beauty specialty stores nationwide.

6. From approximately February 2009 to April 2013, Respondent disseminated or caused to be disseminated advertisements, packaging, and promotional materials for the Lancôme Génifique products, including, but not necessarily limited to the attached Exhibits A through C. These materials contained the following statements:

- a. **Youth is in your genes. *Reactivate it.*¹**
See visibly younger skin in just 7 days.

GÉNIFIQUE
YOUTH ACTIVATING CONCENTRATE

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At the very origin of your skin's youth: your genes.

Genes produce specific proteins. With age, their presence diminishes.

Now, boost genes' activity² and stimulate the production of youth proteins.³

Discover the skin you were born to have.

Breathtakingly beautiful, skin looks as if lit-from-within. Its youthful quality returns: cushiony soft, astonishingly even, dramatically refined.

Clinically proven. Use AM and PM for powerful skin results in 7 days.⁴

[Graph showing that 85% of users had perfectly luminous skin, 82% had astonishingly even skin, 91% had cushiony soft skin, and 82% found skin appearance is improved.]

Learn more at **lancome.com**

¹Activate skin's youthful look. ²In-vitro test on genes.

³Clinical study on skin proteins, associated with young skin – France. ⁴Based upon consumer evaluations in a clinical study, which also consists of expert evaluations

(Exhibit A, Génifique Youth Activating Concentrate print ad (July 2011)).

- b. You sleep. Genes don't.
Wake up to visibly repaired skin. As if you had slept 2 extra hours.¹

NEW
GÉNIFIQUE
REPAIR
YOUTH ACTIVATING NIGHT CREAM

Complaint

During the night, **the speed of cell regeneration doubles.**

By screening over 4,000 genes, our laboratories identified genes responsible for cellular regeneration.

Today, Lancôme creates Génifique Repair, our first night care that **boosts the activity of genes.**²

Visibly repair and restore your skin while you sleep. The first morning, skin looks smoother and fresher. Night after night, skin is visibly younger and rested, **as if you had slept 2 extra hours.**¹

¹Based upon consumer evaluations.² In-vitro test on genes.

10 YEARS OF RESEARCH – 7 INTERNATIONAL PATENTS

(Exhibit B, Génifique Repair Youth Activating Night Cream print ad (May 2010)).

c. **LANCÔME TV – GÉNIFIQUE :15**

Voice over: Youth is in your genes . . .
On screen: Activate skin's youthful look.

Voice over: Reactivate it.
On screen super: Activate skin's youthful look.

Voice over: Lancôme invents Génifique.
On screen: GÉNIFIQUE
Youth Activating Concentrate
On screen super: Activate skin's youthful look.

Voice over: Our first skincare that boosts the activity of genes.
On screen super: In-vitro test on genes.

Voice over: See visibly . . .
On screen super: Based upon consumer evaluation.

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Voice over: . . . younger skin . . .
On screen super: Based upon consumer evaluation.

Voice over: . . . in just 7 days.
On screen: Visibly younger skin in just 7 days
On screen super: Based upon consumer evaluation.

Voice over: Génifique. Lancôme.
On screen: GÉNIFIQUE
Youth Activating Concentrate

(Exhibit C, Génifique Youth Activating Concentrate
15-second TV ad (Feb. 2010)).

7. Respondent has represented with a bar graph that a clinical study proves that Génifique Youth Activating Concentrate produces “perfectly luminous” skin in 85% of women, “astonishingly even” skin in 82% of women, and “cushiony soft” skin in 91% of women, in seven days (*see* Exhibit A). In the study depicted in that bar graph, 34 women who applied Génifique twice daily for 8 weeks answered questionnaires about their experience with the product. The women answered each question on a nine-point scale, with one on the scale equivalent to “disagree completely” and nine equivalent to “agree completely.” Among others, the questionnaire included the following three questions:

- Skin appears more radiant/luminous;
- Skin tone/complexion appears more even; and
- Skin feels softer.

8. Subjects were not asked to rate the magnitude of results achieved, but merely to indicate whether there was any improvement in a particular measure (*e.g.*, the women were not asked *how* radiant or luminous their skin felt after using Génifique, but how strongly they agreed or disagreed that there was *any* improvement in their skin’s radiance or luminosity after using the product). While 85.3% of women gave a positive response to the question asking if their skin appeared more radiant/luminous after 7 days, only 35.5% of subjects indicated that they “agree[d] completely” that their skin was more

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luminous. Similarly, only 29.4% of women agreed completely with the statement that their skin tone appeared more even, and only 58.8% agreed completely with the statement that their skin felt softer.

L'Oréal Paris Youth Code Products

9. Respondent has marketed the L'Oréal Paris Youth Code line of products since November 2010, including Youth Code Serum Intense, Youth Code SPF 30 Day Lotion, Youth Code Day/Night Cream, Youth Code Eye Cream, and a Youth Code Clinical Strength Starter System comprised of three Youth Code products bundled together. The Youth Code products are sold at drugstores and mass market retail stores, with individual products priced at approximately \$15-25 and the Clinical Strength Starter Set priced at approximately \$25-35.

10. From approximately November 2010 to April 2013, Respondent disseminated or caused to be disseminated advertisements, packaging, and promotional materials for the L'Oréal Paris Youth Code products, including but not necessarily limited to the attached Exhibits D through F. These materials contained the following statements:

a. [Left side of print ad]

ONE DROP
INSTANTLY IMPROVES SKIN QUALITY

ONE WEEK
SKIN BEGINS TO LOOK YOUNGER

ONE MONTH
REVEAL THE NEW YOUTH OF YOUR SKIN**

[Center of print ad]

**NOW, CRACK THE CODE
TO YOUNGER ACTING SKIN.**

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**NEW
YOUTH CODE
Youth Regenerating Skincare**

**10 YEARS OF GENE RESEARCH
INTERNATIONAL PATENT**

[Right side of print ad]

**THE NEW ERA OF SKINCARE:
GENE SCIENCE.**

Imagine, what if you could grow young?

Every great discovery begins by pushing the boundaries of science. After 10 years of research, now we know that recovery genes in youthful skin respond **5x faster** to aggressions than aging skin does. So even though you can't grow young, we now have the knowledge to help you begin cracking the code to younger acting skin.

[Bar graph depicting a "CLINICAL STUDY" indicating that "GENE RESPONSE TO AGGRESSIONS" is "5X FASTER" in "YOUTHFUL SKIN" compared to "AGING SKIN."]

**A dramatic new possibility against
the signs of aging:**

L'Oréal introduces Youth Regenerating Skincare: **New Youth Code Serum Intense** with GenActiv Technology.™ Designed to help increase skin's ability to recover faster from aggressions more like it did when it was younger.* With Youth Code, now you can instantly improve skin quality while revealing the new youth of your skin.**

Discover all of the Youth Code products
and learn more about gene science:
LOREALPARIS.COM/YOUTHCODE

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*Based on in-vitro testing **Skin is more youthful looking

(Exhibit D, Youth Code print ad (Feb. 2011)).

b. [Left side of print ad]

UNA GOTA
MEJORA AL INSTANTE EL ESTADO DE LA PIEL

UNA SEMANA
LA PIEL COMIENZA A LUCIR MÁS JOVEN

UN MES
DESCUBRE LA NUEVA JUVENTUD DE TU PIEL*

[Center of print ad]

AHORA, DESCIFRA EL CÓDIGO
PARA REJUVENECER LA PIEL.

NUEVO
YOUTH CODE
Youth Regenerating Skincare

10 AÑOS DE INVESTIGACIÓN GENÉTICA
PATENTE INTERNACIONAL

[Right side of print ad]

LA NUEVA ERA EN EL
CUIDADO FACIAL:
LA CIENCIA DE LOS GENES.

**¿Te imaginas que con el paso de los años
pudieras lucir más joven?**

Todo gran descubrimiento comienza
sobrepasando los límites de la ciencia. Tras
10 años de investigación, ahora sabemos
que los genes de recuperación de una
piel joven reaccionan ante las agresiones
5 veces más rápido que los de una piel
madura. Así que aunque no puedas detener

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el paso del tiempo, ahora tenemos los conocimientos para ayudarte a descifrar el código para rejuvenecer la piel.

[Bar graph depicting an “ESTUDIO CLÍNICO” indicating that “REACCIÓN DE LOS GENES ANTE LAS AGRESIONES” is “5 VECES MÁS RÁPIDO” in “PIEL JOVEN” compared to “PIEL MADURA.”]

Un gran avance contra las señales del envejecimiento: L'Oréal presenta su gama de Cuidados Faciales Rejuvenecedores: Comenzando con el nuevo suero **Youth Code Serum Intense** con la Tecnología GenActiv.TM Diseñado para aumentar la capacidad de recuperación de la piel contra las agresiones como cuando era más joven.** Con Youth Code, podrás mejorar la apariencia de tu piel al instante y lucir su nueva juventud.*

Descubre todos los productos Youth Code y conoce más sobre la ciencia de los genes visitando: LOREALPARIS.COM/YOUTHCODE

*La piel adquiere una apariencia más joven

**Basado en pruebas in vitro

(Exhibit E, Youth Code print ad (Apr. 2011)).

- c. [Front of Youth Code Clinical Strength Starter System package]

NEW
INNOVATION
FROM GENE
SCIENCE

L'ORÉAL®
PARIS
SKIN EXPERTISE

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**CLINICAL
STRENGTH**Starter
System**YOUTH CODE™****Youth Regenerating
Skincare****10 YEARS OF GENE RESEARCH
REDUCES SIGNS OF
STRESS, FATIGUE AND AGING**

[Back of Youth Code Clinical Strength Starter System
package]

**YOUTH REGENERATING DISCOVERY
Innovation derived from GENE Science**

After 10 years of research, L'Oréal scientists unlock the code of skin's youth by discovering a specific set of genes¹ that are responsible for skin's natural power of regeneration.

INTERNATIONAL PATENT²**GenActiv TECHNOLOGY™ . . .**

¹ In-vivo study ²Patented in Germany, Spain, France, UK, Italy, and Japan; US Pat. Pending

(Exhibit F, Youth Code product package).

11. Respondent has represented that the L'Oréal Paris Youth Code products target specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging. The bar graph accompanying this representation in Complaint Exhibits D and E, titled "CLINICAL STUDY," presents the results of a study that did not involve a L'Oréal Paris Youth Code product, or the ingredients in any such product.

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12. The study population in the clinical study referred to in Complaint Exhibits D and E included two groups of males: a “young” group with an average age of 27 years, and an “aged” group with an average age of 67 years. Both groups were subjected to repeated physical stress on the forearm, and gene expression (the process by which genes produce proteins) of skin cell samples was measured at several time points. The study concluded that expression of certain genes following physical stress was delayed in aged skin compared to young skin; specifically, the young skin expressed the same number of genes within six hours as aged skin expressed in 30 hours.

Count I

13. In connection with the advertising, promotion, offering for sale, or sale of the Lancôme Génifique Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Génifique Youth Activating Concentrate boosts the activity of genes, thereby resulting in visibly younger skin in seven days.
- b. Génifique Repair Youth Activating Night Cream boosts the activity of the genes responsible for nighttime cellular regeneration, thereby resulting in visibly younger skin.

14. The representations set forth in Paragraph 13 were not substantiated at the time the representations were made.

Count II

15. In connection with the advertising, promotion, offering for sale, or sale of the Lancôme Génifique products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove:

- a. Génifique Youth Activating Concentrate boosts the activity of genes, thereby resulting in visibly younger skin in seven days.

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- b. Génifique Youth Activating Concentrate is clinically proven to produce perfectly luminous skin in 85% of women, astonishingly even skin in 82% of women, and cushiony soft skin in 91% of women, in seven days.

16. In fact, scientific studies do not prove the representations set forth in Paragraph 15. Therefore, the representations set forth in Paragraph 15 are false or misleading.

Count III

17. In connection with the advertising, promotion, offering for sale, or sale of the L'Oréal Paris Youth Code Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Youth Code targets specific genes to make skin look younger.
- b. Youth Code targets specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging.

18. The representations set forth in Paragraph 17 were not substantiated at the time the representations were made.

Count IV

19. In connection with the advertising, promotion, offering for sale, or sale of the L'Oréal Paris Youth Code products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove:

- a. Youth Code targets specific genes to make skin look younger.
- b. Youth Code targets specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging.

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20. In fact, scientific studies do not prove the representations set forth in Paragraph 19. Therefore, the representations set forth in Paragraph 19 are false or misleading.

Violations of Sections 5 and 12

21. 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-fourth day of September, 2014, has issued this complaint against Respondent.

By the Commission, Commissioner McSweeney not participating.

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Exhibit A

Youth is in your genes. *Reactivate it.¹*
See visibly younger skin in just 7 days.

GÉNIFIQUE
YOUTH-ACTIVATING CONCENTRATE

At the very origin of your skin's youth, your genes. Genes produce specific proteins. With age, their presence diminishes. Now, boost genes' activity² and stimulate the production of youth proteins.³ Discover the skin you were born to have. Breathtakingly beautiful, skin looks as if it's from within. Its youthful quality returns: outshiny soft, astonishingly even, dramatically refined. Clinically proven. Use AM and PM for powerful skin results in 7 days.⁴

100%

Genes	Genes	Genes
Perfectly luminous	Autosunlight even	Outshiny soft
100%	100%	100%

100% skin appearance is improved

Learn more at lancome.com

¹ Activated, amplified. ² Reactivated genes. ³ Genes produce proteins. ⁴ Clinical study results. ⁵ Lancôme is a registered trademark of L'Oréal Paris.

Experience the Génifique 7 DAY TRIAL
What a difference a week makes.
After 7-day supply of Génifique reveals you at your best.
Lancôme winner.⁵

10 YEARS OF RESEARCH - 1 INTERNATIONAL PATENT

LANCÔME
PARIS

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Exhibit B

You sleep. Genes don't.
Wake up to visibly repaired skin. As if you had slept 2 extra hours.¹

NEW
GÉNIFIQUE
REPAIR
YOUTH ACTIVATING NIGHT CREAM

During the night, **the speed of cell regeneration doubles.**
By screening over 4,000 genes, our laboratories identified
genes responsible for cellular regeneration.

Today, Lancôme creates Génifique Repair,
our first night care that **boosts the activity of genes.**

Visibly repair and restore your skin while you sleep.
The next morning, skin looks smoother and fresher.
Night after night, skin is visibly younger and rested,
as if you had slept **2 extra hours.**

1. Skin and collagen synthesis, 12 weeks of sleep.

© L'ORÉAL OF RESEARCH - 7 INTERNATIONAL PATENTS

LANCÔME
GÉNIFIQUE
REPAIR
YOUTH ACTIVATING NIGHT CREAM

LANCÔME
PARIS

The advertisement features a woman's face in profile, looking upwards, with her eyes closed. The background is dark blue with vertical light streaks. In the foreground, a jar of Lancôme Génifique Repair Youth Activating Night Cream is shown, with a dollop of cream on its lid. The jar is white with a black label. The Lancôme logo is visible on the jar and in the bottom right corner.

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Exhibit C

LANCÔME TV – GÉNIFIQUE :15

 AND: "You're a typical gene..." SUPER: Active skin's youthful look.	 Activate it. LEGAL: SUPER: Active skin's youthful look.	 LANCÔME GÉNIFIQUE YOUTH ACTIVATING CONCENTRATE LEGAL: SUPER: Active skin's youthful look.	 Our first skincare that boosts the activity of genes. LEGAL: SUPER: Active skin's youthful look.	 When any 122 in LANCÔME GÉNIFIQUE	 Only at Macy's.
 Now only by LEGAL: SUPER: Active skin's youthful look.	 Younger skin LEGAL: SUPER: Active skin's youthful look.	 ...in just 7 days. SUPER: Visible younger skin in just 7 days. LEGAL: SUPER: Active skin's youthful look.	 GENIFIQUE YOUTH ACTIVATING CONCENTRATE SUPER: GÉNIFIQUE Youth-Activating Concentrate.		

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Exhibit D

**NOW, CRACK THE CODE
TO YOUNGER ACTING SKIN.**

**NEW
YOUTH CODE™**
Youth Regenerating Skincare

**ONE DROP
INSTANTLY IMPROVES SKIN QUALITY**

**ONE WEEK
SKIN BEGINS TO LOOK YOUNGER**

**ONE MONTH
PERCEives THE NEW YOUTH OF YOUR AGE™**

**10 YEARS OF GENE RESEARCH
INTERNATIONAL PATENT**

**L'ORÉAL
PARIS**

**THE NEW ERA OF SKINCARE:
GENE SCIENCE.**

Intelligence... what if you could generate yours?

Every great discovery begins by pushing the boundaries of science. After 10 years of research, now we know that recovery genes in youthful skin respond 50 times faster to aggressors than aging skin does. So even though you can't grow younger, we now have the knowledge to help you begin causing the skin to younger acting skin.

CLINICAL EVIDENCE

10X FASTER

GENE RESPONSE TO AGGRESSORS
YOUTHFUL SKIN

A dramatic new possibility against the signs of aging. L'Oréal introduces Youth Regenerating Skincare: New Youth Code Serum Intense with GeneActiv Technology™. Designed to help increase skin's ability to recover faster from aggressors more like it did when it was younger. With Youth Code, now you can instantly improve skin quality while revealing the new youth of your skin™.

Discover all of the Youth Code products and learn more about gene science: LOREALPARIS.COM/YOUTHCODE

Based on a study by L'Oréal Research & Development. *See inner packaging for details.

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Exhibit E

[illegible]

Complaint

Exhibit F



L'ORÉAL PARIS

Why is Youth Code™ right for me?

With age, your skin regenerates less quickly. Time leaves a visible imprint: signs of stress, fatigue and aging seem to suddenly appear.

YOUTH REGENERATING DISCOVERY
Innovation derived from GENE Science

After 10 years of research, L'Oréal scientists unlock the code of skin's youth by discovering a specific set of genes¹ that are responsible for skin's natural power of regeneration.

INTERNATIONAL PATENT: GenActiv TECHNOLOGY™

With L'Oréal's breakthrough **GenActiv Technology™**, this powerful starter system can increase skin's power of regeneration so it regains the qualities of young skin. See smoother, youthfully luminous and rested skin emerge.

CLINICAL STRENGTH Starter System

These powerful treatments have been developed to work together for increased effectiveness.

SEE DRAMATIC RESULTS

	SPF 30 Day Lotion	Day/Night Cream	Eye Cream
Diminishes signs of stress and fatigue	✓	✓	✓
Reduces the appearance of lines and wrinkles	✓	✓	✓
Smooths and evens skin's surface	✓	✓	✓
Restores skin's radiance and luminosity	✓	✓	✓
Delivers instant hydration	✓	✓	✓
Protects with L'Oréal's SPF 30	✓		
Provides overnight recovery		✓	
Decreases under-eye bags and dark circles			✓

QUESTIONS OR COMMENTS CONTACT: L'ORÉAL USA, INC., 315 Fifth Avenue, New York, NY 10017
For personalized skincare advice, CALL 1-800-321-2616 or visit WWW.LOREALPARIS.COM
Because you're worth it™
MADE IN USA
116-week study 2 Patented in Germany, Spain, France, UK, Italy, and Japan; US Pat. Pending

EXHIBIT F

Decision and Order

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 having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection 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, 15 U.S.C. § 45 *et seq.*; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”) that includes: a statement that the agreement is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the 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 has 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 consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comment, and having duly considered the comments filed thereafter by interested persons 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’Oréal USA, Inc. is a Delaware corporation with its principal office or place of business at 575 Fifth Avenue, New York, NY 10017.
2. The 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’Oréal USA, Inc., a corporation, its successors and assigns, and officers, and each of the above’s agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- C. “Competent and reliable scientific evidence” shall mean evidence, consisting of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.
- D. “Cosmetic” shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
- E. “Covered Product” shall mean any Lancôme brand or L’Oréal Paris brand cosmetic, excluding hair, nail, fragrance, mascara, and sunscreen products. For the purpose of this definition, “sunscreen” refers to products that are marketed primarily for sun protection and does not include makeup or facial skincare products that contain sunscreen.
- F. The term “including” in this order shall mean “without limitation.”
- G. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Lancôme brand or L'Oréal Paris brand facial skincare product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a trade name, product name, endorsement, depiction, or illustration, that such product boosts the activity of genes or targets specific genes, thereby:

- A. Resulting in skin that looks younger or acts younger;
or
- B. Causing skin to respond five times faster to aggressors such as stress, fatigue, and aging;

unless the representation is true, 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 field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, 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 represent in any manner, expressly or by implication, including through the use of a trade name, product name, endorsement, depiction, or illustration, that such product affects genes, unless the representation is true, 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 field, when considered in light of the entire

Decision and Order

body of relevant and reliable scientific evidence, to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, 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 misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

IT IS FURTHER ORDERED that respondent 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 make available to the Federal Trade Commission for inspection and copying:

- A. All 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 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.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for a period of five (5) years, deliver a copy of this order to all current and future principals, officers, directors, and other employees having responsibilities with

Decision and Order

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. Acknowledgment by electronic mail or similar means will be deemed a signature for purposes of this order. Respondent shall deliver this order to current personnel within thirty (30) days after date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

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, 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 fewer 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 Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: L'Oréal USA, Inc., FTC File No. 122-3016.

VII.

IT IS FURTHER ORDERED that respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall 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, respondent shall submit additional true and accurate reports.

Analysis to Aid Public Comment

VIII.

This order will terminate on September 24, 2034, or twenty (20) years from the most recent date that the United States or the 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 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.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from L'Oréal USA, Inc. ("L'Oréal").

Analysis to Aid Public Comment

The proposed consent order (“proposed 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 or make final the agreement’s proposed order.

This matter involves L’Oréal’s advertising for its Lancôme Génifique (“Génifique”) and L’Oréal Paris Youth Code (“Youth Code”) facial skincare product lines. The Commission’s complaint alleges that L’Oréal advertised that Génifique and Youth Code provided anti-aging benefits by targeting users’ genes, and that Génifique provided results to particular percentages of users.

The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making unsubstantiated representations that Génifique boosts the activity of genes, thereby resulting in visibly younger skin in seven days, and that Youth Code targets specific genes to make skin look younger, act younger, and respond five times faster to aggressors such as stress, fatigue, and aging. The complaint also alleges that L’Oréal violated Sections 5(a) and 12 by making false representations that scientific studies prove these claims.

The complaint further alleges that L’Oréal violated Sections 5(a) and 12 by falsely representing that Génifique is clinically proven to produce specific results for particular percentages of users, including perfectly luminous skin in 85% of women, astonishingly even skin in 82% of women, and cushiony soft skin in 91% of women, in seven days. These purported results were presented in a bar graph under the words “clinically proven.”

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, “Covered Product” means any Lancôme brand or L’Oréal Paris brand cosmetic, excluding hair, nail, fragrance, mascara, and sunscreen products.

Part I of the proposed order prohibits L’Oréal from making claims that any Lancôme brand or L’Oréal Paris brand facial

Analysis to Aid Public Comment

skincare product targets or boosts the activity of genes, thereby resulting in skin that looks or acts younger, or skin that responds five times faster to aggressors, without competent and reliable scientific evidence for these claims. “Competent and reliable scientific evidence” is defined to mean “evidence, consisting of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.”

Part II of the proposed order is a fencing-in provision that prohibits L'Oréal from representing that any Covered Product affects genes. The fencing-in provision provides broader product and claims coverage than Part I of the proposed order. It extends to products other than “facial skincare products,” such as lip products and makeup, and covers any gene claims.

Part III of the proposed order prohibits L'Oréal from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research in connection with the manufacturing, labeling, advertising, promotion, offering for sale, and sale or distribution of any Covered Product.

Part IV contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts V through VII of the proposed order require L'Oréal to: deliver a copy of the order to principals, officers, and employees having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part VIII 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 complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**NATIONAL ASSOCIATION OF TEACHERS OF
SINGING, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4491; File No. 131 0127
Complaint, October 1, 2014 – Decision, October 1, 2014

This consent order addresses National Association of Teachers of Singing, Inc.'s ("NATS") adopting and maintaining a provision in its Code of Ethics that restrains solicitation of teaching work. The complaint alleges that NATS violated Section 5 of the Federal Trade Commission Act by restraining competition among singing teachers through adoption and enforcement of the non-solicitation provision of its Code of Ethics. The consent order requires NATS to cease and desist from restraining or declaring unethical the solicitation of teaching work.

Participants

For the *Commission*: Armando Irizarry and Karen A. Mills.

For the *Respondent*: James A. Nolan, III, GrayRobinson.

COMPLAINT

The Federal Trade Commission ("Commission"), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that the National Association of Teachers of Singing, Inc. ("Respondent" or "NATS"), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, 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:

I. RESPONDENT

1. Respondent National Association of Teachers of Singing, Inc. is a non-profit corporation organized, existing, and doing