

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of L'Occitane, Inc., File No. 122 3115

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 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 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. 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.