

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of L'Oréal USA, Inc., File No. 122 3016

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”).

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 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.