

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of)

L'ORÉAL USA, INC.,)
a corporation.)
_____)

DOCKET NO. C-4489

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.

ORDER

DEFINITIONS

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

1. 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.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. "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.
4. "Cosmetic" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. "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.
6. The term "including" in this order shall mean "without limitation."
7. 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.

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 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 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.

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.

Donald S. Clark
Secretary

SEAL:
ISSUED: September 24, 2014