



July 23, 2014

VIA OVERNIGHT MAIL

Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex D)
Washington, DC 20580

Re: *In the Matter of L'Oréal USA, Inc.* – Consent Agreement (File No. 122-3016)

Dear Commissioners:

Capitalizing on consumers' desire for anti-aging skincare products, L'Oréal has sold nine million bottles and made well over \$1 billion in net sales worldwide since introducing its Lancôme Génifique line in 2009.¹ L'Oréal has further exploited this lucrative market by introducing a less expensive product line branded the L'Oréal Youth Code in 2010.² Its success with these product lines has been based on a bold and simple lie – that L'Oreal has discovered a scientifically proven fountain of youth for skincare.³

And what is the price the Federal Trade Commission wants L'Oréal to pay for years of deceiving consumers and charging them up to \$132 for such products?⁴ Absolutely nothing. As currently drafted, the FTC's settlement simply requires L'Oréal to follow the law as every other corporate citizen is required to do and as L'Oréal should have been doing all along.⁵ As such, Truth in Advertising, Inc. ("TINA.org") strongly objects to the proposed settlement and urges the Commission to reject the FTC agreement containing a consent order.

Specifically, the proposed settlement with L'Oréal is defective for three fundamental reasons:

1. The only one financially benefiting from this settlement is L'Oréal, which gets to pocket every last dollar it swindled from consumers with its false advertising campaign. As a result, if the Commission approves this settlement, it will send a clear message to the cosmetic industry and consumers alike that deceptive marketing is a viable and profitable option here in the United States with a documented financial upside for wrongdoers at the expense of consumers.
2. While the proposed agreement specifically states that L'Oréal cannot represent, in any manner, including through the use of a product name that its products affect genes, L'Oréal has had multiple years of marketing its Génifique and Paris Youth Code brands as gene treatments to obtain youthful skin. Consequently, the consent order should deny L'Oréal the opportunity to rely on its past misdeeds by explicitly precluding L'Oréal from ever again using the brand names "Génifique" and "Youth Code."⁶
3. The proposed consent order is legally deficient because even if L'Oréal had competent and reliable scientific evidence to substantiate an advertising claim that it could "boost the activity of genes or target specific genes" to affect a person's skin, these types of marketing claims would still be precluded under the Federal Food, Drug and Cosmetic Act ("the Act").⁷ Such gene treatment claims would render the product to be a drug under section 201(g)(1)(C) of the Act and thereby require prior FDA approval before the product could be marketed as a gene manipulator.⁸

For the foregoing reasons, TINA.org respectfully urges the Commissioners to reject the proposed agreement with L'Oréal as it is currently drafted.

Very truly yours,

Bonnie Patten
Executive Director

¹ See <http://www.lorealusa.com/news/advanced-genifique-the-new-youth-icon-by-lancome.aspx> and <http://www.loreal-finance.com/docs/rapport/2013/uk/data/0050.pdf>.

² See *In the Matter of L'Oréal USA, Inc.* (File No. 122-3016), draft FTC Complaint at <http://www.ftc.gov/enforcement/cases-proceedings/122-3016/loreal-usa-matter>.

³ *Id.*

⁴ *Id.*

⁵ See *In the Matter of L'Oréal USA, Inc.* (File No. 122-3016), FTC Agreement Containing Consent Order at <http://www.ftc.gov/enforcement/cases-proceedings/122-3016/loreal-usa-matter>.

⁶ L'Oréal has marketed the Lancôme Génifique line using product names that include:

- Génifique Youth Activating Concentrate
- Génifique Repair Youth Activating Night Cream
- Génifique Cream Serum
- Génifique Youth Activating Eye Concentrate

Given that the brand name "Génifique" implies "Magnificent Genes" – these product names, in and of themselves, are misleading. Similarly, it has marketed its Paris Youth Code line using product names such as:

- Youth Code Serum Intense
- Youth Code SPF 30 Day Lotion
- Youth Code Day/Night Cream
- Youth Code Eye Cream
- Youth Code Clinical Strength Starter System

See these links for product names

<http://www.fda.gov/iceci/enforcementactions/warningletters/2012/ucm318809.htm>, <http://www.ftc.gov/enforcement/cases-proceedings/122-3016/loreal-usa-matter>.

⁷ See September 7, 2012 FDA Warning Letter to Lancôme USA at <http://www.fda.gov/iceci/enforcementactions/warningletters/2012/ucm318809.htm>.

⁸ *Id.*