

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

WACOAL AMERICA, INC.
a corporation.

DOCKET NO. C-4496

DECISION AND ORDER

The Federal Trade Commission (the "Commission") having initiated an investigation of certain acts and practices of Wacoal America, Inc., a corporation, hereinafter sometimes referred to as "Respondent," and Respondent having been furnished with a copy of a draft of complaint which the Western Region San Francisco proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (the "Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rule

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said 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, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order.

1. Respondent Wacoal America, Inc., is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey 07071.
2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the Respondent, and the proceeding is in the public interest.

scientific evidence shall consist of at least two adequate and controlled human clinical studies of the Covered Product, conducted by different researchers, independently of each other, 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.

III.

V.

IT IS FURTHER ORDERED that

- A. Nothing in this order shall prohibit Respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and
- B. Nothing in this order shall prohibit Respondent from making any representation for any product that is permitted in the labeling for such product under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased Covered Product from January 1, 2011, through the date of entry of this order to the extent it has such information in its possession or control, including information available upon request from franchisees or others. Such file: (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns, the date(s) of purchase, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that Respondent shall pay to the Federal Trade Commission the sum of one million three hundred thousand dollars (\$1,300,000). This payment shall be made in the following manner:

- A. The payment shall be made by electronic funds transfer within ten (10) days after the date that this order becomes final and in accordance with instructions provided by a representative of the Federal Trade Commission.
- B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.

- C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers (which shall be the first priority for dispensing the funds set forth above) is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- E. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(2)(A), and that this order shall have collateral estoppel effect for such purposes.
- F. In accordance with 31 U.S.C. § 7701, Respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Respondent's relationship with the government.
- G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that Respondent shall comply with Paragraphs and III of Appendix A to this order and shall also provide reasonable cooperation to the Commission with respect to the administration of the Consumer Redress Program and other Consumer Redress Requirements as described in Appendix A to this order, hereby incorporated into this order.

X.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc. 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 and request, 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.

XI.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents and representatives having primary responsibilities with respect to the advertising subject to the terms of Part 1 of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgements of receipt of this order obtained pursuant to this Part.

XII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc. 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 a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; 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 less 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, all notices required by this Part shall be emailed to Debrief@ftc.gov by

APPENDIX A
CONSUMER REDRESS PROGRAM

I.

VII. Following the completion of the redress program described in Part VII of this Order and in this Appendix A, the Commission or its designated agent shall provide Respondent a report containing the name and address of each consumer to whom redress was paid pursuant to this Order and, for each consumer, the Covered Product(s) for which such claim was made, the total dollar volume of such claim and the redress paid. Respondent shall have no right to contest the validity of any claim submitted pursuant to the redress program.

EXHIBIT 1 – [*USA Today* Notice]

Did you buy a Wacoal iPant product? You may be eligible for a refund.

The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

- 1) Call [toll-free number] and request a claim form; complete the form and mail it back by [date certain -sixty (60) days after the last online notice or publication of the *USA Today* notice], or
- 2) Apply online at [URL] by [date certain -sixty (60) days after the last online notice or publication of the *USA Today* notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

EXHIBIT 3 – [Email or letter to online buyers]

[date]

Name of Consumer
Address
City/State/ZIP

RE:

REFUND APPLICATION

[Attachment to letter to people who bought from Wacoal's website]

I bought the following Wacoal iPant product(s) since January 1, 2011. .

- _____ Cupless Camisole (Style No. 802171)
- _____ Legging (Style No. 804171)
- _____ MidThigh Shaper (Style No. 804271)
- _____ HiWaist Long Leg Shaper (Style No. 805171)
- _____ Brief (Style No. 808171)
- _____ Long Leg Shaper (Style No. 809171)

(If you bought more than one, please say how many.)

If I'm eligible to get money back as part of the FTC's lawsuit against Wacoal, send my refund to:

NAME: _____

ADDRESS: _____

CITY AND STATE: _____

ZIP CODE: _____

EXHIBIT 4 – [Letter to accompany redress payment]

[date]

Name of Consumer
Address
City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

You applied for a refund as part of the Federal Trade Commission's lawsuit against Wacoal America for deceptive advertising about iPant products. A check for your part of the settlement is enclosed. Please cash it by [date certain]. After that, the check won't be good.

If you have questions, please call the FTC [or name] at [tel] number].

For consumer information about evaluating advertising claims for products like this, visit the FTC's Health & Fitness page, <http://www.consumer.ftc.gov/topics/healthfitness>.

Sincerely,

[name]

EXHIBIT 5 – [Letter to ineligible consumers]

[date]

Name of Consumer
Address
City/State/ZIP