

1
2
3
4
5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10
11 AS YOU SOW, a non-profit
corporation,

12 Plaintiffs,

13 v.

14
15 REVLON, INC.; PROCTOR & GAMBLE
CO. CHESEBROUGH-POND'S U.S.A.
16 CO.; ARDEX CORPORATION;
ARTMATIC U.S.A. COSMETICS;
17 COSMAIR, INC.; ELIZABETH ARDEN;
JONEL, INC.; MAX FACTOR &
18 COMPANY; MAYBELLINE, INC.;
PAVION LTD.; PRINCESS MARCELLA
19 BORGHESE, INC. SALLY HANSEN;
TOP TEN COSTMETICS, INC.; and
20 DOES 1 through 10,

21 Defendants.

NO. 950766

STIPULATION FOR ENTRY OF
JUDGMENT

22 IT IS HEREBY STIPULATED, by and between plaintiff As You
23 Sow and defendant Maybelline, Inc., through their respective
24 representatives, that judgment in the above-entitled action be
25 entered in accordance with the terms of the Settlement Agreement
26 between the parties, which is attached hereto as Exhibit A.
27
28

1 Dated: July 20th, 1993

CHANLER & ASSOCIATES

2
3 by: Cliff Ch
CLIFFORD A. CHANLER
Attorneys for Plaintiffs

4 Dated: July 22, 1993

BRONSON, BRONSON & MCKINNON

5
6 by: THOMAS W. PULLIAM, JR.
THOMAS W. PULLIAM, JR.
Attorneys for Defendant
7 Maybelline, Inc.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SAN FRANCISCO, CALIFORNIA 94111-2514
106

SETTLEMENT AGREEMENT

On July 22, 1993 in San Francisco, California, As You Sow ("AYS") and Maybelline, Inc. ("Maybelline") agreed to the following terms and conditions:

WHEREAS:

AYS is a not-for-profit public interest corporation dedicated to promoting consumer awareness, protecting the environment, and improving human health; and

Maybelline is a company that once manufactured nail enamel products containing toluene which were sold in retail stores; and

Maybelline represents that in 1991 it began the process of reformulating the Products for the purpose of eliminating toluene as an ingredient in them; and

On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.8; and

A list of the nail enamels containing toluene which Maybelline has manufactured for retail sale in California since January 1, 1992 is provided in attachment A (the "Products"); and

On November 18, 1992, AYS served Maybelline with a document entitled "60-Day Notice" which alleged Maybelline was in violation of Health & Safety Code §25249.6 for failing to warn purchasers and individuals using Maybelline's Products that certain nail enamel products it sells in California expose users to toluene, a chemical known by the State of California to cause birth defects or other reproductive harm; and

There is pending in the San Francisco Superior Court a lawsuit brought by AYS against Maybelline and others, Case No., 950766 ("The Action") and this Action is an enforcement action brought, not on its own behalf, but in the public interest, on behalf of the citizens of the State of California pursuant to California Health and Safety Code §25249(d) and California Business and Professions Code §§17200 and 17204; and

It is the intention of AYS and Maybelline that the judgment entered pursuant to this Agreement

- (1) shall constitute a full and final adjudication of all claims against Maybelline based upon alleged violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) including Health and Safety Code §25249.7 and of the Unfair Competition Act, including

1 Business and Professions Code §§17200 and 17204, which
2 claims arise from the alleged failure to provide clear
3 and reasonable warning of exposure to toluene from use
4 of nail polish products offered for sale in California,
and which claims Maybelline denies in their entirety;
and

- 5 (2) shall bar other parties from prosecuting against
6 Maybelline any claims substantially similar to those
made in this action.

7 NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

8 1. Maybelline agrees not to ship (or cause to be
9 shipped) any of the Products into the State of California after
10 July 1, 1993 unless such products have been reformulated so as to
eliminate the presence of toluene as an intended ingredient,
except as provided in Paragraph 7 herein.

11 2. In an effort to defray AYS' costs of investigating
12 this matter, Maybelline agrees to pay AYS the sum of \$16,000.00.

13 3. In consideration of the representations and
14 commitments set forth in this Agreement, AYS releases all claims
and waives all rights to institute action against Maybelline, its
15 subsidiaries, affiliates, distributors or retailers, which sell
the Products, whether under Proposition 65, Business and
16 Professions Code Sections 17200, et seq., or any other statutory
or common law claim based on the sale of, or failure to warn
17 consumers or others about, the Products.

18 4. In the event that any of the provisions of this
Agreement is held by a court to be unenforceable, the validity of
19 the enforceable provisions shall not be adversely affected.

20 5. In the event that a dispute arises with respect to
any provision(s) of this Agreement, the prevailing party shall be
entitled to recover costs and reasonable attorneys' fees.

21 6. The terms of this Agreement shall be governed by
22 the laws of the State of California.

23 7. In the event that

- 24 (a) it is finally adjudicated by a California court,
25 OR
(b) AYS resolves its dispute with another defendant in
26 a manner which provides, or
(c) a state agency determines that certain nail enamel
27 or nail care products containing a certain

1 percentage of toluene may be sold in California
2 without the requisite Proposition 65 warning,

3 the commitment referenced in Paragraph 1 shall be modified so as
4 to allow Maybelline to manufacture, sell, market, advertise and
5 ship those types of nail enamel or nail care products containing
6 that percentage of toluene (or less than that percentage) for
7 sale in California. It is expressly agreed that nothing in this
8 provision shall modify any other provision in this Agreement.

9 8. Nothing in this Agreement shall be construed as an
10 admission by Maybelline of any fact, finding, issue of law, or
11 violation of law, nor shall compliance with this Agreement
12 constitute or be construed as an admission by Maybelline of any
13 fact, finding, conclusion, issue of law, or violation of law.
14 However, this paragraph, shall not diminish or otherwise affect
15 this obligation, responsibilities, and duties of Maybelline under
16 this Agreement.

17 9. Following execution of this Agreement, all
18 correspondence, should be mailed to AYS as follows:

19 As You Sow
20 106 Clifford Terrace
21 San Francisco, CA 94117

22 10. The parties shall file a stipulated judgment (to
23 be approved pursuant to CCP §664.6) with the San Francisco
24 Superior Court in accordance with the terms set forth in this
25 Agreement.

26 11. The undersigned are authorized to execute this
27 Agreement on behalf of their respective parties and have read,
28 understood and agreed to all of the terms and conditions of this
Agreement.

AGREED TO:

AGREED TO:

Bronson, Bronson & McKinnon
Attorneys for Maybelline, Inc.

By: Chris CM

for Thomas Van Dyck
Chairman
As You Sow

By: Thomas W. Pulliam

THOMAS W. PULLIAM, JR.

Dated: July 20th, 1993

Dated: July 22, 1993

ATTACHMENT A

- 1) Long wearing
- 2) Revitalizing
- 3) Shades of You