

ORIGINAL

FILED
San Francisco County Superior Court

AUG 13 1993

ALAN CARLSON, Clerk
S. Y. [Signature]
Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

AS YOU SOW, a non-profit corporation,)	No. 950767
)	
Plaintiff)	JUDGMENT ON STIPULATION FOR
)	ENTRY OF JUDGMENT
v.)	
)	
ORLY INTERNATIONAL, et al.,)	
)	
Defendants.)	

In the above-entitled action, plaintiff As You Sow and defendant Miss Marion Cosmetics, Inc. having stipulated through their respective representatives, that judgment be entered pursuant to the terms of the settlement agreement entered into by the parties on July __, 1993, said stipulation being attached hereto,

IT IS HEREBY ORDERED that judgment be entered in accordance with the terms of the stipulation between the parties.

Dated: July ¹⁶ 13 1993
~~11~~ 1993

Olivia Marie-Victorie
Judge of the Superior Court

SETTLEMENT AGREEMENT

On July __, 1993 in San Francisco, California, As You Sow ("AYS") and Miss Marion Cosmetics, Inc. ("Miss Marion") 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

Miss Marion is a Florida-based company that currently manufactures nail enamel products containing toluene which are sold in retail stores and used by manicurists in hair, beauty and/or nail salons; 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 Miss Marion has manufactured for retail sale and for use by manicurists in hair, beauty and/or nail salons in California since January 1, 1992 is provided in attachment A (the "Products"); and

On March 4, 1993, AYS served Miss Marion with a document entitled "60-Day Notice" which provided Miss Marion with notice that it was in violation of Health & Safety Code §25249.6 for failing to warn purchasers and individuals using Miss Marion'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

Nothing in this Agreement shall be construed as an admission by Miss Marion of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Miss Marion of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Miss Marion under this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. On or before December 15, 1993, Miss Marion agrees not to ship ~~(or cause to be shipped)~~ any of the Products into the State of California unless such products have been reformulated so as to eliminate the presence of toluene as an intended ingredient.

2. If Miss Marion fails to comply with the reformulation commitment set forth in paragraph 1, Miss Marion agrees to the following: (a) to pay a liquidated penalty in the sum of \$5,000 within ten days of December 15, 1993; and (b) to comply with Health & Safety Code §25249.6 and 22 CCR §12601 for each Product that is shipped for sale in California after December 15, 1993, by providing a warning that: 1) is prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual; 2) is calculated to warn individuals at the point of purchase as well as individuals who may use the Products at beauty, hair or nail salons; and 3) bears the message:

"WARNING: Use of this product will expose you to toluene, a chemical known to cause birth defects or other reproductive harm"

If the warning is going to be placed in hair, beauty or nail salons, the warning shall be provided in a language(s) spoken by a significant portion of the employees or others likely to be exposed, so as render the message clear.

3. In an effort to defray AYS' costs of investigating this matter, Miss Marion agrees to reimburse AYS the reasonable sum of \$7,000 to be paid in two installments. The first payment of \$4,000 is due upon execution of the agreement, and the second payment of \$3,000 is due 60 days after the execution of the agreement.

4. AYS, by this Agreement, waives all rights to institute action against Miss Marion, its distributors or retailers which sell the Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Miss Marion's alleged failure to warn consumers about exposure to toluene from, or their sale of, any of the Products identified in attachment A.

5. The parties recognize that products covered by this Agreement are or may be regulated under federal statutes. Nothing in this Agreement shall be construed to mean that Proposition 65 or any of its implementing regulations require the specific warning message or method set forth in this Agreement.

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

7. 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.

8. The terms of this Agreement shall be governed by the laws of the State of California.

9. All correspondence, including a letter indicating whether the reformulation commitment referred to in paragraph 1 has been made, should be mailed to AYS to the attention of:

As You Sow
106 Clifford Terrace
San Francisco, CA 94117

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

11. In the event that (a) it is finally adjudicated by a California court, or (b) AYS resolves its dispute with another defendant in a manner which provides that certain nail enamel or nail polish products containing a certain percentage of toluene may be sold in California without the requisite Proposition 65 warning, the commitment referenced in paragraph 1 shall be modified so as to allow Miss Marion to manufacture those type of nail enamel products containing that percentage of toluene (or less than that percentage) for sale in California. It is expressly agreed that nothing in this provision shall modify any other provision in this Agreement.

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

AGREED TO:

AGREED TO:

By: Thomas Van Dyck
for Thomas Van Dyck
Chairman
As You Sow

By: Miss Marion
PRESIDENT
Miss Marion Cosmetics, Inc.

Dated: July 31, 1993

Dated: July 29, 1993

ATTACHMENT A

1. Nail Polish Miss Marion Frosted
2. Nail Polish Miss Marion Creme
3. Super Hardener Acrylic
- 4.
- 5.
- 6.