

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Plaintiffs	§	
v.	§	
	§	BEXAR COUNTY, TEXAS
FLORENCIO LANDIN, JR.,	§	
d/b/a NEW LOOK COSMETICS	§	
Defendants	§	150 TH JUDICIAL DISTRICT

FINAL JUDGMENT AND
AGREED PERMANENT INJUNCTION

On this _____ day of _____, 2007, came on for hearing the above entitled and numbered cause in which the STATE OF TEXAS is Plaintiff and FLORENCIO LANDIN, JR. d/b/a NEW LOOK COSMETICS is the Defendant. Defendant FLORENCIO LANDIN, JR. d/b/a NEW LOOK COSMETICS, *pro se*, agrees to the entry of this final judgment and stipulates that:

(1) the parties have compromised and settled Plaintiff's claim for damages, court costs and civil penalties;

(2) Plaintiff and Defendant agree to and do not contest the entry of this judgment;

(3) Defendant's indebtedness to the State of Texas for the civil penalties identified below for violations of the Federal Trade Commission Act ("FTCA"), the Deceptive Trade Practices Act ("DTPA"), the Fairness to Contact Lens Consumers Act ("FCLCA"), the Texas, Food, Drug and Cosmetic Act ("TFDCA"), and the Contact Lens Prescription Act ("CLPA"), has been found by this court to constitute indebtedness for a civil fine or penalty to and for a governmental unit and is not compensation for actual pecuniary loss;

(4) the indebtedness for the civil penalties identified below is nondischargeable in any subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11; and

(5) in the event a voluntary or involuntary chapter 7 or chapter 11 bankruptcy proceeding is commenced against the Defendant, the Defendant shall not contest either directly or indirectly any future attempts by the State of Texas to have such debt declared nondischargeable in accordance with 11 U.S.C. § 523(a)(7).

INJUNCTIVE RELIEF

The court then proceeded to read the pleadings and stipulations of the parties, and it appearing to the court that all parties agree to the entry of this judgment and that they have approved its entry by the signatures of their attorneys below,

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by this Court that FLORENCIO LANDIN, JR. d/b/a NEW LOOK COSMETICS, his officers, agents, servants, employees and any other person in active concert or participation with him who receive actual notice of this injunction by personal service or otherwise, ARE HEREBY PERMANENTLY ENJOINED FROM:

A) selling, giving away, delivering or dispensing contact lenses or eye glasses to any person within the State of Texas under any circumstances;

B) engaging in any way, directly or indirectly, in the business of buying, selling, trading, fitting, delivering, advertising, promoting, or marketing the sale of contact lenses and eye glasses anywhere in Texas under any circumstances;

C) promoting, representing or advertising, directly or indirectly, that contact lenses can be sold without a valid prescription which meets the requirements of 25 TAC §128.5;

D) Selling, offering for sale, promoting, advertising, distributing into trade and commerce, or delivering for distribution into trade and commerce, any misbranded,

adulterated, or unapproved class III medical device, including but not limited to contact lenses and prescription eyeglasses, in violation of the Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(b) or the Contact Lens Prescription Act, TEX. OCC. CODE §353.001(West 2006) *et seq.*;

E) misbranding or adulterating any medical device, including but not limited to contact lenses and prescription eyeglasses, in violation of Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(a);

F) Representing, directly or by implication, that this court or the Attorney General has approved any good or service sold or offered for sale by Defendant, or have approved any of Defendant's business practices; or

G) Interfering with, preventing, or in any way obstructing DSHS agents from reasonably inspecting, copying, or photographing all business records and business premises of Defendant and all devices found therein, pursuant to TEX. HEALTH & SAFETY CODE §431.042, 431.043, and 431.044.

MANDATORY RELIEF

YOU AND EACH OF YOU ARE HEREBY ORDERED TO:

A) refund to all persons who purchased contact lenses from Defendant without a prescription, and who request a refund, the purchase price plus any sales tax and postage or handling charges paid on such purchase. Such refund shall also be made to all persons who have paid for but have not received such contact lenses.

IT IS FURTHER ORDERED AND ADJUDGED THAT DEFENDANT FLORENCIO LANDIN, JR. d/b/a NEW LOOK COSMETICS , shall pay and deliver:

(A) Fifty Thousand Dollars (\$50,000.00) to the Office of the Attorney General as civil penalties for five (5) days of Severity Level Two violation at Ten Thousand Dollars per day as per the Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(a)(b), 25 T.A.C. §229.261, and DTPA §17.47(c)(1);

(B) Nine Thousand Two Hundred Dollars (\$9,200.00) to the Office of the Attorney General for attorney fees and costs of court pursuant to the TEX. GOT. CODE, §402.006(c); and

(C) Three Thousand Dollars (\$3000.00) to the Texas Department of State Health Services (the Department) for investigative costs pursuant to TEX. HEALTH & SAFETY CODE §431.047(d).

IT IS FURTHER ORDERED that if the Department does not find any evidence of a violation of this injunction at any inspection which DSHS may hold during a ten year period following the signing of this injunction, this \$50,000 civil penalty, the \$9,200 attorney fee award, and the \$3000 investigative fee are waived. Provided further, that if the Department finds evidence that the Defendant is not in substantial compliance with this injunction within this ten year period by again being involved in the contact lens industry in any way, this \$62,200 award will be accelerated and will be immediately due and payable as of the date of the first inspection which reveals evidence of non-compliance;

IT IS FURTHER ORDERED that Defendant will fully reimburse those complainants who may later file complaints with OAG and who purchased contact lenses or glasses from Defendant.

THIS ORDER shall further constitute a judicial determination that these civil penalties are to and for a governmental unit and are not compensation for actual pecuniary loss.

It is further ORDERED that interest at the rate of 8.25 per cent per year, as per TEX. FIN. CODE §304.003, will accrue on all sums owing beginning at the time DSHS finds any further evidence of violation of this injunction at any inspection which DSHS may hold.

It is further ORDERED that Defendant is assessed all costs herein.

It is further ORDERED that the State of Texas have all writs of execution and other process necessary to enforce this judgment.

All relief not granted herein is hereby denied.

Signed and entered this ____ day of _____, 2007.

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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