Order denying motion requesting that two individual respondents be omitted from the amended complaint charging false advertising of the drug "Hungrex."

ORDER DENYING RESPONDENTS' MOTION FOR RECONSIDERATION

The Commission issued its amended complaint and order reopening proceedings in the matter on November 15, 1965 [p. 1221 herein], charging that the above-named corporate and individual respondents had violated Sections 5 and 12 of the Federal Trade Commission Act in connection with the advertising of the weight-reducing capabilities of the drug Hungrex. On November 22, 1965, respondents filed a motion for reconsideration requesting that the amended complaint be dismissed as to two of the individual respondents, Harry Evans and Vincent J. Lynch. Counsel supporting the complaint has filed an answer opposing respondents' motion.

In support of their motion, respondents Evans and Lynch state that neither of them had any connection, directly or indirectly, with the corporate respondent or with the advertisements promulgated by it since April 1958. These respondents also point out that in November 1958 the original complaint was dismissed as to them in their capacities as officers of the corporate respondent since they had resigned their corporate officerships. Therefore, they contend that joining them in the amended complaint merely subjects them to unnecessary expense and serves no purpose as they are no longer associated with the corporate respondent.

The original order to cease and desist issued in this matter on November 7, 1958 [55 F.T.C. 705], does, however, apply to both Evans and Lynch in their individual capacities. In so doing, it was recognized that these respondents were no longer associated with the corporate respondent. Therefore, the mere fact that they are still no longer associated with the corporate respondent is not alone sufficient grounds for dismissing the instant complaint as to them. The amended complaint looks toward the broadening of the old order, not on the grounds of subsequent advertisements, but rather on the basis of additional information concerning the characteristics of the basic ingredient of the product. Since the old order is presently binding on these individual respondents, it is entirely proper that they are parties to the instant proceeding to broaden that order. Consequently, we believe that all of the respondents originally subject to the order are proper parties to the proceeding. Accordingly,

It is ordered, That respondents' motion be, and it hereby is, denied.

GRABER MANUFACTURING COMPANY, INC., ET AL.

Docket 8038. Order and Opinions, Dec. 13, 1965

Order denying respondents' motion for interrogatories and issuance of subpoenas directed to third party companies.