

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

Docket 9055. Order, Jan. 27, 1976

Portions of complaint counsel's motion to supplement complaint with paragraphs 95a and 95b and the notice order with paragraph 50 granted; and portion of complaint counsel's motion to supplement complaint with paragraphs 95c-95e, remanded to administrative law judge for determination.

Appearances

For the Commission: *Jeffrey Tureck, David C. Keehn and Pamela B. Stuart.*

For the respondents: *Philip Zeidman and Sara Holtz, Brownstein, Zeidman, Schomer & Chase, Washington, D.C.*

ORDER GRANTING IN PART AND REMANDING IN PART
MOTION TO SERVE SUPPLEMENTAL PLEADING

This matter is before us upon complaint counsel's motion to amend the complaint. The administrative law judge certified the motion to the Commission on December 23, 1975.

Complaint counsel request that the complaint be amended to allege that (1) respondents' statements to purchasers concerning the instant proceedings, including but not limited to, statements characterizing the complaint allegations and describing their applicability to the Rotonda subdivisions are false and deceptive (proposed paragraphs 95a, 95b) and (2) respondents are misrepresenting the extent of recent development activities at Rotonda (proposed paragraphs 95c-95e).¹ In addition, complaint counsel move that a prohibition against misrepresentations concerning legal proceedings pending before the Commission or any other forum be added to the notice order.

The Commission will treat complaint counsel's motion to amend the complaint as a motion to serve a supplemental pleading since the motion concerns "transactions, occurrences, or events which have allegedly happened since the date of the pleading * * *." Rules of Practice, Section 3.15(b).

The Commission agrees with the administrative law judge's decision to certify those portions of complaint counsel's motion which relate to alleged misrepresentations concerning these proceedings and which seek an addition to the notice order since the above-described allegation is sufficiently different in theory from the allegations

¹ With respect to paragraphs 95c-95e, the Commission assumes that complaint counsel refer to alleged misrepresentations made after the complaint issued.

already in the complaint to require certification to the Commission. *See, Standard Camera Corp.*, 63 F.T.C. 1238, 1266 (1963).²

Upon consideration of complaint counsel's motion, the Commission has concluded that there is reason to believe that the misrepresentations alleged with respect to these proceedings were made and that it is in the public interest to try said misrepresentations. The Commission has also determined that the notice order should be modified as requested by complaint counsel.

The Commission disagrees with the law judge's decision to certify the portion of the motion concerning allegations that respondents are misrepresenting the extent of recent development activities at Rotonda. The complaint alleges that respondents have made various deceptive representations concerning improvements to be provided in the Rotonda subdivisions and the progress being made toward their completion. (complaint, Pars. 32-36.) The allegation that respondents have misrepresented that they have recently made substantial improvements at Rotonda is clearly relevant to the allegations already in the complaint.³ This portion of the motion should, therefore, be decided by the administrative law judge. Accordingly,

It is ordered, That the portions of complaint counsel's motion to supplement the complaint with paragraphs 95a and 95b and to supplement the notice order with paragraph 50, set forth in the aforesaid motion be, and they hereby are, granted;

It is further ordered, That the portion of complaint counsel's motion to supplement the complaint with paragraphs 95c, 95d and 95e, set forth in the aforesaid motion, be, and it hereby is, remanded for determination by the administrative law judge.

² The administrative law judge has authority to amend the complaint if the amendment is "reasonably within the scope of the original complaint or notice." He has authority to permit service of a supplemental pleading or notice setting forth transactions, occurrences, or events which have happened since the date of the original pleading or notice which are "relevant" to any of the issues involved. Whichever standard is applied, the law judge lacks authority to permit modifications where the effect is an alteration of the underlying theory behind the complaint.

³ "Certainly there are many proposed amendments, such as those intended to merely clarify the allegations of a complaint, or to add examples of practices alleged to be unlawful * * * which are not excluded from those to be ruled on by the [law judge]." *Capitol Records Distributing Corp.*, 58 F.T.C. 1170, 1173 (1961).

IN THE MATTER OF
LUSTRASILK CORPORATION OF AMERICA, INC., ET
AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2784. Complaint, Jan. 27, 1976—Decision, Jan. 27, 1976

Consent order requiring a St. Louis Park, Minn., manufacturer of cosmetics, among other things to cease misrepresenting that its hair conditioners are safe and from making other false claims; and further requiring the firm to include a health hazard warning in advertising and labeling for the products.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *Edward A. Zimmerman*, Edina, Minn.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lustrasilk Corporation of America, Inc., a corporation, and D. C. Smith and Guenther Roth, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Lustrasilk Corporation of America, Inc. is a Minnesota corporation with its office and principal place of business located at 6989 Oxford St., St. Louis Park, Minnesota.

Respondents D. C. Smith and Guenther Roth are officers and principal shareholders of Lustrasilk Corporation of America, Inc. They formulate, direct and control the acts and practices of said corporation, including those hereinafter set forth. Their address is the same as that of Lustrasilk Corporation of America, Inc.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondents engage in the manufacturing, advertising, offering for sale, sale, and distribution of Lustrasilk Home Permanent and Lustrasilk 4 Application Home Perm Kit, which are "cosmetics" as that term is defined in Section 15 of the Federal Trade Commission Act. The Lustrasilk solution is a liquid which contains ethylene glycol, acid and other ingredients. The solution is applied to the hair and, while wet, the hair is straightened with a pressing comb. This process is used