

Interlocutory Order

98 F.T.C.

IN THE MATTER OF
INTERNATIONAL HARVESTER COMPANY

Docket 9147. Interlocutory Order, July 15, 1981

ORDER DENYING MOTION FOR STAY

On June 25, 1981, Administrative Law Judge Mathias certified to the Commission the question whether further proceedings in this matter are in the public interest.

On June 30, 1981, Judge Mathias refused respondent International Harvester Company's ("IH") request for a stay of further proceedings pending a Commission ruling on the certified question. On July 2, 1981, IH filed a motion for a stay with the Commission pursuant to Section 3.23(c) of the Commission's Rules of Practice. Complaint counsel opposed the motion for a stay in an answer filed on July 7, 1981. On July 9, 1981, IH moved for leave to file, and submitted, a reply memorandum to complaint counsel's answer. IH's reply memorandum is accepted. Because the active pretrial schedule begins on July 13, 1981, IH asks that the Commission grant a stay at the earliest possible time in order to avoid potentially unnecessary costs of litigation.

Section 3.23(c) of the Commission's Rules of Practice provides that an application for review and appeal shall not stay proceedings unless the ALJ or the Commission shall so order. This provision presumes that proceedings will continue unless a stay is appropriate in the opinion of the ALJ or the Commission. An important purpose of this provision is to facilitate discovery and trial with a minimum of interruption due to interlocutory issues that may arise. Generally speaking, the public interest in expeditious disposition of adjudicatory matters disfavors interlocutory suspensions of proceedings except in extraordinary circumstances. In addition, responsibility for resolving procedural questions of this type in adjudicatory matters generally has been left by the Commission to the sound discretion of the administrative law judges. The Commission does not lightly disturb their rulings on the course and conduct of the proceedings over which they preside.

IH argues that Judge Mathias' order places in serious issue whether this case is any longer in the public interest. In light of this development, IH argues that it would be wasteful to incur further costs of litigation during the pendency of Judge Mathias' order before the Commission. The Commission is in no position yet to judge the validity of the real premise for IH's motion for a stay, namely, that a decision to withdraw this matter from litigation is a likely

consequence of Judge Mathias' action and that further expense of litigation thus should be avoided. Until and unless the Commission finds such a likelihood or actually decides that this matter should be withdrawn from litigation, the public interest in expeditious completion of discovery and trial requires that the case go forward.

IH argues that the cost of pretrial litigation will be substantial, heightening the need for a stay. While the Commission is sensitive to IH's alleged financial difficulties and the added stress created by this case, Motion for Stay at 6-7, the cost of litigation, even if considerable, ordinarily is insufficient to support a stay.¹

For these reasons, and because of the broad discretion our administrative law judges have on questions of this kind, the Commission does not believe that Judge Mathias' denial of IH's motion for a stay below should be set aside.²

Accordingly, it is ordered that respondent IH's motion for a stay filed with the Commission is hereby denied.

Commissioner Dixon voted in the negative.

¹ Section 3.23 of the Commission's Rules is modeled after the appeal procedure of 28 U.S.C. 1292(b), in which interlocutory appeals do not stay further proceedings unless the district or appellate court so orders. Precedents under that provision thus can be useful to the Commission in interpreting its own rule governing stays pending appeal. The Commission notes that federal courts have rejected costs of litigation as a ground for a stay pending appeal. See, e.g., *Long v. Robinson*, 432 F. 2d 977, 980 (4th Cir. 1970), quoting, *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921, 925, (D.C. Cir. 1958); *Reynolds Metal Co. v. Secretary of Labor*, 453 F. Supp. 4, 6-7 (W.D. Va. 1977).

² IH alleges that in denying a stay, Judge Mathias indicated that if the Commission felt the certified question raised a substantial issue, then the Commission was the appropriate body to issue a stay. Reply Memo at 2. To the extent IH is arguing that Judge Mathias suggested a stay is appropriate, we note that there is no recommendation for a stay in his order.

Complaint

98 F.T.C.

IN THE MATTER OF
SPERRY CORPORATION

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

Docket C-3068. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New York City manufacturer, among other things, to cease disseminating advertisements which misrepresent that the Black Man's Shaver or any other device or commercial treatment will cure or minimize "razor bumps." Further, respondent is barred from making statements which are inconsistent with accepted medical opinion or which misrepresent the efficacy, performance or superiority of any drug or device. The order also requires that the company contact previous customers and make refunds to those eligible.

Appearances

For the Commission: *Mark Allan Heller and Teresa A. Hennessy.*

For the respondent: *Roger A. Clark, Rogers & Wells, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Sperry Corporation, formerly the Sperry Rand Corporation, (hereinafter "Sperry"), through its former Sperry-Remington Division, (hereinafter "Remington"), hereinafter at times referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. "Sperry" is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1290 Avenue of the Americas, New York, New York.

PAR. 2. "Sperry" has engaged in the business of manufacturing, advertising, and offering for sale, various products, including but not limited to, Remington's Black Man's Shaver, a product advertised for treating the shaving problems of Black men, to wit pseudofolliculitis barbae (hereinafter "razor bumps"), a disease primarily induced by shaving.