

Interlocutory Order

124 F.T.C.

IN THE MATTER OF

BUTTERWORTH HEALTH CORPORATION, ET AL.

Docket 9283. Interlocutory Order, September 25, 1997

ORDER GRANTING MOTION TO DISMISS

On July 22, 1997, respondents Butterworth Health Corporation and Blodgett Memorial Medical Center ("the Hospitals") filed a Motion to Dismiss the complaint in the above-captioned case pursuant to Section 3.26(d) of the Commission's Rules. Complaint counsel filed an Opposition to Respondents' Motion to Dismiss the Proceedings on August 5, 1997. On August 15, 1997, the Hospitals moved for leave to file a Reply Memorandum and on September 2, 1997, complaint counsel moved for leave to file a Response to Respondents' Reply Memorandum. Both motions for leave to file supplemental pleadings are granted.

These proceedings follow the Commission's filing of an action in the United States District Court for the Western District of Michigan seeking a preliminary injunction under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), to prevent a proposed merger of the Hospitals pending completion of an administrative proceeding to determine whether the proposed merger violates Section 7 of the Clayton Act, 15 U.S.C. 18. On September 26, 1996, the district court issued an opinion denying a preliminary injunction. *FTC v. Butterworth Health Corp.*, 946 F. Supp. 1285 (W.D. Mich. 1996). Thereafter, the United States Court of Appeals for the Sixth Circuit affirmed the district court's decision in an unpublished *per curiam* opinion. *FTC v. Butterworth Health Corp.*, No. 96-2440 (6th Cir. July 8, 1997) (*per curiam*).

The rationale for Rule 3.26(d), pursuant to which the Hospitals move, is that although denial of injunctive relief by the courts does not compel the Commission, as a matter of law, to terminate its administrative case, such judicial action justifies respondents in asking the Commission to review closely whether further proceedings are appropriate. The Commission's Policy Statement on Administrative Merger Litigation Following the Denial of a Preliminary Injunction, which was published with Rule 3.26(d), states that the Commission must determine whether to continue or terminate

an administrative proceeding on a case-by-case basis. 60 Fed. Reg. 39,741, 39,743 (1995); 4 Trade Reg. Rep. (CCH) ¶ 13,242 at 20,994.

In determining whether to continue the administrative litigation, the Commission has considered the following factors set forth in the Commission's Policy Statement:

(i) The factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the transaction raises important issues of fact, law, or merger policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceedings, and (v) any other matter that bears on whether it would be in the public interest to proceed with the merger challenge.

Id. After considering the pleadings and each of these five factors, the Commission has determined that further administrative litigation is not in the public interest.

Accordingly,

It is ordered, That respondents' motion for leave to file a reply and complaint counsel's motion for leave to file a response to the reply be, and they hereby are, granted;

It is further ordered, That respondents' motion to dismiss be, and it hereby is, granted.

Chairman Pitofsky recused.

Complaint

124 F.T.C.

IN THE MATTER OF

GLOBAL WORLD MEDIA CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3772. Complaint, October 9, 1997--Decision, October 9, 1997*

This consent order, among other things, requires a California-based company and its officer, the marketers of a supplement known as "Herbal Ecstasy," to substantiate all future safety claims for any food, drug or dietary supplement, and requires a disclosure statement warning consumers of the potentially serious safety risks of taking Ecstasy or any other product containing ephedra. In addition, the consent order prohibits the respondents from promoting Ecstasy or any similar product for its mind-altering effects in media with a predominant youth audience, and prohibits misrepresentations of testimonials or endorsements of any product.

Appearances

For the Commission: *Nancy Warder, Michelle Rusk and C. Lee Peeler.*

For the respondents: *William H. Dailey, Encino, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Global World Media Corporation, a corporation, and Sean Shayan, individually and as an officer of the corporation ("respondents"), have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Global World Media Corporation is a California corporation with its principal office or place of business at 1501 Main Street, Venice, California.

2. Respondent Sean Shayan is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Global World Media Corporation.

3. Respondents have advertised, labeled, offered for sale, sold, and distributed products to the public, including Ecstasy or Herbal Ecstasy tablets ("Ecstasy"). The principal ingredient in Ecstasy is