

Interlocutory Orders, Etc.

IN THE MATTER OF

HACKENSACK MERIDIAN HEALTH, INC.

AND

ENGLEWOOD HEALTHCARE FOUNDATION

Docket No. 9399. Order, September 24, 2021

Order granting in part to defer the commencement of the evidentiary hearing.

ORDER GRANTING FOURTH CONTINUANCE

On September 14, 2021, Complaint Counsel and Respondents Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation (“Englewood”) jointly moved to defer commencement of the evidentiary hearing in this proceeding until thirty days after the United States Court of Appeals for the Third Circuit renders its judgment on Respondents’ appeal of the August 4, 2021 order by the United States District Court for the District of New Jersey granting a preliminary injunction requested by Complaint Counsel. Joint Expedited Motion for Further Continuance of Administrative Proceedings Pending Federal Court Appeal of Order Granting Motion for Preliminary Injunction (“Joint Motion”). Complaint Counsel and Respondents further requested that interim prehearing deadlines be continued for the same period of time. We have previously granted similar requests to continue the commencement of the hearing and to defer the prehearing deadlines on May 25, 2021, July 1, 2021, and July 27, 2021. Order Granting Continuance (“May 25 Order”); Order Granting Further Continuance (“July 1 Order”); Order Granting Third Continuance (“July 27 Order”). For reasons similar to those expressed in these prior orders, we have determined to defer commencement of the evidentiary hearing as requested by the parties.

On December 3, 2020, the Commission issued an administrative complaint challenging a proposed transaction whereby HMH would acquire Englewood (“the Proposed Transaction”). The Commission at that time also filed a complaint in the U.S. District Court for the District of New Jersey seeking a preliminary injunction barring the Proposed Transaction until completion of the administrative proceeding. The District Court granted that preliminary injunction on August 4, 2021. Respondents have appealed the preliminary injunction order, and briefing is scheduled to conclude on November 12, 2021. The parties state that “[i]f after all appeals in the federal court proceeding are exhausted [R]espondents continue to be preliminarily enjoined from consummating the proposed transaction, it is highly likely Respondents will abandon the transaction and this administrative proceeding will be moot.” Joint Motion at 2; *see id.* at 3.

The parties argue that granting the requested continuance and extending prehearing deadlines would protect the parties and third parties and their witnesses from unnecessary burdens and expense, without prejudicing the Commission. *Id.* at 1-5; *see* May 25 Order at 1-2. We found these arguments persuasive in granting prior continuances in this proceeding. *See* May 25 Order; July 1 Order; July 27 Order.

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Commission Rule 3.41(f) provides that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative proceedings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b). Nonetheless, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. May 25 Order at 2. For the reasons stated in our May 25, July 1, and July 27 Orders, and based on the authorities cited therein, we find that there is good cause to continue the commencement of the evidentiary hearing in order to protect the parties and third parties from unnecessary burden and expense.

Because we are not rescheduling the evidentiary hearing to commence on a specific calendar day, a delay of prehearing deadlines by the same interval would create uncertainty. Consequently, we will continue all prehearing deadlines for sixty days, with the understanding that the Chief Administrative Law Judge can further adjust those deadlines if that proves appropriate.

Accordingly,

IT IS HEREBY ORDERED that the Joint Expedited Motion for Further Continuance of Administrative Proceedings Pending Federal Court Appeal of Order Granting Motion for Preliminary Injunction is **GRANTED IN PART**;

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on the first working day that is at least thirty days after the United States Court of Appeals for the Third Circuit renders its judgment on Respondents’ appeal of the August 4, 2021 order by the United States District Court for the District of New Jersey granting a preliminary injunction requested by Complaint Counsel; and

IT IS FURTHER ORDERED that unless modified by the Chief Administrative Law Judge, all related prehearing deadlines shall be extended by sixty (60) days.

By the Commission.

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IN THE MATTER OF

**HEALTH RESEARCH LABORATORIES, LLC.,
WHOLE BODY SUPPLEMENTS, LLC.,
AND
KRAMER DUHON***Docket No. 9397. Order, November 19, 2021*

Order denying either a final or summary decision, remanding the case to the FTC Administrative Law Judge, and allowing the Complaint Counsel to amend the complaint.

ORDER DENYING FINAL DECISION UNDER RULE 3.12(B)(2) AND DENYING SUMMARY DECISION

The Complaint in this case alleges that Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”), and their owner Kramer Duhon (collectively, “Respondents”) violated the Federal Trade Commission Act by making unsubstantiated health claims concerning their Black Garlic Botanicals, BG18, The Ultimate Heart Formula (“UHF”), and Neupathic products. Respondents seek a final decision and order under Commission Rule 3.12(b)(2), 16 C.F.R. § 3.12(b)(2), based on their purported admission of all material facts in the Complaint, while Complaint Counsel seek summary decision under Commission Rule 3.24, 16 C.F.R. § 3.24. We find that significant questions of material fact remain in dispute which make the case inappropriate for either a summary decision or a decision under Rule 3.12(b)(2). Therefore, this matter will be remanded to the Chief Administrative Law Judge (“ALJ”) for additional discovery, evidentiary hearing, and initial decision, consistent with our opinion below. Before remanding, however, we will provide opportunity for Complaint Counsel to move to amend the Complaint.

I. PROCEDURAL HISTORY**A. The Complaint**

On November 13, 2020, the Commission issued an administrative Complaint charging HRL, WBS, and Kramer Duhon, individually and as an owner and officer of the aforementioned companies, with violating Sections 5(a) and 12 of the FTC Act. The Complaint alleges that HRL’s and WBS’s advertisements conveyed expressly or by implication, and without substantiation, claims that the Black Garlic Botanicals, BG18, and UHF products: (a) prevent or reduce the risk of and treat cardiovascular disease, including by lowering blood pressure, improving blood flow, reducing cholesterol, or decreasing arterial plaque; (b) prevent or reduce the risk of and treat atherosclerosis, including by reducing cholesterol or decreasing arterial plaque; and (c) cure, treat, or mitigate hypertension, including by decreasing arterial plaque or lowering blood pressure. Complaint ¶¶ 14-19. The Complaint also alleges that HRL’s advertisements conveyed expressly or by implication, and without substantiation, claims that the Neupathic dietary supplement cures, treats, or mitigates diabetic neuropathy, including by improving blood circulation, or eliminating or alleviating diabetic nerve pain and discomfort. *Id.* ¶¶ 20-21. To support these claims, the