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In the Matter of COLLEGE FOOTBALL ASSOCIATION, an unincorporated association,
and CAPITAL CITIES/ABC, INC., a corporation

DOCKET NO. 9242

Federal Trade Commission

1990 FTC LEXIS 350

ORDER RE MORE DEFINITE STATEMENT

October 9, 1990

ALJ: [*1]

James P. Timony, Administrative Law Judge

Respondent Capital Cities/ABC, Inc. moves for more definite statement of the charges. On 10/11/90, 1

1991 FTC LEXIS 306, *

11 of 103 DOCUMENTS

In the Matter of DIRAN M. SEROPIAN, M.D.

Docket No. D-9248

Federal Trade Commission

1991 FTC LEXIS 306

ORDER DENYING RESPONDENT'S MOTION FOR A MORE DEFINITE STATEMENT

July 3, 1991

ALJ: [*1]

Lewis F. Parker, Administrative Law Judge

The respondent, Dr. Diran M. Seropian, has filed a motion seeking a more definite statement of the charges against

(Publication page references are not available for this document.)

In the Matter of THE ELECTRICAL BID REGISTRATION SERVICE OF MEMPHIS,
INC., a corporation, and
C.H. DENNIS, JR., individually and as an officer and director of said
corporation, and

of said corporation, and
THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, MEMPHIS CHAPTER, a corporation

1994 FTC LEXIS 213, *

5 of 103 DOCUMENTS

~~1994 FTC LEXIS 213, * 5 of 103 DOCUMENTS~~

DOCKET NO. 9268

Federal Trade Commission

1994 FTC LEXIS 213

NO DATE IN ORIGINAL

October 20, 1994

ORDER:

[*1]

ORDER DENYING MOTION TO DISMISS OR FOR A MORE DEFINITE STATEMENT

~~Respondent's motion to dismiss the Complaint is denied. The Commission's order is affirmed. 1994 FTC LEXIS 213, * 5 of 103 DOCUMENTS~~

1994 FTC LEXIS 90, *

6 of 103 DOCUMENTS

In the Matter of RED APPLE COMPANIES, INC., et al.

DOCKET NO. 9266

Federal Trade Commission

1994 FTC LEXIS 90

June 21, 1994

ORDER:

[*1]



LEXSEE 1992 U.S. DIST. LEXIS 9844

MARGARITA SANCHEZ

CV-92-1467

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

1992 U.S. Dist. LEXIS 9844

June 29, 1992, Decided

June 30, 1992, Filed

LexisNexis(R) Headnotes

plaintiff, without seeking leave of the Court and after one defendant has answered, [*2] has filed an amended

and as to prejudice the defendant seriously in attempting to answer it." *Bower v. Weisman* 630 F. Supp. 532, 538

pretense that it would speed the daughter's return to the plaintiff

Defendant's motion fails because it mistakes the role of the pleadings. The Federal Rules, trusting in the discovery process to provide much of the detail needed to

these reasonably straightforward factual allegations. Count 1, by far the most involved of all the counts, may be understood as alleging several claims in the alternative

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In the Matter of Schering-Plough Corporation, a corporation, Upsher-Smith Laboratories,
a corporation, and American Home Products Corporation, a corporation

Docket No. 9297

Federal Trade Commission

2001 FTC LEXIS 198

ORDER DENYING MOTIONS OF RESPONDENTS SCHERING-PLOUGH AND

October 31, 2001

ALJ: [*1]

D. Michael Chappell, Administrative Law Judge

ORDER:

I. PROCEDURAL BACKGROUND

On June 7, 2001, Respondent Schering-Plough Corporation ("Schering") filed a motion for partial dismissal of the Complaint for failure to state a claim upon which relief could be granted. Complaint Counsel filed an opposition on June 25, 2001. Schering filed a reply in support of its motion on July 6, 2001. Oral arguments of counsel were heard on July 25, 2001.

On July 20, 2001, Respondent Upsher-Smith Laboratories, Inc. ("Upsher-Smith") filed a motion to dismiss the Complaint in its entirety as deficient as a matter of law. Complaint Counsel filed an opposition on August 2, 2001.

. When a brand name drug is protected by one or more patents, an ANDA applicant that intends to market its generic product prior to expiration of any patent must certify that the patent on the brand name drug is invalid or will not be infringed by the manufacture, use, or sale of the drug for which the ANDA

. If the ANDA contains a Paragraph IV Certification, the ANDA applicant must provide notice to each owner of the patent that is the subject of the certification and to the holder of the approved NDA to which the ANDA refers. *Id.* at P 14. Upon receiving notice of a Paragraph IV Certification, the patent holder has 45 days in which to file a patent infringement suit against the generic manufacturer. *Id.* If a patent infringement suit is initiated against the ANDA applicant, the FDA must stay its final approval of the ANDA for the generic drug until the earliest of (1) the patent expiration, (2) a judicial determination of the patent litigation, or (3) the expiration of a 30-month waiting period. *Id.*

. The Hatch-Waxman Act provides that the first to file a Paragraph IV certified ANDA ("the first filer") is eligible for a 180-day period of exclusivity ("the 180-day exclusivity period"). *Id.* at P 15. That is, during those 180 days, the FDA will not approve any other ANDA for the same generic product until the earlier of the date on which (1) the first firm begins commercial marketing of its generic version of the

allegedly infringing generic version of K-Dur 20 or with any other generic version of K-Dur 20, regardless of whether such product would infringe Schering's patents, until September 2001; both parties agreed to stipulate to the dismissal of the litigation without prejudice and Schering received licenses to

market five Upsher-Smith products. Id. at P 44.

On December 20, 1995, ESI Lederle Laboratories, Inc. ("ESI") filed a New Drug Application ("NDA") with the

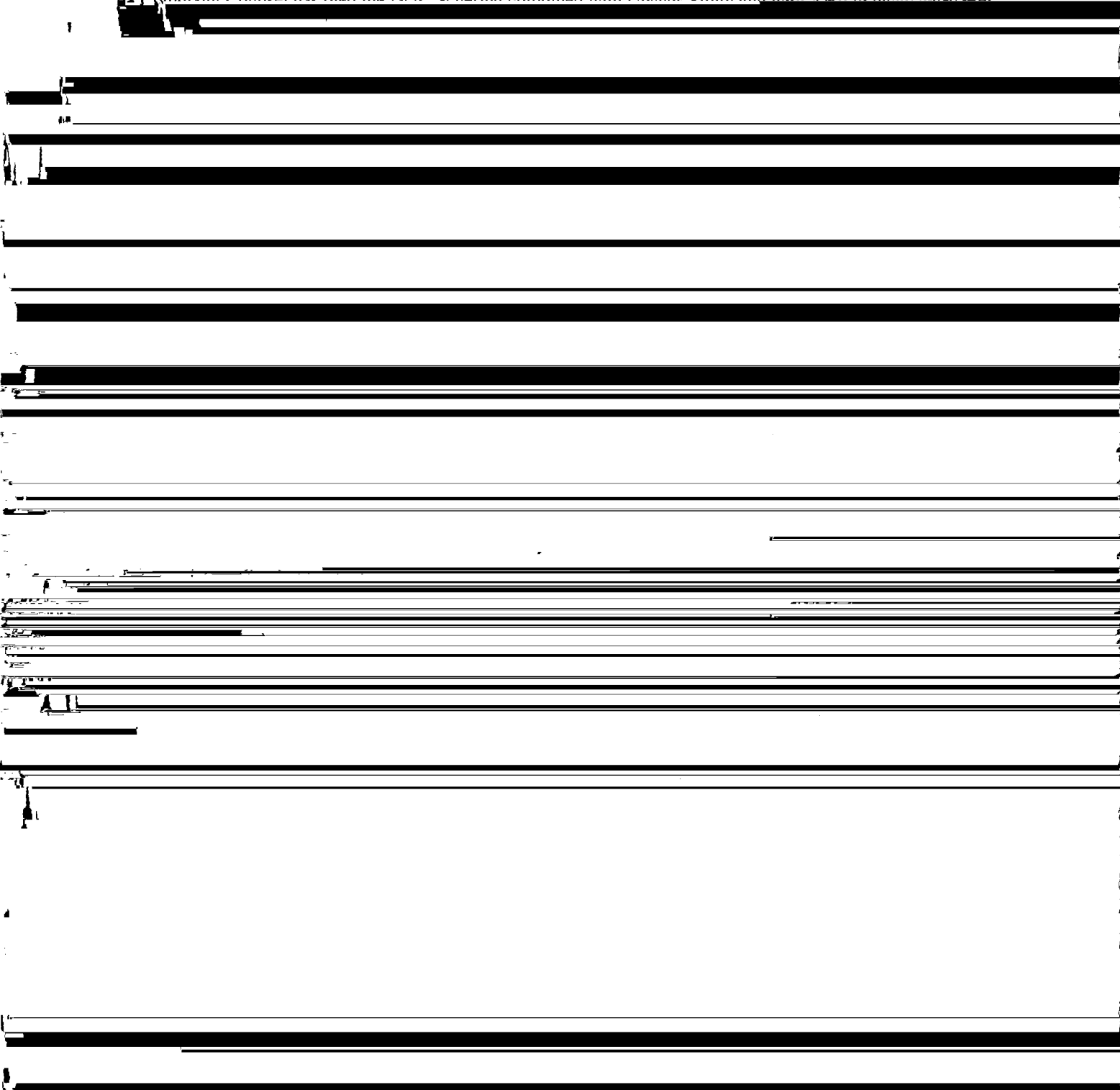
the FDA to market a generic version of Schering's K-Dur 20. Id. at P 51. ESI submitted a Paragraph IV Certification with this filing and notified Schering of its Paragraph IV Certification and ANDA. Id. Schering sued ESI for patent infringement in the United States District Court for the Eastern District of Pennsylvania on February 16, 1996, alleging that ESI's generic version of Schering's K-Dur 20 infringed Schering's '743 patent. Id. at P 53.

On June 10, 1998, the U.S. District Court for the Eastern District of Pennsylvania entered a judgment in favor of ESI, finding that ESI's generic version of K-Dur 20 did not infringe Schering's '743 patent. Id. at P 53.

Schering's and Hoechst-Smith's motions are filed pursuant to Rule 3007(a) of the FTC Rules. 10/1/01

Respondents, by arguing that the Complaint fails to allege patent invalidity or non-infringement and fails to allege the patent suit was not bona fide or that the settlements were more anticompetitive than the probable outcome of the patent litigation, urge the Court to accept a different set of facts than alleged in the Complaint. In essence, Respondents argue that if Schering's patent was valid and was infringed by Upsher-Smith's and AHP's products, then Schering has a legal right to exclude those proposed products from the market until September 2006. Memorandum in Support of Respondent Schering-Plough Corporation's Motion for Partial Dismissal of the Complaint at p. 7. Under this scenario, Respondents assert, the agreements which allow Upsher-Smith and AHP to bring their generics to market prior [*15] to September 2006 are legal and indeed are procompetitive because the agreements allow the generics to enter the market sooner than the products otherwise would have.

As Complaint Counsel has pled the facts, Schering combined with Upsher-Smith and with AHP to delay entry into



Schering asserts, first, that it is unclear whether the Hatch-Waxman Act grants the 180-day exclusivity period to a

period, it is by operation of federal law with no resulting antitrust liability.

Although eligibility for the 180-day exclusivity period is 180 days from the date of the first commercial sale of the generic drug to the public.

Administrative Law Judge

LEXSEE 1993 US DIST LEXIS 4663

TEXTIL RV LtdA, Plaintiff, v. ITALUOMO, INC., f/k/a STYLECRAFT

92 Civ. 526 (PKL)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

1993 U.S. Dist. LEXIS 4663

April 13, 1993, Decided

April 13, 1993, Filed

LexisNexis(R) Headnotes

COUNSEL: [*1] KAZLOW & KAZLOW, 19 West
34th Street, New York, New York 10001, James M.

to Rule 12(b)(6). Plaintiff also moves for a more definite statement of the first and second counterclaims pursuant to Rule 12(e). For the following [*2] reasons, it hereby is ordered that: (1) Textil's motion to dismiss Italuomo's first and second counterclaims or for a more definite

goods were defective and non-conforming, mismatched and/or in incomplete lots." Answer, P 9. n2

counterclaim as pleaded is sufficient to alert Textil as to the general nature of Italuomo's breach of contract claim. Italuomo has met the burden imposed by Rule 8(a) and need not provide detailed evidence supporting its claims in its pleading. Textil is not entitled to a more specific

n? A question as to the choice of law to be

footnote in its moving memorandum of law, Textil states the bald conclusion that "under New York's Choice of Law Rules, it would appear that Brazilian law may need to be applied to the

under the Federal Rules of Civil Procedure to ascertain the particular evidence Italuomo will adduce in support of its claim. Accordingly, Textil's motion for a more definite statement with respect to the first counterclaim is

Fed. R. Civ. P. 9(b). "The purpose of Rule 9(b) is

36. Italuomo alleges further that

notice of a plaintiff's claim, to safeguard a defendant's reputation from improvident charges of wrongdoing, and to protect a defendant against the institution of a strike

Plaintiff communicated the same to the defendant and assured the defendant that in order to continue production and

in connection with the third and fourth counterclaims. Under New York law, a pleading adequately states a claim for punitive damages if the pleading recounts facts suggesting that "the misconduct was extraordinary and the wrongdoer exhibited a high degree of moral culpability or a total lack of loyalty and good faith."

Syjit v. Lichtenberg Pol. Dns. Inc. 261 F.2d 262 272

a fiduciary relationship embraces not only those the law has long adopted -- such as trustee and beneficiary -- but also more informal relationships where it can be readily seen that one party reasonably trusted another. Examples of such informal fiduciary relationships found in

contracts and misrepresented material
facts to the defendant thereby negligently

*Duncan, 668 F. Supp. at 234 (citing Barr v. Abrams,
810 F.2d 358, 363 (2d Cir. 1987))* In this case

defendant's contractual obligations to

conclusory, and unsupported by factual allegations that it

1993 FTC LEXIS 300, *

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In the Matter of Weight Watchers International, Inc. a corporation

DOCKET NO. 9261

Federal Trade Commission

1993 FTC LEXIS 300

October 27, 1993

ORDER:

[*1]

~~ORDER OF THE FEDERAL TRADE COMMISSION~~

Weight Watchers International, Inc. ("Weight Watchers"), claiming that it cannot form a responsive answer, has asked me to direct complaint counsel to file a more definite statement of the allegations contained in the Commission's