

****PUBLIC****

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



DOCKET NO. 9332

In the Matter of
ALEXANDER HECKMAN,
individually and doing business
as Omega Supply, and
ERICK DEL RIO,
Respondents.

**ORDER GRANTING MOTION TO DISMISS
AND INITIAL DECISION**

D. Michael Chappell
Administrative Law Judge

Date: March 3, 2009

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I. PROCEDURAL HISTORY

On February 25, 2009, Complaint Counsel filed a motion to dismiss without prejudice (“Motion to Dismiss”) on the ground that efforts to serve the Complaint on Alexander Heckman and Erick del Rio (collectively, “Respondents”) have been unsuccessful. Complaint Counsel’s motion is granted with the result that the proceeding before the Administrative Law Judge is terminated.

Rule 3.22(e) of the Commission’s Rules of Practice requires that when a motion to dismiss a complaint is granted with the result that the proceeding before the Administrative Law Judge is terminated, the Administrative Law Judge shall file an initial decision in accordance with the provisions of Rule 3.51. 16 C.F.R. § 3.22(e). This Initial Decision is filed in accordance with the provisions of Rule 3.51 of the Commission’s Rules of Practice. Citations to specific numbered Findings of Fact in this Initial Decision are designated by “F.”

II. STATEMENT OF FINDINGS

Rule 3.51(c) of the Commission’s Rules of Practice requires an initial decision to include a statement of findings and conclusions and an appropriate rule or order. 16 C.F.R. § 3.51(c). Accordingly, this section sets forth the following statement of findings.

1. The Federal Trade Commission (“FTC”) issued a Complaint against Respondents Alexander Heckman, individually and doing business as Omega Supply, and Erick Del Rio, individually (collectively, “Respondents”) on September 16, 2008. (Complaint.)

2. The Complaint alleges that Respondents have advertised, promoted, offered for sale, sold, and distributed products to the public, including Amigdalina B-17, Hydrazine Sulphate, and Cloracesium (collectively, the “Omega Supply Products”). (Complaint at ¶ 3.)

3. The Complaint alleges that the acts and practices of Respondents, as alleged in the Complaint, constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 21 of the Federal Trade Commission Act. (Complaint at ¶ 23.)

4. By Order dated October 29, 2008, Complaint Counsel was directed to provide the Office of Administrative Law Judges a status report. (October 29, 2008 Order Requiring Status Report.)

5. Complaint Counsel filed a status report on November 6, 2008. (November 6, 2008 Status Report.)

6. The November 6, 2008 Status Report includes a declaration of Victor F. DeFrancis, Attorney in the Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission. (DeFrancis Decl. at ¶ 1.)

7. The Office of the Secretary at the FTC attempted to serve the Respondents via United States Postal Service Express Mail delivery service. Both attempts at service failed, and the packages were returned to the FTC, each similarly marked “moved, left no address.” (DeFrancis Decl. at ¶ 3.)

8. Complaint Counsel engaged a private process server, First Legal Support Services in an effort to locate and serve the Complaint on Alexander Heckman at two separate addresses. The individuals at those addresses claimed to not know where Alexander Heckman resided or how to contact him. (DeFrancis Decl. at ¶ 3.)

9. By Order dated February 13, 2009, Complaint Counsel was directed to provide a subsequent status report. (February 13, 2009 Order Requiring Second Status Report.)

10. On February 25, 2009, Complaint Counsel filed its Second Status Report and Motion to Dismiss Without Prejudice. (Motion to Dismiss.)

11. Complaint Counsel states, despite its best efforts, the Commission has not been able to locate Respondents and is not likely to in the foreseeable future. (Motion to Dismiss at 1.)

12. Complaint Counsel states that there have been no communications between the parties since the issuance of the Complaint. (Motion to Dismiss at 1.)

13. Complaint Counsel states that an employee of a Mexican-based supplier to Omega Supply informed Complaint Counsel that he believes Respondent del Rio is currently living in Mexico but that he does not know of del Rio's location. (Motion to Dismiss at 2.)

III. CONCLUSIONS

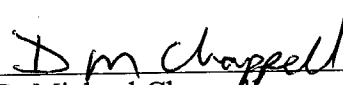
Complaint Counsel has demonstrated that the FTC attempted to and has not been able to serve the Complaint on the Respondents. F. 7-8, 11-13. Complaint Counsel has moved to dismiss the complaint without prejudice. Dismissal without prejudice under these circumstances is appropriate. See *In re R.C. Myrick Trading as Carey Surgical Applicance Co., et al.*, 56 F.T.C. 351, 1959 FTC LEXIS 272 (Sept. 26, 1959); *In re Federal Fire Protection Service, Inc., et al.*, 54 F.T.C. 419, 1957 FTC LEXIS 184 (Oct. 3, 1957).

ORDER

Upon consideration of the reasons set forth in Complaint Counsel's status reports and motion, Complaint Counsel's motion to dismiss is GRANTED.

IT IS ORDERED that all violations of the Complaint be, and hereby are, dismissed without prejudice to the right of the Commission to take such further action in the matter in the future as may be warranted by the then existing circumstances.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Dated: March 3, 2009