

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
American Consumer Products Corporation,) Docket No. FIFRA-04-2009-3023
)
Respondent.)

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ORDER GRANTING MOTION TO AMEND COMPLAINT

On August 25, 2009, the U.S. Environmental Protection Agency, Region 4 (“Complainant”), initiated this action by the filing of a “Civil Complaint” against “American Consumer Products” (“Respondent”). An Answer to the Complaint was filed on October 27, 2009. The Answer raised issues, *inter alia*, regarding the identity of the corporate entity being charged in the action. A Prehearing Order was issued in this matter on January 19, 2010 establishing dates for submission of the parties pre-hearing exchanges, *etc.*, deadlines which were subsequently extended upon motion. Thereafter, Complainant timely submitted its Initial Prehearing Exchange. Respondent’s Prehearing Exchange is due shortly, on April 16, 2010.

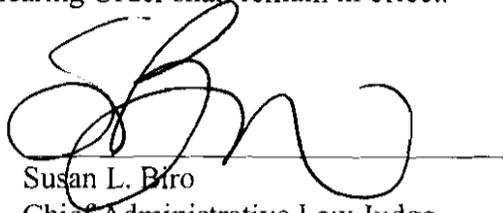
Complainant filed a Motion to Amend the Complaint (“Motion”) along with an executed proposed Amended Civil Complaint on March 26, 2010. The Motion indicates that Complainant wishes to amend the Complaint to clarify and correct certain errors therein including changing the name of the Respondent as identified in the caption and body of the Complaint to “American Consumer Products Corporation,” a Georgia corporation. Contrary to the Prehearing Order, however, the Motion did not include a statement as to Respondent’s position in regard thereto. To date, Respondent has not filed any response to the Motion and, upon being contacted by this Tribunal, and provided with a copy of the Motion, the Respondent indicated that it did not object thereto.¹

Section 22.14(c) of the Rules of Practice, 40 C.F.R. § 22.14(c), provides that once an

¹ Respondent was provided with a copy of the Motion by facsimile after notifying this Tribunal that the copies of the Motion served by Complainant had not been received. The unnecessary expenditure of time and effort by this Tribunal and the parties on this uncontested Motion after its filing is a perfect example of the necessity and benefit of the provision in the Prehearing Order regarding pre-filing communication. The parties are expected to strictly comply with such requirement in regard to any motions filed in the future. For additional guidance on the proceedings before this Tribunal, the parties are encouraged to consult the Practice Manual, accessible at: <http://www.epa.gov/oalj/orders/alj-practice-manual.pdf>

Answer has been filed, the Complainant may amend the complaint only upon motion granted by the presiding judge. The Rules of Practice, however, provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure provides that "leave [to amend a complaint] shall be freely given when justice so requires." The Supreme Court has interpreted Rule 15(a) to mean that leave to amend pleadings should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Therefore, upon consideration, Complainant's unopposed Motion to Amend the Complaint is hereby **GRANTED and the caption of this action changed consistent therewith.** The proposed "Amended Civil Complaint" dated March 26, 2010, attached to Complainant's Motion, is hereby deemed filed as of the date of this Order. **Respondent shall have twenty (20) days from the date of this Order to file its Answer to the Amended Civil Complaint.** All deadlines previously established in the Prehearing Order shall remain in effect.



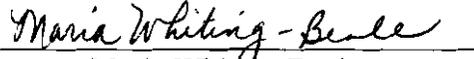
Susan L. Biro
Chief Administrative Law Judge

Date: April 13, 2010
Washington, D.C.

In the Matter of American Consumer Products, Respondent
Docket No. FIFRA-04-2009-3023

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Complaint**, dated April 13, 2010, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: April 13, 2010

Original And One Copy By Pouch Mail To:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Copy By Pouch Mail And Facsimile To:

Jennifer Lewis, Esquire
Associate Regional Counsel
U.S. EPA
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Copy By Regular Mail And Facsimile To:

Robin Zahran
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1301 W. 22nd Street, Suite 815
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