

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

_____)	
In the Matter of)	
)	
Health Research Laboratories, LLC,)	
a limited liability company,)	Docket No. 9397
)	
Whole Body Supplements, LLC,)	
a limited liability company, and)	
)	
Kramer Duhon,)	
individually and as an officer of)	
Health Research Laboratories, LLC,)	
and Whole Body Supplements, LLC,)	
)	
Respondents.)	
_____)	

**ORDER GRANTING RESPONDENTS’ MOTION
FOR LEAVE TO AMEND ANSWER**

I.

On February 12, 2021, Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”), and Kramer Duhon (collectively, “Respondents”) filed a Motion for Leave to Amend the Answer in accordance with Rule 3.12(b)(2) (“Motion to Amend Answer”). On February 24, 2021, Federal Trade Commission (“FTC”) Complaint Counsel filed an Opposition to the Motion to Amend Answer (“Opposition”).¹

On February 25, 2021, Respondents filed a Waiver of Affirmative Defenses of Mootness and Lack of Public Interest. Also on February 25, 2021, Complaint Counsel filed a motion for leave to respond to Respondents’ waiver filing, which was granted on

¹ Complaint Counsel included within its Opposition to Respondent’s Motion to Amend Answer a request for leave to amend the Complaint, pursuant to Rule 3.15(a), which Complaint Counsel referred to as a “Cross-Motion” (“Motion to Amend the Complaint”). An order on Complaint Counsel’s Motion to Amend the Complaint will be issued on or before March 12, 2021.

March 1, 2021. As of this date, Complaint Counsel has not filed the allowed response.²

II.

The Complaint in this case was filed November 13, 2020 (“Complaint”). Respondents filed an answer to the Complaint on December 4, 2020 (“Answer”), denying a number of factual allegations and pleading nine legal defenses.

Pursuant to Rule 3.15(a)(1) the Administrative Law Judge “may allow appropriate amendments” to an answer “[i]f and whenever determination of a controversy on the merits will be facilitated thereby” and may impose “such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties.” 16 C.F.R. § 3.15(a)(1).

Respondents seek to amend their Answer to elect not to contest the factual allegations of the Complaint, in accordance with Rule 3.12(b)(2), which states in pertinent part:

If the respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that the respondent admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such an answer, the respondent may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46.

16 C.F.R. § 3.12(b)(2).

Respondents’ proposed amended answer, under a section titled, “Answer Pursuant to [Rule] 3.12(b)(2),” states:

Pursuant to 16 CFR § 3.12(b)(2), Respondents elect not to contest the allegations of fact set forth in the complaint. Respondents admit all of the material allegations to be true. Pursuant to 16 CFR § 3.12(b)(2), Respondents reserve the right to submit proposed findings of fact and conclusions of law.

Motion to Amend Answer Ex. 1.

² On March 4, 2021, Complaint Counsel filed what it titled a “Supplemental Opposition” to its Opposition to the Motion to Amend Answer. The Commission’s Rules do not provide for such a filing and Complaint Counsel did not seek leave to file the purported supplement. A cursory review of the filing shows that the supplement is little more than a regurgitation of the arguments made in Complaint Counsel’s original Opposition. Moreover, Complaint Counsel’s Supplemental Opposition does not present arguments in opposition to Respondents’ Waiver filing, which response was permitted under the Order of March 1, 2021.

Respondents' proposed amended answer also includes a section titled "Legal Defenses," which asserted five of the nine legal defenses Respondents pled in their original Answer. Respondents subsequently filed a document titled, "Waiver of Affirmative Defenses of Mootness and Lack of Public Interest," pursuant to which Respondents waived those two defenses (the "Waived Defenses"), thereby leaving only three asserted "legal defenses": that the requested relief exceeds statutory authorization; that the FTC's administrative litigation process is unconstitutional; and that the Commission's *de novo* review of fact-findings by the Administrative Law Judge ("ALJ") on administrative appeals is unconstitutional and a violation of the Administrative Procedures Act. Respondents' original answer had asserted nine defenses.

Respondents argue that the amendments should be allowed because they do not add any allegations or defenses from their original answer. Rather, Respondents state, the proposed amended answer seeks to "admit the few material allegations that Respondents did not admit" in the original answer. Respondents further argue that Complaint Counsel is not prejudiced, and is in fact benefitted, by the proposed amended answer because Complaint Counsel will "not have to prove any disputed factual allegations." Motion to Amend Answer at 4.

Complaint Counsel contends that Respondents' proposed amended answer is improper under Rule 3.12(b)(2) because, according to Complaint Counsel, the amended answer does not unequivocally admit "all" material facts; and denies or challenges the facts through positing legal defenses. Complaint Counsel argues in the alternative that certain conditions should attach to allowing the amended answer, including requiring Respondents to provide a paragraph-by-paragraph statement admitting (or denying) each allegation of the Complaint and ordering discovery as to issues that remain in dispute.

III.

As further explained below, leave to file Respondents' proposed amended answer, without the now-waived defenses of mootness and lack of public interest, will be allowed. There can be little doubt that Respondents' admissions, made pursuant to Rule 3.12(b)(2), will significantly narrow the issues in the case and thereby facilitate a determination of the merits. 16 C.F.R. § 3.15(a)(1). Moreover, Respondents' proposed amended answer contains an appropriate election and statement of admission under Rule 3.12(b)(2). As noted above, Rule 3.12(b)(2) allows a respondent to elect "not to contest the allegations of fact" in a complaint by submitting an answer "consist[ing] of a statement that the respondent admits all of the material allegations to be true." Respondents' proposed amended answer includes the express and unequivocal statements: "Respondents elect not to contest the allegations of fact set forth in the complaint. Respondents admit all of the material allegations to be true." Motion to Amend Answer Ex. 1. Complaint Counsel complains about Respondents' use of the phrase "material allegations" as inserting unknown limitations and equivocation into Respondents' admissions because Respondents do "not specify which allegations they consider material." However, the language used by Respondents is that which is provided in Rule 3.12(b)(2). Indeed, Respondents' language tracked the language of the Rule

precisely. Under these circumstances, which allegations Respondents “consider” material appears to be irrelevant.

Complaint Counsel also contends that Respondents’ proposed amended answer is improper under Rule 3.12(b)(2) because it includes affirmative defenses. Complaint Counsel first argues that Rule 3.12(b)(2) bars the assertion of legal defenses by providing that an answer under the Rule “shall consist of” the statement admitting all material allegations to be true. However, the Rule does not state that such an answer “shall consist *only*” of the required statement of admission, and this limitation will not be implied. In addition, the Rule expressly allows the answering party to submit both proposed findings of fact and proposed conclusions of law, which is inconsistent with a conclusion that a Rule 3.12(b)(2) answer prohibits presentation of legal arguments that may bar liability or the requested relief, notwithstanding the admission of all material allegations.

Next, Complaint Counsel argues Respondents’ legal defenses necessarily implicate a denial of alleged facts, which would be contrary to the purpose of an answer under Rule 3.12(b)(2). Complaint Counsel’s examples include Respondents’ defenses of mootness and lack of public interest, but Respondents have waived those defenses and Respondents will not be permitted to include them in the amended answer allowed under this Order. Complaint Counsel fails to demonstrate how Respondents’ remaining legal defenses in the proposed amended answer challenge or deny the material allegations of the Complaint. Indeed, the nature of an affirmative defense is that it defeats the plaintiff’s claim even assuming the allegations are true. Thus, Respondents can, for example, challenge the scope of remedy, while still admitting the underlying factual allegations supporting liability. *See, e.g., In re Auslander Decorator Furniture Inc.*, 83 F.T.C. 1542, 1974 FTC LEXIS 213, *47-48 (Apr. 23, 1974) (accepting Rule 3.12(b)(2) answer that “admitted all the material allegations” of the complaint and resolving remaining issue of scope of remedy). Ultimately, the risk that Respondents’ admissions of fact will undermine their legal defenses is Respondents’ to bear, and is not a reason to disallow either the admissions or the legal defenses.

In addition, Complaint Counsel argues that even if the proposed amended answer is allowed, certain conditions are necessary to prevent prejudice to Complaint Counsel. The notion that Complaint Counsel is prejudiced by Respondents’ admission of all material allegations of the Complaint and the reduction of Respondents’ asserted legal defenses defies credulity. The effect of a Rule 3.12(b)(2) answer is to “waive [all] hearings” and, as Respondents state in their Motion, Complaint Counsel will “not have to prove any disputed factual allegations.” Motion to Amend Answer at 4. That Respondents have reserved the right to file proposed findings and conclusions, as outlined in Rule 3.46 and expressly allowed by Rule 3.12(b)(2), also does not create a risk of prejudice as Respondents will be bound by the admissions of fact in their amended answer.

Moreover, Complaint Counsel’s proposed condition that Respondents provide a paragraph-by-paragraph response to each allegation of the Complaint is not contemplated by Rule 3.12(b)(2) and could create ambiguity, when the proposed amended answer

already expressly admits “all material allegations” of the Complaint. Complaint Counsel’s request that the ALJ order discovery to continue “concerning all remaining issues,” as a condition of Respondents’ amending their Answer, is unnecessary. Although Complaint Counsel’s most recent motions to compel discovery from Respondents were denied without prejudice until the resolution of the motions to amend the Answer and the Complaint, there is nothing in Rule 3.12(b)(2) or the Scheduling Order issued in this case that prohibits Complaint Counsel from pursuing discovery regarding issues that remain relevant after these motions are resolved.

Complaint Counsel also requests it be permitted to amend the Complaint as a condition for permitting Respondents to amend their Answer. Complaint Counsel fails to explain how amending the Answer is prejudicial to Complaint Counsel’s case or to persuade that such amendment operates to avoid such alleged prejudice. Accordingly, Complaint Counsel’s request to amend the Complaint as a condition for allowing Respondents to amend the Answer is rejected.

IV.

For all the foregoing reasons, Respondents’ Motion for Leave to Amend the Answer is GRANTED, and it is hereby ORDERED that Respondents may file an Amended Answer to the Complaint, in the form proposed by Respondents, except that Respondents may not include the Waived Defenses.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 10, 2021