Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson
U.S. v. iSpring Water Systems, LLC. et al.
Matter No. C4611

April 12, 2019

In February 2017, iSpring Water Systems LLC ("iSpring"), a Georgia-based distributor of water filtration systems, entered into an administrative agreement and consent order with the Federal Trade Commission. The consent order prohibited iSpring from making misleading claims that its products are made in the USA. Despite, and in violation of, this consent order, in March 2018 iSpring again began advertising that some of its wholly-imported products were made in the USA.

In response to these ongoing violations of the Commission's administrative order, the FTC is filing a federal district court complaint for civil penalties, and other relief, against iSpring and John Chen and Pearl Cai, as individuals and corporate officers of iSpring. To settle this action, defendants—unrepresented by counsel at the time—negotiated a stipulated federal district court order, containing several features. First, John Chen and Pearl Cai, corporate officers of iSpring, have agreed to be held individually liable for the violations of the administrative order, and are named in the federal district court complaint and order. Second, all three defendants, iSpring, Chen and Cai, have agreed to admit that the allegations in the FTC's original complaint are true, including that they made misleading and false Made in the USA claims. Third, the defendants have agreed to pay a $110,000 civil penalty. Finally, the order requires that defendants notify all consumers who purchased the products that the FTC has sued them for false advertising and that, according to the FTC's complaint, they made misleading claims that their imported water filtration systems were made in the United States.

We agree that the defendants' actions in this case were deliberate and in direct violation of the Commission's administrative order, which is why we support this consent order. We have two concerns, however, about the remedies we have applied. First, we are concerned that, in a case where defendants negotiated a settlement without counsel, we have pursued a combination of remedies—in particular, the defendants' admission of liability together with notice to consumers—that may penalize the defendants more than necessary to punish the defendants and deter future conduct. Some of our colleagues have articulated their view that the Commission should seek more and new kinds of remedies. Our view is that remedies have a purpose; that experience and learning tell us how best to use them; and that more is not necessarily better. The Commission has an obligation to ensure that the relief in our orders is tailored carefully to the facts and circumstances of each matter—just because we *can* seek and obtain a particular remedy does not mean that we *should*.[1]

Second, the extension of the remedy of an admission of liability to these facts is not self-evident. While defendants here deliberately made false statements, those claims arguably went to secondary characteristics of the products—consumers did get filtration systems, which did work.

[1] *See*, *e.g.*, AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW, PRESIDENTIAL TRANSITION REPORT: THE STATE OF ANTITRUST ENFORCEMENT 30-32 (2017) (discussing the scope of relief in FTC settlements), https://www.americanbar.org/content/dam/aba/publications/antitrust_law/state_of_antitrust_enforcement.pdf.

While the facts of this case—the defendants deliberately misled and then were deliberately contumacious—support an admission of liability, from a policy perspective we are still concerned that the Commission is sanctioning use of an admission of liability before fully contemplating the ramifications of this policy change. We believe it will be very difficult for staff to obtain admissions of liability in settlement negotiations with defendants represented by counsel. As a result, we may end up penalizing only those that do not have the wherewithal, representation, or funding to negotiate. Instead, we believe the better course would be for the Commission to consider carefully the circumstances under which we should be pursuing admissions of liability before extending this practice to new areas.