

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SCHERING-PLOUGH HEALTHCARE)	
PRODUCTS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 09-268-SLR
)	
NEUTROGENA CORPORATION,)	
)	
Defendant.)	

MEMORANDUM ORDER

At Wilmington this 13th day of April 2010, having reviewed two of defendant's print advertisements submitted to the court (D.I. 116), the court declines to find those advertisements in violation of its injunction order of April 8, 2010 (D.I. 113),¹ as follows:

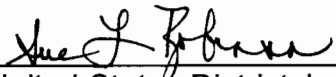
1. During a telephone conference held on this matter, defendant's counsel represented that the advertisements at issue were prepared after the court issued its findings of fact and conclusions of law in this case on March 15, 2010, but before the court issued its final injunction order. (D.I. 107) Counsel also represented that the advertisements cannot now be redacted from print and will run in the May 2010 issue of Allure magazine.

2. Plaintiff avers that the advertisements violate the court's final order because

¹The court stated in its order that it retains jurisdiction over the parties and subject matter of this action for the purpose of the construction and enforcement of its order of permanent injunction. (D.I. 113 at ¶ 4)

each contains a “SPF” and a “PFA” bar graph depicting the Neutrogena “spectrum+ advanced” SPF 100+ sunblock and Neutrogena Ultimate Sport® sunblock without a specific disclosure that “SPF” takes UVA protection into account, that is, that “PFA” (a measure of UVA protection) is to some extent subsumed within “SPF.”

3. Given that the court’s final order included language not suggested by the parties, and given that the new advertisements minimize the risk of consumer confusion over “SPF” and “PFA” values, the court declines to mandate subsequent, corrective advertising as plaintiff suggests.²


United States District Judge

²Defendant’s counsel represents that all future advertisements will contain a disclosure commensurate with the court’s order. (D.I. 113 at ¶¶ 1(c)-(d) & n.2)