

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 20-cv-23564-MGC

DAVID WILLIAMS, et al.,	:
	:
	:
	:
Plaintiffs,	:
	:
vs.	:
	:
RECKITT BENCKISER LLC, et al.,	:
	:
	:
Defendants.	:

**TRUTH IN ADVERTISING, INC.’S SUPPLEMENTAL RESPONSE
TO DEFEDANTS’ MOTION TO STRIKE**

Pursuant to the Court’s August 15, 2021 Order, Truth in Advertising, Inc. (“TINA.org”) submits this supplemental response to Defendants’ Motion to Strike (D.E. 86). The following information is provided in addition to that provided in TINA.org’s July 26, 2021 Unopposed Motion for Leave (D.E. 74) and August 13, 2021 Opposition to Motion to Strike (D.E. 91).

In the past 10 years,¹ TINA.org has filed 13 motions for leave seeking to file an amicus curiae brief opposing the terms of a proposed class-action settlement in district court. Over that time period, only one court – the first in which TINA.org objected to a settlement – has ever stricken, without prejudice, TINA.org’s motion for leave but did so because the Court determined that it had already adequately scrutinized the proposed settlement and

¹ TINA.org first filed a motion for leave to file an amicus curiae brief in a class-action lawsuit in 2013.

conducted the fairness hearing required by the Class Action Fairness Act, and not because it determined that TINA.org lacked standing. Order Striking Truth In Advertising, Inc.'s Motion for Leave to File Brief as Amicus Curiae in Opposition to Proposed Settlement, *Perkins et al v. Philips Oral Health Care, Inc. et al*, Case No. 3:12-cv-01414 (S.D. Cal. Nov. 5, 2013), ECF No. 43. Every other court ruling on such a TINA.org motion for leave has granted it, including this Court last year. Paperless Order Granting 166 Motion for Leave to File, *Collins et al v. Quincy Bioscience, LLC*, Case No. 1:19-cv-22864 (S.D. Fla. Oct. 27, 2020), ECF No. 167; Order Granting in Part and Denying in Part 270 Truth In Advertising, Inc.'s Motion for Leave to File Brief as Amicus Curiae, *Aboltin et al v. Jeunesse LLC et al*, Case No. 6:17-cv-1624 (M.D. Fla. Dec. 5, 2018), ECF No. 282; Minute Order for Motion Hearing/Settlement Conference held on 6/7/2016 before Magistrate Judge Marilyn D. Go, *Aliano et al v. CVS Pharmacy Inc.*, Case No. 16-cv-2624 (E.D.N.Y. June 7, 2016); Order Granting 52 Motion for Leave to File, *Aliano et al v. CVS Pharmacy Inc.*, Case No. 16-cv-2624 (E.D.N.Y. Sept. 20, 2016); Minute Entry for Proceedings Held Before Magistrate Judge Robert M. Levy, *In Re: Glaceau VitaminWater Mktg. and Sales Prac. Litig. (NO. II)*, Case No. 1:11-md-02215 (E.D.N.Y. Feb. 26, 2016); In Chambers Order Re Plaintiffs' Motions for Final Approval of Class Action Settlement, *Bostick et al v. Herbalife Int'l of Am., Inc. et al*, Case No. 2:13-cv-02488 (C.D. Cal. May 14, 2015), ECF No. 145; Order Granting Motion to File Amici Curiae Brief, *Lerma et al v. Schiff Nutrition Int'l, Inc. et al*, Case No. 3:11-cv-01056 (S.D. Cal. Mar. 26, 2015), ECF No. 135; Order Granting Truth In Advertising, Inc.'s Motion for Leave to File Brief as Amicus Curiae in Opposition to Proposed Settlement, *Hazlin et al v. Botanical Laboratories, Inc., et al*, Case No. 3:13-cv-00618 (S.D. Cal. Feb. 18, 2015), ECF No. 50; Civil Minutes, *Volz et al v. Coca Cola Co., et al*, Case No. 1:10-cv-00879 (S.D. Ohio Dec. 2,

2014), ECF No. 65. Only one court has limited TINA.org's participation by denying it the ability to appear before the court at the final fairness hearing (but granted TINA.org's motion for leave). Order Granting in Part and Denying in Part 270 Truth In Advertising, Inc.'s Motion for Leave to File Brief as Amicus Curiae, *Aboltin et al v. Jeunesse LLC et al*, Case No. 6:17-cv-1624 (M.D. Fla. Dec. 5, 2018), ECF No. 282.

In granting TINA.org's motion for leave, one California district court has stated:

The Court has also considered the arguments advanced by TINA.org and [National Consumers League] in their amici briefs. Although Plaintiffs object to these briefs on the basis that TINA.org and NCL's participation in these proceedings is neither helpful nor useful, the Court finds otherwise. Many of the objectors' arguments are similar to those expressed in TINA.org and NCL's amici briefs. Indeed, the objectors directly reference and incorporate some of these arguments in their opposition. To ensure a full, fair, and objective review of the Settlement Agreement, the Court finds it appropriate to consider the full range of concerns raised by the objecting class members, as well as those expressed by non-parties TINA.org and NCL. Accordingly, TINA.org and NCL's Motions for Leave to file amici briefs are hereby GRANTED. (internal citations omitted).

In Chambers Order Re Plaintiffs' Motions for Final Approval of Class Action Settlement, *Bostick et al v. Herbalife Int'l of Am., Inc. et al*, Case No. 2:13-cv-02488 (C.D. Cal. May 14, 2015), ECF No. 145.

In another case, the Court did not have to rule on TINA.org's motion for leave as the parties to the lawsuit renegotiated the settlement agreement following TINA.org's motion for leave and accompanying amicus curiae brief and filed an amended agreement in court that addressed TINA.org's primary concerns.² See Amendment to Settlement Agreement and General Release, *Quinn et al v. Walgreen Co. et al*, Case No. 7:12-cv-08187 (S.D.N.Y.), ECF No. 141-1.

² Only one court did not rule on TINA.org's motion for leave. See *Barrera et al v. Pharmavite LLC*, Case No. 2:11-cv-4153 (C.D. Cal.).

TINA.org has also filed six amicus curiae briefs at the appellate level, including the U.S. Supreme Court, which recently cited to TINA.org’s amicus curiae brief in its opinion. *AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341, 1351 (2021). (“[T]he Commission and its amici emphasize the policy-related importance of allowing the Commission to use §13(b) to obtain monetary relief. They suggest that it is undesirable simply to enjoin those who violate the Act while leaving them with profits earned at the unjustified expense of consumers. See, e.g., Brief for Respondent 8–9; Brief for Truth in Advertising, Inc., as Amicus Curiae 7–13.”)

No court has ever sanctioned TINA.org or any person or attorney associated with TINA.org in its efforts to oppose proposed class-action settlements, or in any other lawsuit.

Dated: August 19, 2021

Respectfully,

By: s/ Jon Polenberg
Jon Polenberg, Esq.
Florida Bar No.: 653306
Becker & Poliakoff
1 East Broward Blvd., Suite 1800
Ft. Lauderdale, FL 33301
Telephone: (954) 987-7550
jpolenberg@beckerlawyers.com

and

Laura Smith, Legal Director
(District of Conn. Bar No. ct28002, not admitted
in Florida)
Truth in Advertising, Inc.
115 Samson Rock Drive, Suite 2
Madison, CT 06443
Telephone: (203) 421-6210
lsmith@truthinadvertising.org
Attorneys for Truth in Advertising, Inc.

