

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

BRONSON PARTNERS, LLC, d/b/a NEW
ENGLAND DIET CENTER and BRONSON
DAY SPA, and MARTIN HOWARD,
Defendants.

CIVIL ACTION NO.
3:04CV1866 (SRU)

RULING

The Federal Trade Commission (“FTC”) has moved for leave to amend its complaint, pursuant to Rule 15(a), in order to add H & H Marketing, LLC, and Sandra Howard as relief defendants in the instant action. Fed. R. Civ. P. 15(a). The defendants have opposed the motion for leave to amend, arguing that the motion is in bad faith and any amendment would be futile and eventually dismissed because the FTC has acknowledged that the relief defendants are not accused of any wrongdoing. For the reasons set forth below, I grant the FTC’s motion to amend the complaint.

The FTC originally filed its complaint against Bronson Partners and Martin Howard, individually and in his official capacity as principal manager of Bronson, alleging deceptive advertising, marketing, and sale of Chinese Diet Tea and Bio-Slim Patch, in violation of sections 5(a) and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 52.

The plaintiff asserts that through discovery, it has learned that Sandra Howard – wife of defendant Martin Howard – and their jointly owned corporation, H & H Marketing, received “substantial monies” from Bronson. The FTC now seeks to add the relief defendants in order for the court “to effectuate complete relief” if the FTC prevails in this litigation. The FTC has not

alleged that either Sandra Howard or H & H Marketing violated the FTC Act.

Courts of appeal have approved claims against “relief” or “nominal” defendants. *E.g.*, *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998). In *Cavanagh*, the Second Circuit described a relief defendant as “a person who is not accused of wrongdoing in a securities enforcement action where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds.” *Id.*

The Fourth Circuit approved that description and discussed the nominal defendant status, which it called “an ‘obscure common law concept’ . . . that has come to be applied in the context of the Securities Exchange Act.” *Commodity Futures Trading Commission v. Kimberlynn Creek Ranch*, 276 F.3d 187, 191 (4th Cir. 2002). In what appeared to be the “first attempt to obtain relief from a nominal defendant in an action for commodities fraud,” the Court held that the relief defendants were proper parties in the litigation even though they were not accused of violating the Commodity Exchange Act. *Id.* at 192. The Court stated that when a plaintiff seeks equitable relief, “a district court possesses inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief Such orders may be directed against a custodian of the defendant’s assets, including a nominal defendant.” *Id.* at 192-93 (internal quotation and citations omitted).

District courts have extended the reasoning of *Cavanagh* and *Kimberlynn Creek Ranch*, permitting the naming of relief defendants in actions brought under the FTC Act even though the relief defendants were not alleged to have violated the Act. *See FTC v. Ameridebt*, 343 F. Supp. 2d 451, 464 (D. Md. 2004) (relying on *Kimberlynn Creek Ranch* and discussing district court’s “equitable powers over ‘innocent persons’ in order to accomplish such relief as repayment,

restitution, rescission, or disgorgement of any unjust enrichment”); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1020 (N.D. Ind. 2000) (citing cases in the SEC context to hold more generally that “a court may grant equitable relief against a relief defendant against whom no wrongdoing is alleged if it is established that the relief defendant possesses property or profits illegally obtained and the relief defendant has no legitimate claim to them”).

It appears appropriate to apply the Second Circuit’s holding in *Cavanagh* in the context of an FTC action. Accordingly, based on this court’s equitable powers to effectuate relief in an FTC action, I will permit the FTC to amend its complaint to add H & H Marketing and Sandra Howard as relief defendants. *See Ameridebt*, 343 F. Supp. 2d at 464; *Think Achievement Corp.*, 144 F. Supp. 2d at 1029.

The FTC’s motion to amend its complaint to add relief defendants (doc. # 43) is GRANTED. The proposed amended complaint is allowed and counsel should electronically file the amended complaint forthwith.

It is so ordered.

Dated at Bridgeport, Connecticut, this 8th day of June 2005.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge