

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
The Honorable Perry M. Buckner, Circuit Court Judge

RECEIVED
JUN 10 2013
SC Court of Appeals

Case No. 2012-213713

Emily Williams,

Plaintiff-Appellant,

v.

L'Oreal USA, Inc.,

Respondent.

**RESPONDENT L'OREAL USA, INC.'S MOTION TO DISMISS APPEAL AND
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL**

Respondent, L'Oreal USA, Inc., moves the Court pursuant to South Carolina Appellate Court Rule 240 to dismiss the Appellant's appeal on the ground that Appellant did not preserve any issue for appellate review. Specifically, no objection was registered at trial as to the testimony of witness Tammy Stewart Stuckey and, therefore, the alleged improper admission of her testimony has not been preserved for review by this Court and the appeal should be summarily dismissed.

LEGAL ARGUMENT

L'Oreal USA, Inc. (hereinafter L'Oreal) respectfully requests the Court dismiss Emily Williams' (hereinafter Williams) appeal because Williams failed to object, at any time, to the testimony of the witness Tammy Stewart-Stuckey. Since the only ground for appeal concerns the testimony of this witness, Williams has not preserved the issue for review by this Court.

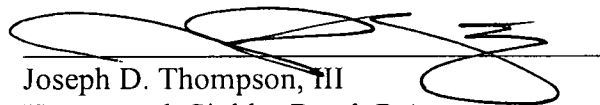
It is axiomatic that an objection to testimony, “cannot be raised for the first time on review, nor can it be heard on appeal when it is not properly raised by an exception.” Rosamond Enterprises, Inc. v. McGranahan, 278 S.C. 512, 513, 299 S.E.2d 337, 338 (1983); *see also* Sloan v. Lee, 121 S.C. 426 114 S.E. 408 (1922) (stating where the record reflects no objection to the evidence at trial, an appellate court cannot hear the objection). This Court has held that where “the record does not reflect ... any ground for objecting to the testimony at trial....” The issue of the admission of the testimony is not preserved for appellate review. Campbell v. Bi-Lo, Inc. 301 S.C. 448, 454, 292 S.E.2d 477, 481 (Ct. App. 1990).

In the subject case, the record is clear that Williams never objected, at any time, to any testimony offered by the witness Tammy Stewart-Stuckey. A complete copy of the witness’ trial testimony is attached as Exhibit A. Since the only ground for appeal to this Court is the alleged improper admission of the witness’ testimony, there is nothing for this Court to review and the appeal should be dismissed as a matter of law.

CONCLUSION

Based on the foregoing discussion, the transcript of the witness Tammy Stewart Stuckey’s trial testimony and the Appellant’s Initial Brief, the Respondent L’Oreal USA, Inc., respectfully submits that it is entitled to dismissal of the appeal as a matter of law.

Respectfully submitted,



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June 5, 2013

1 Illinois, with a Masters in Analytical Chemistry.

2 Q Where are you currently employed?

3 A L'Oreal, USA.

4 Q Okay. And how long have you been with L'Oreal?

5 A Totally, twenty-two years.

6 Q All right. And what is your current position with
7 L'Oreal?

8 A Research and Innovation Manager.

9 Q And can you tell the jury what you do as a Research and
10 Development or Innovation Manager?

11 A As a Research Innovation Manager, I daily formulate new
12 products for the market. We also troubleshoot existing
13 products. We also come up with new innovative ideas for,
14 basically, in my division for people with curly hair or
15 African descent.

16 Q Now, how long have you been working in research and
17 development or formulation of hair care products?

18 A For a total of 13 years.

19 Q And currently, you work in a lab or an office just
20 outside of Chicago?

21 A Yes, I work in a laboratory.

22 Q And how many others work with you?

23 A There are a total of eight chemists.

24 Q All right. Can you describe to the jury what a daily
25 and weekly routine is for you in your work?

1 A A daily routine would be actually formulating new
2 products and they can range from anything to relaxers,
3 shampoos, conditioners, spritz, styling lotion gels, but it
4 would actually be taking the raw materials to make a recipe
5 for hair care products. Taking those products, then if we
6 have something that's viable, we would actually submit it to
7 micro for microbiology testing, as far as toxicology so that
8 they could look at each individual raw material and make
9 sure that the levels they use and the concentration that
10 they use are adequate. Then, from there, we would do
11 anything from swatch testing to mannequin testing and then
12 we also have a part evaluation center that we can do on-hair
13 evaluations as well.

14 Q Okay. And so you develop an original product or a new
15 formulation?

16 A Correct.

17 Q And then where does it go from there?

18 A It goes to the departments, the safety department, it
19 goes to micro, toxicology, before it's actually evaluated on
20 any human subjects.

21 Q Before it even hits a human head, is it applied or used
22 on mannequins or anything like that?

23 A Yes, it's done on swatches, natural hair swatches and
24 then it would also be used on natural hair mannequins.

25 Q And in your work with L'Oreal, have you worked on

1 formulations, instructions, that sort of thing, for relaxer
2 products?

3 A Yes.

4 Q And how long have you done that?

5 A I've done that for the totality of my work with
6 L'Oreal.

7 Q All right. And are you familiar with the product that
8 we are talking about today?

9 A Yes, I am.

10 MR. THOMPSON: May I approach, Your Honor?

11 THE COURT: You may.

12 Q I'm going to hand you two exhibits. Can you describe
13 for the jury what the box is, what product that is, that
14 L'Oreal ---

15 THE COURT: Refer to the exhibit for the record for me.

16 MR. THOMPSON: I'm sorry. That's Plaintiff's Exhibit
17 One, Your Honor.

18 Q Plaintiff's Exhibit One, can you describe for the jury
19 what this product is?

20 A This product is a relaxer care kit. In the kit, it
21 actually has a relaxer, a liquid activator, that will
22 actually mix together to do the actual relaxer process. It
23 also contains a pre-treatment that is used on the ends of
24 the hair or the hair that's already been previously relaxed
25 if someone had previously relaxed their hair. It contains a

1 shampoo that actually helps to stop the process so that the
2 hair goes back to the normal pH of the hair. And then it
3 has a reconstructive conditioner that actually helps to
4 condition the hair after the processing and it has a leave-
5 in conditioner for styling aid.

6 Q And what is the purpose of a relaxer?

7 A The purpose of a relaxer kit is for people that have
8 naturally curly hair to actually keep their hair in the
9 straightened pattern. It actually changes the actual
10 internal bonds of your hair so your hair won't go back to
11 the natural curly configuration; it will stay straight.

12 Q That's some kind of chemical analysis?

13 A Yes.

14 Q Okay. Now, in the box, are their components?

15 A Yes, there are.

16 Q I want to show you a couple of components. They've
17 been previously marked as Defendant's Exhibits Three, five
18 and six.

19 MR. THOMPSON: May I approach, Your Honor?

20 THE COURT: You may.

21 Q Are these components that would be involved as part of
22 that kit?

23 A Yes, they are. They're partial.

24 Q There are other components involved with that kit,
25 correct?

1 A Yes.

2 Q Now, if you could, if you could grab the instructions
3 there for me.

4 THE COURT: As to Defendant's Three, Five and Six, do
5 you wish to admit them?

6 MR. THOMPSON: Not yet.

7 THE COURT: All right. Then, please refer to the
8 exhibit number he has asked you for the record.

9 A Plaintiff's Exhibit Nine.

10 Q Okay. In Plaintiff's Exhibit Nine, is that a soft-
11 sheen Carson Optimum Care Instruction Sheet?

12 A Yes, it is.

13 Q And is that the sheet that would come in that kit?

14 A Yes, it would.

15 Q All right. Is there a copyright date on that
16 instruction sheet?

17 A Yes, it is. It says 2002.

18 Q And so would that be the first time that these
19 instructions would have been found in that kit?

20 A Correct.

21 Q Now, looking at the instruction sheet, and you have the
22 original, is that correct?

23 A Yes, I do.

24 Q Can you describe for the jury, what is the purpose of
25 the do's and don'ts and the warnings on the instruction

1 sheet?

2 A The do's and don'ts and warnings basically tell you how
3 you should use the product. Things that you shouldn't do
4 and things that if you do, you might not want to do before
5 you apply this process to your hair, like, don't pre-shampoo
6 your hair. They tell you that because the product has
7 warnings for scalp irritation, so if you shampoo your hair,
8 when you shampoo your hair, you actually work your hair into
9 a lather and you are actually manipulating the scalp, so
10 they don't want you doing things like that. So there are a
11 lot of do's and don'ts to help minimize any adverse reaction
12 that you might have to the process.

13 Q Is this product just like a shampoo that you just kind
14 of throw on?

15 A No, it's not. It's multiple steps and because you have
16 a product that contains alkaline and chemicals that alter
17 your hair configurations, it's much different; much more
18 weighed than a shampoo or a conditioner.

19 Q And do the instructions tell the user to follow the
20 instructions?

21 A Yes, they do.

22 Q All right. Is that actually on the warning on the box,
23 to start with?

24 A Yes.

25 Q And is it in the instruction sheet itself?

1 A Yes.

2 Q And then one of the components that I have in front of
3 you.

4 MR. THOMPSON: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q This is defendant's Exhibit Three. Is there also a
7 warning or instruction on that component about reading the
8 instructions?

9 A Yes. It says, "Warning: Please read carefully all
10 directions on instruction sheet inside of kit box to avoid
11 skin and scalp burns, hair loss, and eye injury."

12 Q And the purpose then of the instructions is to avoid
13 hair loss and scalp injury?

14 A Yes.

15 Q And with regard to the directions and the instructions,
16 there is a component on the second page there, the
17 preliminary steps is a strand test; is that correct?

18 A Yes, it is.

19 Q And could you tell the jury the importance of the
20 strand test?

21 A The strand test has two-fold meanings. One is that
22 when you do a strand test, you can actually tell if your
23 hair is in good condition, that you should be applying this
24 process to your hair. Then, the other one is to actually
25 give the timing that is actually required for your hair so

1 that you will do the process based off of your hair, your
2 hair needs, your hair type.

3 Q And so there are actually two reasons for conducting
4 the strand test?

5 A Yes.

6 Q And the first one you described was whether the hair
7 was in a good condition to be relaxed; is that correct?

8 A Correct.

9 Q And what does that mean? Are we worried that a
10 consumer has used some product before? I mean, what's the
11 reason for the strand test in that situation? Why do we
12 want to know the condition of the hair?

13 A Well, you want to know if the hair is in good condition
14 because you have so many people, first of all, using the
15 kit, and you can't tell from head to head what you might
16 encounter. You also want to make sure that no one has any
17 pre-existing issues that might cause this problem to cause
18 more damage or that they have adverse reactions to it or
19 that they don't get the results that they are looking for
20 when they use the relaxer system, so you want to know that
21 going in up front.

22 Q Is it also precaution, maybe, if a person has forgotten
23 that they shampooed the night before or a few weeks before
24 or done something that might interfere with the work of the
25 relaxer?

1 A Yes.

2 Q Okay. And so the second component of the strand test
3 is to figure out timing?

4 A Yes.

5 Q Okay. And why is timing critical in this product?

6 A Timing is critical because if you over process, or if
7 you add too much time to it, then you might do damage, or if
8 you don't use enough time then you might not get the hair in
9 the straight configuration that you would like to.

10 Q And is that also contained in these instructions? This
11 idea that you have to do the strand test to figure out if
12 it's going to relax the hair or if it's not going to relax
13 the hair and how much time is necessary, is that in there?

14 A Yes, it is.

15 Q Okay. And then when you get down to the application,
16 the timing guide, does it reference the strand test?

17 A Yes, it does. It says that the timing guide is
18 critical. Follow the timing guide closely or lesser time as
19 indicated by strand test. The total time for application
20 and smoothing must not exceed the maximum time allowed for
21 your hair.

22 Q So the instructions actually have a maximum time limit;
23 is that right?

24 A Yes.

25 Q And so, really, for determining for anybody's

1 particular hair situation, the strand test is going to tell
2 them the time that it needs to be used?

3 A Yes. The strand test will tell the time to use, but
4 then the maximum time tells them not to go over that amount
5 of time.

6 Q Regardless?

7 A Regardless.

8 Q Okay.

9 MR. THOMPSON: Your Honor, I will move into evidence
10 Defendant's Exhibit Number Three.

11 THE COURT: As to Defendant's Three?

12 MR. CAMPBELL: No objection, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury,
14 Defendant's Exhibit Three will be admitted into evidence in
15 the trial of this case, without objection.

16 (Whereupon, Defendant's Exhibit Number Three,
17 conditioning crème container, is received into evidence.)

18 THE COURT: You may publish, counsel.

19 MR. THOMPSON: Thank you, Your Honor.

20 Q Now, Ms. Williams, if you got a product and you've gone
21 through the chemistry and you've got something you want to
22 put out on the marketplace, who gets together to talk about
23 the instructions and the warnings for the L'Oreal product?

24 A For the L'Oreal product, it's the Research and
25 Innovation, it's the Claims Substantiation Department, as

1 well as Legal.

2 Q All right. And when we say claims, I always hear
3 "claims substantiation," what does that mean?

4 A Claims substantiation is the department that actually
5 allows you to make certain claims or certain benefits
6 statements on your packaging. They actually want to make
7 sure that what we're saying the product will do; those
8 little adjectives or those flowery words that we use, are
9 actually adequate and are actual benefit of the products.

10 Q And so, does every L'Oreal product go through this
11 process of looking at the instructions and the warnings
12 between legal R&I, research and innovation, and claims
13 substantiation?

14 A Yes.

15 Q And that's been the way it's been ever since you've
16 been in the department for the last 13 years?

17 A Yes.

18 MR. THOMPSON: Your Honor, I don't have any further
19 questions for Ms. Stewart-Stuckey.

20 Q Thank you very much. If you'll answer any questions
21 that Mr. Campbell has.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. CAMPBELL:

25 Q Ms. Stuckey, in your direct testimony, you talked a

1 little about the pH scale and what you referred to as a
2 chemical analysis, what was going on when this product goes
3 into your hair. Can you tell us what the pH scale is?

4 A A pH scale is the hydroxide levels that's going on in
5 your hair. So you've got alkaline, you've got basic. So
6 like lemon juice is kind of on the acid side, so that's the
7 difference on the pH scales. It's like the hydroxide level.

8 Q That scale goes from zero to fourteen; is that correct?

9 A Correct.

10 Q Seven being neutral?

11 A Yes.

12 Q Above seven being an alkaline?

13 A Uh-huh (affirmative).

14 Q Below seven being an acid?

15 A Correct.

16 Q This product, you also mentioned that there is an agent
17 in there that is designed to bring the hair back to its
18 normal pH?

19 A Yes.

20 Q After this process is over with, correct?

21 A Yes.

22 Q How high does the pH go when you're putting this
23 treatment in?

24 A Well, the pH of the relaxer, once it's combined with
25 the liquid activator, is about thirteen.

1 Q So it's very high on the scale of pH's; is that
2 correct?

3 A Yes.

4 Q And that's potassium -- is it potassium hydroxide that
5 is used?

6 A No, it's guanidine hydroxide.

7 Q Okay. You represent on this box that this is a no-lye
8 relaxer, correct?

9 A Correct.

10 Q Okay. And lye, to my understanding, is sodium
11 hydroxide; isn't that correct?

12 A Correct.

13 Q Which is also just like -- what did you call it? What
14 was the one that is actually in here?

15 A Calcium hydroxide.

16 Q Calcium hydroxide is the one that we use in this
17 product, correct?

18 A Correct.

19 Q And sodium hydroxide being lye?

20 A Correct.

21 Q Does sodium hydroxide, when those treatments are being
22 used, does it take the pH higher than thirteen?

23 A No.

24 Q Okay. So they are substantially similar, you would
25 agree?

1 A Correct.

2 Q Lye relaxers act exactly the same way that this
3 particular relaxer does?

4 A Correct.

5 Q As far as they both use soluble hydroxides to take the
6 hair pH up to thirteen; is that correct?

7 A Correct.

8 Q And when it does take the hair up to pH thirteen, what
9 actually happens?

10 A It actually reconfigures to bonds that are in your
11 hair.

12 Q Okay. It actually destroys the bonds, does it not?

13 A Right.

14 Q It destroys them and because you only let it sit for a
15 small amount of time, you stop that chemical reaction from
16 destroying all the protein bonds in your hair; is that
17 right?

18 A Correct.

19 Q So it's pretty much exactly the same process as a lye
20 relaxer, it's just using a different chemical to do it; is
21 that correct?

22 A Correct.

23 MR. CAMPBELL: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MR. THOMPSON: Very short, Your Honor.

1
2 REDIRECT EXAMINATION

3 BY MR. THOMPSON:

4 Q Ms. Stuckey, Mr. Campbell took you through a chemistry
5 class. Is that the reason why you have to be very careful
6 about the timing is because of all these things that are
7 going on with the hair chemically?

8 A Yes.

9 Q Thank you.

10 THE COURT: Recross, limited to redirect?

11 MR. CAMPBELL: None, Your Honor.

12 THE COURT: You may step down.

13 (Witness complies.)

14 THE COURT: Call your next witness.

15 MR. THOMPSON: The defense rests, Your Honor.

16 THE COURT: Is there any reply testimony from the
17 plaintiff?

18 MR. CAMPBELL: No, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury, I
20 understand that your delicious lunch that you have ordered
21 has arrived. We will conclude the case immediately after
22 you have had your lunch. During the lunch break, I would
23 ask that you not discuss the case. You have not heard the
24 final arguments of the attorneys or received my charge on
25 the law. If I have any smokers on the jury, smoking is
not permitted in the courthouse, but the bailiffs will