

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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)
DURA LUBE CORPORATION,)
AMERICAN DIRECT MARKETING, INC.,)
HOWE LABORATORIES, INC.,)
CRESCENT MANUFACTURING, INC.,)
NATIONAL COMMUNICATIONS CORPORATION) Docket No. 9292
THE MEDIA GROUP, INC.,)
corporations, and)
HERMAN S. HOWARD,)
SCOTT HOWARD,)
individually and as officers)
of the corporations.)

**ORDER ON RESPONDENTS'
MOTION TO EXCLUDE WITNESSES**

I.

On November 30, 1999, pursuant to Commission Rule 3.38(b)(3), Respondents filed a motion requesting an order barring Complaint Counsel from calling as witnesses at trial three witnesses designated by Complaint Counsel as fact witnesses on November 17, 1999. Complaint Counsel filed a memorandum in opposition on December 3, 1999, and Respondents replied on December 6, 1999.

As grounds for their motion, Respondents assert that Complaint Counsel did not notify Respondents of its intent to call these individuals as witnesses in a timely manner and that Respondents would be unfairly prejudiced if these witnesses are allowed to testify since the discovery cutoff is December 18, 1999. Complaint Counsel responds that these witnesses were identified promptly after the potential importance of their testimony was known and that, with a month remaining for discovery (from the date of designation), Respondents have sufficient time to depose or interview these witnesses.

II.

These witnesses have not been designated as expert witnesses. Complaint Counsel is not excluded from calling witness Doerhoff as a fact witness or witnesses Mannion and Aschbrenner as rebuttal fact witnesses. However, since Complaint Counsel did not designate these individuals as expert witnesses as required by the Pretrial Scheduling Order, expert testimony from these witnesses will not be allowed. To mitigate any prejudice to Respondents, the parties have until December 22, 1999 to complete any necessary depositions of these three witnesses. Accordingly, as herein described, Respondents' motion is DENIED.

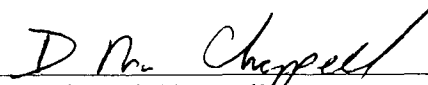
III.

Under the Commission's Rules of Practice, confidential material does not become "*in camera*" material until the Administrative Law Judge has granted the material *in camera* status. Commission Rule 3.45. The Pretrial Scheduling Order sets forth procedures which counsel must follow in order for confidential material to be granted *in camera* status. Absent strict adherence to this process, pleadings should be composed in a manner which sufficiently apprizes the Court of the matter at issue and which does not identify any confidential information.

IV.

The Court expects the tone and manner of all pleadings to reflect the high level of professionalism and civility required of all parties engaged in litigation. Known unethical or improper conduct should be reported. However, unsubstantiated or speculative allegations, or references thereto, are not appropriate.

It is SO ORDERED.



D. Michael Chappell
Administrative Law Judge

Dated: December 8, 1999