

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)
)

UNION OIL COMPANY OF)
CALIFORNIA,)
a corporation.)
_____)

DOCKET NO. 9305

**ORDER DENYING RESPONDENT'S MOTION TO COMPEL
SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

I.

Respondent Union Oil Company Of California ("Unocal") filed a Motion to Compel Amended Responses to Interrogatories on June 9, 2003. Complaint Counsel filed its opposition on June 20, 2003. For the reasons set forth below, Respondent's motion is DENIED.

II.

Pursuant to 16 C.F.R. § 3.38, Respondent seeks an order compelling Complaint Counsel to provide amended responses to Interrogatories 1, 2, and 3 of Respondent's First and Second Sets of Interrogatories. Respondent asserts that these interrogatories requested that Complaint Counsel identify the terms of alternative regulations that the California Air Resources Board ("CARB") would have adopted and describe how CARB would have limited Unocal's ability to enforce its intellectual property rights. According to Respondent, Complaint Counsel's responses to these interrogatories speculated that CARB could have adopted any one of a wide range of alternative regulations, and claimed that CARB would have effectively negotiated with Unocal to limit the enforcement of Unocal's patent rights prior to the adoption of CARB's Phase 2 RFG regulations. Respondent argues that, subsequent to Complaint Counsel's providing its responses to the interrogatories, Mr. Peter Venturini, who was designated as a Rule 3.33(c) witness for CARB, provided deposition testimony that renders the interrogatory responses previously supplied by Complaint Counsel "materially inaccurate." Memorandum in Support of Motion at 2.

Complaint Counsel asserts that its interrogatory responses identified a series of options that were available to CARB, which CARB would have preferred over passing regulations that overlapped with Unocal's patent. Opposition at 6. Complaint Counsel's response to the interrogatories also stated that CARB witnesses were best suited to address what alternatives were most likely to have been selected. Complaint Counsel argues that Venturini, along with former CARB Executive Officer Michael Kenny, provided deposition testimony that supports

Complaint Counsel's contention that CARB would not have made the findings that it did, which resulted in the regulations adopted by CARB had Unocal not acted fraudulently. Further, Complaint Counsel insists that Venturini's deposition testimony does not contradict or repudiate the interrogatory responses. Finally, Complaint Counsel asserts that the hearing scheduled to take place before this "Tribunal" is the appropriate place to raise and resolve factual and legal disputes. Opposition at 2.

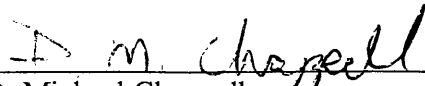
III.

Rule 3.31(e) of the Commission's Rules of Practice imposes a duty upon parties "to supplement or correct [a] disclosure or response" under certain circumstances, and includes "a duty to seasonably amend a prior response to an interrogatory . . . if the party learns that the response is in some material respect incomplete or incorrect." 16 C.F.R. § 3.31(e)(2). The parties disagree over whether Venturini's testimony makes Complaint Counsel's responses materially incorrect. To determine whether Venturini's testimony contradicts Complaint Counsel's responses would require resolution of a factual dispute which is not appropriate when ruling on a motion to compel responses to interrogatories. "When there is a conflict between answers in response to interrogatories and answers obtained through other questioning, either in deposition or trial, the finder of fact must weigh all of the answers and resolve the conflict." *Bell v. A-Leet Leasing Corp.*, 863 F.2d 257, 259 (2nd Cir. 1988). *See also Lewis v. Tully*, 1984 U.S. Dist. LEXIS 15839, *28-29 (N.D. Ill. 1984) (conflict between interrogatory answers of one defendant with interrogatory answers or another defendant created a genuine issue of material fact).

"The purpose of interrogatories is to narrow the issues and thus help determine what evidence will be needed at trial and to reduce the possibility of surprise at the trial." *In re TK-7 Corp.*, 1990 FTC LEXIS 20, *1-2 (March 9, 1990). Complaint Counsel's responses to the interrogatories are adequate at this stage of the proceedings to inform Respondent of Complaint Counsel's contentions. Whether Complaint Counsel's responses are supported by the evidence is a matter to be decided at trial.

Accordingly, Respondent's motion is DENIED.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: July 8, 2003