

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)
 In the Matter of)
)
 MOTOR UP CORPORATION, INC., and)
 MOTOR UP AMERICA, INC.,)
 corporations, and)
)
 KYLE BURNS,)
 individually and as an officer)
 of the corporations.)
 _____)

DOCKET NO. 9291

PRETRIAL SCHEDULING ORDER

- May 17, 1999 - Exchange initial disclosures.
- July 20, 1999 - Exchange of preliminary witness lists, including experts, with description of proposed testimony for nonexpert witnesses.
- August 17, 1999 - Deadline for serving document requests and interrogatories.
- October 15, 1999 - First exchange of lists of proposed exhibits with copies of exhibits.
- Exchange of preliminary rebuttal witness lists (nonexpert), with description of proposed testimony.
- Exchange expert reports and produce written communications exchanged between counsel and expert (other than drafts of expert reports) and produce or identify documents and other written materials relied on by the expert in his/her analysis and conclusions.
- October 22, 1999 - File statement of the case reporting on compliance with discovery and settlement negotiations and identifying the legal matters and factual matters to be decided by the Administrative Law Judge.

- October 27, 1999 - Conference pursuant to Rule 3.25 to report on negotiations for the settlement of the case, in whole or in part, by way of consent agreement. The parties are also directed to meet and discuss contested issues of fact and simplification of the issues and the possibility of obtaining stipulations of facts.
- November 1, 1999 - Deadline for serving requests for admission.
- November 15, 1999 - Exchange rebuttal expert reports and produce written communications exchanged between counsel and expert (other than drafts of expert reports) and produce or identify documents and other written materials relied on by the expert in his/her analysis and conclusions.
- November 22, 1999 - Deadline for filing motions for summary decision.
- Exchange proposed stipulations of law, facts, and authenticity.
- December 1, 1999 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4) and as otherwise specified in this Order.
- Deadline for taking depositions, including designated expert witnesses.
- December 8, 1999 - Exchange final proposed witness and exhibit lists, including designated testimony to be presented by deposition, and a brief summary of the testimony of each witness and copies of exhibits not previously provided.
- Exchange responses to proposed stipulations of law, facts, and authenticity.
- December 15, 1999 - Deadline for filing motions *in limine*.
- Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- Exchange responses to any designated deposition testimony.
- December 20, 1999 - Deadline for filing responses to motions *in limine*.
- Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.

- File pretrial briefs identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge.
- December 22, 1999 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- January 4, 2000 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. All trial exhibits will be admitted or excluded. All outstanding evidentiary or other pending motions (except motions for summary decision) and any matter that may aid in the orderly and expeditious disposition of the case will be resolved.
- January 5, 2000 - Commencement of hearing.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.
2. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 10 days of service of the responses and/or objections to the discovery requests. Any response to a motion to compel discovery shall be filed within 10 days of service of the motion to compel.
3. The parties are limited to a total of 25 document requests, 25 interrogatories, and 50 requests for admission. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request does not exceed these limits, including all subparts. Additional discovery will be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses or objections to document requests, interrogatories, and requests for admission shall be due within 30 days of service.

The parties shall serve all discovery requests on each other in both hard copy (paper) and electronic format (disk or e-mail). Each response and/or objection to each discovery request shall be preceded by the specific discovery request to which the answer pertains.

Depositions by telephone are permitted by agreement of counsel.

4. The preliminary and final witness lists shall represent counsel's good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify opposing parties promptly of changes in preliminary witness lists to facilitate completion of discovery within the dates of the scheduling order. Additional witnesses may be added after the submission of the final witness lists only by order of the Administrative Law Judge upon a showing of good cause.

5. The first exhibit lists shall represent counsel's good faith designation of all potential exhibits other than demonstrative, illustrative, or summary exhibits. The final exhibit lists shall represent counsel's good faith designations of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

6. At the time an expert is first listed as a witness by a party, the party will provide to the other party:

- (a) materials fully describing or identifying the background and qualifications of the expert, lists of publications, and all prior cases in which the expert has testified or has been deposed; and
- (b) transcripts of such testimony in the possession, custody or control of the listing party or the expert.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion. Each party is permitted to depose experts identified as witnesses by an opposing party. Parties will pay any fees or costs associated with their own experts' time and travel to attend a deposition.

7. If any party seeks to file a pleading which includes its own materials that are subject to confidentiality protections pursuant to a protective order entered in this matter and the party seeks to prevent its own materials from being placed on the public record, at least 10 days prior to filing such pleading, -- unless it is impracticable (e.g., when filing a response or reply brief) in which case at least 5 days prior to filing such pleading -- the party shall make an application to the Administrative Law Judge to order such materials be placed *in camera*.

If any party seeks to file a pleading which includes the other party's or a third party's materials that are subject to confidentiality protections pursuant to a protective order entered in this matter, the filing party must notify opposing counsel and the producing party at least 14 days prior to such proposed filing -- unless it is impracticable (e.g., when filing a response or reply brief). If advance notice cannot be provided, opposing counsel or such producing party must be notified at the time of introduction of such documents or information. Opposing counsel or the producing party shall have 7 days from the date of notice to make an application to the Administrative Law Judge to order such materials be placed *in camera*.

If the Administrative Law Judge either grants the application for *in camera* treatment of the material or does not rule on the application prior to the filing of the pleading containing confidential information, the party shall file two versions of the document in accordance with the procedures set forth in Rule 3.45(e). In the latter case, the documents or information subject to confidentiality protections shall be accorded *in camera* treatment, pending a ruling on the application by the Administrative Law Judge.

The parties are cautioned that compliance with this provision will require them to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner. The parties are also reminded that Rule 3.45 places the burden of showing that public disclosure will likely result in a clearly defined, serious injury upon the person requesting *in camera* treatment.

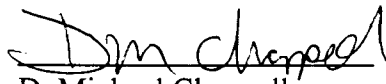
8. All papers filed with the Commission shall comply with Rule 4.4(b) and shall include a certificate of service indicating the date and manner of service. Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by hand or by facsimile by 5:00 p.m. on the designated date.

Hand deliveries shall be to complaint counsel Gina Schaar Howard or Robert Frisby, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Room S-4626 or S-4622, respectively, Washington, D.C. 20580, and to respondents' counsel Edward F. Glynn, Jr. or Mary Jane Saunders, 1201 New York Avenue, N.W., Suite 1000, Washington, D.C. 20005-3917. All deliveries by facsimile shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid. It shall be the obligation of the serving party to ensure that service by facsimile has been effected.

9. All motions shall include the name, address, and telephone number of counsel, and attach a draft order containing the proposed relief. The title of the proposed order shall not include the word "proposed" and shall identify the subject matter of the order. (For example, an order granting a party's motion to exclude evidence shall be titled "Order Granting Motion to Exclude Evidence," and not simply "Order" or "[Proposed] Order.")

10. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: both sides shall number their exhibits with a single series of consecutive numbers. Complaint counsel's exhibits shall bear the designation CX and respondents' counsel's exhibits shall bear the designation RX. (For example, the first exhibit shall be marked CX-1 for complaint counsel and RX-1 for respondents' counsel.) When an exhibit consists of more than one piece of paper and each page of the exhibit bears a consecutive bates number or some other consecutive page number, counsel shall mark only the first page of the exhibit with the appropriate designation (*e.g.*, CX-1 or RX-1). When an exhibit consists of more than one piece of paper and each page of the exhibit does not bear a consecutive bates number or some other consecutive page number, counsel shall mark each page and each back side of each page containing relevant matter with CX-1-A through CX-1-Z; items thereafter are numbered CX-1-Z-2, Z-3, Z-4, etc., as necessary.

It is SO ORDERED:


D. Michael Chappell
Administrative Law Judge

Dated: May 21, 1999