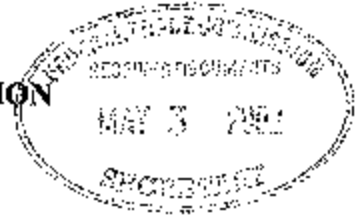


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
MSC.SOFTWARE CORPORATION,)
a corporation.)

Docket No. 9299

Public Version

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTIONS FOR PROTECTIVE ORDER REGARDING COMPLAINT COUNSEL'S
SUBPOENAS FOR TESTIMONY FROM MSC'S SENIOR EXECUTIVES
AND THE FORMER CEO OF CSAR**

Complaint Counsel file this opposition to Respondent MSC Software Corporation's April 30 and May 1, 2002, motions for protective orders to bar or limit Complaint Counsel's subpoenas to take the depositions of six MSC senior executives and the former chief executive officer of Computerized Structural Analysis and Research Corporation. Complaint Counsel have sought unsuccessfully to schedule these depositions with Respondent since April 15, 2002.

First, Respondent has not carried its burden to bar or otherwise limit these depositions. In accordance with Rule 3.35 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.35, Complaint Counsel "[m]ay take a deposition of a named person or of a person or persons described with reasonable particularity, provided that such deposition is reasonably expected to yield information within the scope of discovery under § 3.31(c)(1)." Complaint Counsel seek to take the depositions of the following persons:

While Mr. Blakely and Mr. Dyer may no longer be on MSC's witness list, depositions of these key executives are needed. Both appeared on Respondent's Preliminary and Revised Witness lists and Respondent has not contested that Mr. Blakely and Mr. Dyer possess information that is relevant to this proceeding. Indeed, each possesses specific knowledge and authority that is limited to persons in their respective positions and cannot be obtained from other MSC employees.

First, Mr. Blakely is MSC's Vice President & General Manager. According to MSC's web page, Mr. Blakely heads MSC's software and services business, which includes MSC Nastran.¹ He possesses decision-making authority regarding MSC Nastran, that affects the crux of our case. Specifically, Mr. Blakely has a lead role in the sales, marketing, and development of MSC Nastran, along with other MSC products.

Mr. Dyer is MSC's Director of Aerospace Corporate Accounts. Mr. Dyer has the lead role in MSC's aerospace customer accounts. He provides guidance to numerous MSC account representatives responsible for aerospace customers, including approving price quotes to customers.² Mr. Dyer also participates in contract and price negotiations with MSC accounts.³

Respondent's argument that Complaint Counsel does not need further discovery from any further witnesses respecting MSC's recent elimination of annual licenses is baseless. The issue of MSC's recent change in licensing policy is relevant to many issues in this matter, including

¹ See Exhibit A.

² See, e.g., Exhibit B (Baldwin (MSC) tr. at 75), Exhibit C (Barclay (MSC) tr. at 129), Exhibit D (Barthenheir (MSC) tr. at 184).

³ See, e.g., Exhibit B (Baldwin (MSC) tr. at 218).

the appropriate remedy. While Complaint Counsel have asked numerous MSC employees about MSC's change in policy, not a single deponent had any role in the decision-making process, or had any knowledge about why the decision was made.⁴ Only the top MSC executives, including Mr. Perna and Mr. Blakely, have the knowledge and decision-making ability to address this important issue.

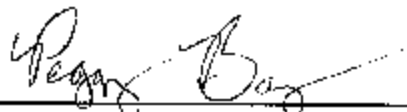
Additionally, Respondent ignores the relevance of the strategic alliance between Dassault and MSC when it claims that no further inquiry into the alliance is needed. First, the strategic alliance is an evolving relationship. Second, the alliance is very relevant to the issues in this case, including MSC's defenses. MSC claims that Dassault's product ELFINI is part of the market. The fact that Dassault and MSC are now aligned means that MSC Nastran and ELFINI are no longer rivals. Mr. Perna and Mr. Blakely have both been directly involved in the formation of the strategic alliance and its continuing evolution.⁵

⁴ See, e.g., Exhibit E (Torres (MSC) Tr. at 123-124).

⁵ Complaint Counsel will try to keep the depositions to one day but may need more than one day to depose several of these witnesses. There are numerous issues and documents that need to be explored with each witness as noted above. Thus, Complaint Counsel needs flexibility to continue the depositions into a second day if warranted.

For the reasons set forth above, Complaint Counsel request that MSC's motions for protective order be denied and Complaint Counsel's motions be granted so that these seven depositions may proceed immediately.

Respectfully Submitted,



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Dated: May 3, 2002

CERTIFICATE OF SERVICE

This is to certify that on May 3, 2002, I caused a copy of Complaint Counsel's Motion to Compel Depositions and to Shorten the Time for Responding to this Motion to be served by hand-delivery to the following person:

The Honorable D. Michael Chappell
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

and by facsimile transmission with hand-delivery of a copy the next business day to the following person.

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