

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

PUBLIC VERSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**OPPOSITION OF RESPONDENT RAMBUS INC. TO COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF MOTION FOR
ADDITIONAL ADVERSE INFERENCES AND OTHER APPROPRIATE RELIEF
NECESSARY TO REMEDY RAMBUS INC.'S INTENTIONAL SPOILIATION OF
EVIDENCE**

In support of their original motion for default judgment, Complaint Counsel filed briefs totaling 125 pages, along with 118 exhibits totaling hundreds of pages more. In support of their Motion for Additional Adverse Inferences, Complaint Counsel filed a 37-page brief and 12 more exhibits or attachments. Now, they ask leave to file a “reply” that not only adds to the excessive volume of paper filed on this single issue, namely, what remedy, if any, should be imposed in response to the failure by Rambus to preserve certain documents, Complaint Counsel also seek to raise new arguments, to which Rambus may

not have an opportunity to respond if Complaint Counsel are allowed to file a reply. For these reasons, Rambus urges Your Honor to deny leave to Complaint Counsel to file the reply that they already have lodged.

Among the new arguments, made for the first time in Complaint Counsel's reply, are the following:

- It is "new evidence," not known to Judge Timony when he issued his Order Re Default Judgment on February 26, 2003, that he also issued, that very same day, his Order Granting Complaint Counsel's Motion For Collateral Estoppel. *See* Complaint Counsel's [Proposed] Reply at 3.
- That testimony by Professor Mark Horowitz at his January 20, 2001 deposition, nearly two years before Complaint Counsel's motion for default judgment was filed, is "new evidence." *See* Complaint Counsel's [Proposed] Reply at 5 n. 4. Implicitly, this contention is premised on the remarkable argument that evidence available to Complaint Counsel and which they chose not to cite the first time can later be cited as "new evidence" to justify reconsideration.
- That in responding to an argument that the adverse inferences imposed by Judge Timony are not sufficiently severe, Rambus should be prevented from presenting the underlying facts. *See, e.g.*, Complaint Counsel's [Proposed] Reply at 7. This contention is premised on the

argument that the “punishment” need bear no relationship to the
“wrong” committed.

For these reasons, Complaint Counsel’s motion for leave to file a reply should be denied. However, if Complaint Counsel are granted leave to file their reply, then Rambus requests an opportunity to file a brief response to the new arguments raised in that reply, a few of which are described briefly above.

DATED: April __, 2003 Respectfully submitted,

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BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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) Docket No. 9302
RAMBUS INCORPORATED,)
)
a corporation.)
_____)

CERTIFICATE OF SERVICE

I, Jacqueline M. Haberer, hereby certify that on April 11, 2003, I caused a true and correct copy of the *Opposition of Respondent Rambus Inc. to Complaint Counsel's Motion for Leave to File a Reply in Support of Motion for Additional Adverse Inferences and Other Appropriate Relief Necessary to Remedy Rambus Inc.'s Intentional Spoliation of Evidence* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Donald S. Clark, Secretary
Federal Trade Commission
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Jacqueline M. Haberer

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BEFORE THE FEDERAL TRADE COMMISSION

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CERTIFICATION

I, Jacqueline M. Haberer, hereby certify that the electronic copy of the *Opposition of Respondent Rambus Inc. to Complaint Counsel's Motion for Leave to File a Reply in Support of Motion for Additional Adverse Inferences and Other Appropriate Relief Necessary to Remedy Rambus Inc.'s Intentional Spoliation of Evidence* accompanying this certification is a true and correct copy of the paper version that is being filed with the Secretary of the Commission on April 11, 2003 by other means:

Jacqueline M. Haberer
April 11, 2003