

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

B259095

\_\_\_\_\_) )  
In the Matter of ) )  
 ) )  
MOTOR UP CORPORATION, INC. and ) )  
MOTOR UP AMERICA, INC., ) ) DOCKET NO. 9291  
corporations, and ) )  
 ) )  
KYLE BURNS, ) )  
individually and as an officer ) )  
of the corporations. ) )  
\_\_\_\_\_)

**ORDER DENYING MOTION IN LIMINE  
OR FOR A PROTECTIVE ORDER**

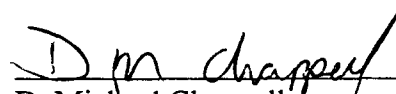
Respondents MotorUp Corporation, Inc., MotorUp America, Inc. and Kyle Burns, (“Respondents”), have moved for an order *in limine* or, in the alternative, for a protective order to preclude discovery relating to the use of chlorine or any chlorinated substance (“chlorinated paraffins”) as a component of any motor oil product. As grounds for their motion, Respondents assert this information is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. For the reasons set forth below, the motion is DENIED.

Respondents’ motion *in limine* is premature. “Motion *in limine*” refers “to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984). See also *Provident Life & Accident Ins. Co. v. Adie*, 176 F.R.D. 246, 250 (E.D. Mich. 1997)(“Motions in limine typically involve matters which ought to be excluded from the jury’s consideration due to some possibility of prejudice or as a result of previous rulings by the court.”); *Kansas v. Quick*, 597 P.2d 1108, 1112 (Kan. 1979)(“The purpose of a motion in limine is to assure all parties a fair and impartial trial by prohibiting inadmissible evidence, prejudicial statements, and improper questions by counsel.”).

Respondents seek to preclude Complaint Counsel from obtaining discovery relating to chlorinated paraffins. Their use of a motion *in limine* to achieve this goal is procedurally improper and will be denied, without prejudice. Respondents are not, however, barred from later filing a motion *in limine* to exclude admissibility of evidence on the use of chlorinated paraffins.

Respondents' Motion in the Alternative for a Protective Order is also denied. Pursuant to Federal Trade Commission Rule 3.43(a), Respondents, as movants, have the burden of proof on their motion. This burden has not been met. Given the broad scope of discovery in Commission proceedings, I reject the relevance objection, for the requested documents "may be reasonably expected to yield information relevant to the allegations of the complaint . . ." 16 C.F.R. § 3.31(c)(1); *In re R.R. Donnelley & Sons Co.*, 1991 FTC LEXIS 268 (June 6, 1991). Because discovery about chlorine or chlorinated substances is relevant to the allegations of the Complaint and Respondents' defenses, or is likely to lead to the discovery of relevant information, the motion for a protective order to preclude discovery is denied.

It is SO ORDERED.

  
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D. Michael Chappell  
Administrative Law Judge

Dated: July 21, 1999