

- April 27, 2007 - Deadline for depositions of experts (including rebuttal experts).
- May 4, 2007 - Deadline for filing responses, including any opposing affidavits, statement of facts, and brief, to motions for summary decision.
- May 8, 2007 - Status report due and, if requested, conference with Administrative Law Judge.
- May 15, 2007 - Exchange: (1) final proposed witness lists with a brief summary of the testimony of each witness; (2) final exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits).

Serve courtesy copies on Administrative Law Judge of: (1) final proposed witness lists with a brief summary of the testimony of each witness; and (2) final exhibit lists.
- May 15, 2007 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- May 18, 2007 - Deadline for filing motions *in limine* and motions to strike.
- May 25, 2007 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 30, 2007 - Parties file pretrial briefs supported by legal authority.
- June 4, 2007 - Exchange and serve courtesy copy on Administrative Law Judge objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- June 11, 2007 - Exchange proposed stipulations of law, facts, and authenticity, and objections to counter designations.
- June 14, 2007 - 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 the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Stipulations of law, facts, and authenticity shall be prepared as a Joint Exhibit and offered at the

final prehearing conference. A signature line for the Administrative Law Judge shall not be included on such stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. All trial exhibits must be offered at the final prehearing conference. The offered exhibits will be admitted or excluded at this conference to the extent practicable.

June 19, 2007 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to deadlines will be made only upon a showing of good cause.

2. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve two courtesy copies on the Administrative Law Judge by hand by 5:00 p.m. on the designated date. For papers that are not required to be filed with the Office of the Secretary (including discovery requests and responses, *see* Commission Rules 3.31(b), 3.35, 3.37), the parties shall not serve courtesy copies on the Administrative Law Judge, unless specifically requested by the Administrative Law Judge.

3. The parties shall serve each other by electronic mail. Service by email shall be followed promptly by delivery of an original through one of the methods in 16 C.F.R. § 4.4(b). Deliveries shall be made as follows:

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4. All pleadings that cite to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

5. Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. Motions that fail to include such statement may be denied on that ground.

6. All motions must attach a draft order containing the proposed relief. All such attachments must be titled "Proposed Order," instead of simply "Order." In no event shall a party file a pleading that is titled "Order."

7. Memoranda in support of, or in opposition to, any non-dispositive motion, shall not exceed 10 pages, exclusive of attachments.

8. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45. Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

9. Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

10. Each party is limited to 50 document requests, 50 interrogatories, and 50 requests for admission, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. 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, including all subparts, does not exceed these limits. Additional discovery may be permitted only for good cause upon application to and approval by the Administrative Law Judge.

11. Responses and objections to document requests and interrogatories shall be due within 20 days of service, unless the parties agree otherwise. Responses and objections to requests for admission shall be due within 10 days of service, unless the parties agree otherwise. Each response and/or objection to each discovery request shall be preceded by the specific discovery request to which the answer pertains.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition.

13. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled.

14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within five business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition as agreed to by all parties involved.

15. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

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

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

At the time an expert report is produced, the listing party will provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case. Unless otherwise agreed by the parties, draft reports and notes of experts need not be

produced. Likewise, communications between experts and counsel or consultants need not be produced unless relied upon by the expert in formulating an opinion in this case.

Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

17. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness lists may not include additional witnesses not listed in the preliminary witness lists previously exchanged, unless by order of the Administrative Law Judge upon a showing of good cause, or by agreement of the parties.

18. The final exhibit lists shall represent counsels' good faith designation 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, or by agreement of the parties.

19. Applications for the issuance of subpoenas commanding a person to attend and give testimony at the adjudicative hearing must comply with 16 C.F.R. § 3.34, must demonstrate that the subject is located in the United States, and must be served on opposing counsel. Oppositions to applications for issuance of subpoenas shall be due within three business days.

20. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

21. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 702. F.R.E. 701.

22. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.


23. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

24. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

25. Complaint Counsel's exhibits shall bear the designation CX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

26. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will maintain as part of the record.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

Date: December 4, 2006