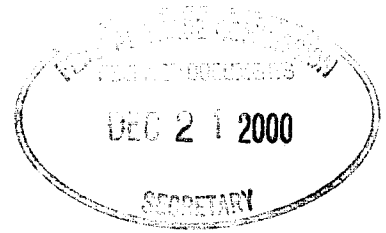


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



_____)
In the Matter of)
)
H.J. HEINZ COMPANY)
a corporation;)
)
MILNOT HOLDING CORPORATION,)
a corporation;)
)
and)
)
MADISON DEARBORN CAPITAL)
PARTNERS, L.P.,)
a limited partnership.)
_____)

Docket No. 9295

SCHEDULING ORDER

- March 13, 2001 - Parties provide to opposing parties or third parties a list of materials, information, or documents that have been designated as confidential which the listing party reasonably expects to include in a pleading, motion, exhibit or other paper to be filed with the Secretary. This list will not be filed with the Secretary's Office, but shall be served on the Administrative Law Judge.
- March 20, 2001 - Exchange preliminary witness lists, including experts, with description of proposed testimony.
- File motions for *in camera* treatment of materials marked confidential pursuant to protective order which a party reasonably expects to be included in a pleading, motion, exhibit or other paper to be filed with the Secretary.
- March 27, 2001 - File responses to motions for *in camera* treatment of materials marked confidential pursuant to a protective order.
- April 3, 2001 - Exchange expert reports.
- April 10, 2001 - Deadline for filing motions for summary decision.

- April 13, 2001 - Deadline for issuing document requests, requests for admission, interrogatories and subpoenas *duces tecum*.
- April 16, 2001 - Exchange rebuttal expert reports.
- April 20, 2001 - Deadline for depositions on rebuttal expert opinions.
- April 24, 2001 - Deadline for filing responses to motions for summary decision.
- May 1, 2001 - Deadline for filing replies on motions for summary decision.
- 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. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless good cause is shown.
- May 8, 2001 - Deadline for filing motions *in limine* and motions to strike.
- Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- Exchange objections to proposed trial exhibits.
- Exchange objections to any designated deposition testimony.
- Exchange proposed stipulations of law, facts, and authenticity.
- May 11, 2001 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4).
- May 15, 2001 - File responses to motions *in limine* and motions to strike.
- File responses to motions for *in camera* treatment of proposed trial exhibits.
- Exchange responses to objections to proposed trial exhibits.
- Exchange responses to any designated deposition testimony.

- Exchange responses to proposed stipulations of law, facts, and authenticity.
- May 18, 2001 - File statement of the case reporting on compliance with discovery and settlement negotiations and identifying the legal and factual matters to be decided by the Administrative Law Judge.
- May 22, 2001 - Status conference to report on discovery and settlement negotiations. 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.
- May 25, 2001 - File pretrial briefs identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge.
- May 28, 2000 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- May 31, 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 the 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.
- June 5, 2001 - Commencement of Hearing, to begin at 9:00 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 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 5 days of impasse if the parties are not able to resolve their dispute.

3. Written discovery is limited in accordance with the FTC Procedures and Rules of Practice, which includes a provision that each party is limited to a total of 25 interrogatories. There is no limit to the number of sets of interrogatories the parties may issue, as long as the total number, including all subparts, does not exceed these limits. Additional interrogatories 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 20 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 revised 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 opposing parties promptly of changes in preliminary and revised witness lists to facilitate completion of discovery within the dates of the scheduling order. Additional witnesses may be added to the final witness lists and 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 counsels' good faith designation of all potential exhibits other than demonstrative, illustrative, or summary exhibits. The final exhibit lists shall represent counsels' 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 listing party will provide to the other parties:

- (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.

At the time an expert report is produced, the listing party will provide to the other parties:

- (a) all written communications exchanged between counsel and expert (other than drafts of expert reports); and

- (b) all documents and other written materials relied upon or reviewed by the expert in formulating an opinion in this case.

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.

7. If any party seeks to introduce into evidence, by filing a pleading, attaching an exhibit thereto, introducing at trial, or otherwise placing on the record, materials or information derived from materials that have been designated as "confidential" pursuant to the Protective Order entered in this case, that party must comply with the procedures for motions *in camera* treatment that are set forth in the Protective Order entered in this case. Absent strict adherence to these procedures, pleadings should be composed in a manner which sufficiently apprises the Court of the matter at issue and which does not identify or disclose any confidential information. Failure to comply with these procedures may result in pleadings or portions thereof being stricken from the record.

8. Use of materials that have been granted *in camera* status: In the *in camera* version of any pleading or exhibit thereto, the offering party must clearly indicate which materials have been granted *in camera* status by placing brackets around such material.

9. 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. Unless the FTC Rules of Practice require filing with the Office of the Secretary a paper (including discovery requests and responses and witness and exhibit lists or reports), the parties shall not serve courtesy copies of such papers with the Administrative Law Judge.

Deliveries shall be as follows:

For Complaint Counsel: Richard B. Dagen
Assistant Director
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Room S-3001
Washington, D.C. 20580

Counsel for H.J. Heinz: Rosemary H. McEnery
 Howrey Simon Arnold & White
 1209 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004-2402

Counsel for Madison Dearborn Capital Partners, L.P. and
Milnot Holding Corporation:

Colin R. Kass
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005

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.

10. All pleadings that cite to cases not published in a reporter or not reported on LEXIS or WESTLAW shall include as exhibits any unpublished opinions. All pleadings shall include the name, address, and telephone and fax numbers 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.")

11. 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 exhibits shall bear the designation RX or some other appropriate designation. (For example, the first exhibit shall be marked CX-1 for complaint 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).

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.

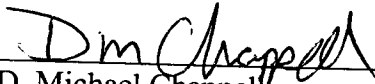
All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party were to select certain, but not all, documents that had been designated as deposition exhibits to be designated as trial exhibits, the party must indicate that certain numbers were not used in the numbering process for trial exhibits. For example, if complaint counsel

decided to not introduce at trial documents previously marked at depositions as exhibits CX-2, CX-4, and CX-6, its list of exhibits would begin CX-1, CX-3, and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4, and CX-6 were never designated as trial exhibits. Using this example, in preparing the set of original exhibits to give to the court reporter, complaint counsel must indicate that CX-2, CX-4, and CX-6 were never designated as trial exhibits by inserting in their place a blank piece of paper, tab, or other method.

12. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will further be required to give the originals of exhibits to the court reporter, which the court reporter will keep.

13. In addition to providing the original exhibits to the court reporter at the final pre-hearing conference, counsel must bring to the hearing one copy of their exhibits for each of the following: the court reporter, the Administrative Law Judge, the Administrative Law Judge's attorney advisor, and the witness. Counsel will present the copy to each of the above when using it, and then take back the copy when finished. Counsel may agree among themselves on the method by which they wish to exchange exhibits with each other.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Dated: December 21, 2000