

# NOTICE OF APPEARANCE



**CASE NAME**  
In the Matter of Paul L. Foster, Western  
Refining, Inc., and Giant Industries Inc.

**FILE/DOCKET NUMBER**  
No. D09323

231873  
530357

► Pursuant to Section 4.1 of the Commission's Rule of Practice, enter in the above proceeding the appearance of

counsel or representative for the respondent (Complete items 1, 2, 4, and 5 below)

counsel supporting the complaint (Complete items 1, 3, 4, and 5 below)

### 1. COUNSEL OR REPRESENTATIVE

Include name, address and telephone of each

David F. Smutny  
HELLER EHRMAN LLP  
1717 Rhode Island Avenue NW  
Washington, D.C. 20036  
Tel: (202) 912-2000  
Fax: (202) 912-2020

### 2. RESPONDENTS

Include address and telephone numbers of all persons, partnerships, corporations, or associations

Paul L. Foster  
6500 Trowbridge Drive  
El Paso, Texas 79905  
(915) 775-3300  
  
Western Refining, Inc.  
6500 Trowbridge Drive  
El Paso, Texas 79905  
(915) 775-3300

### 3. ASSOCIATE/ASSISTANT DIRECTOR

### 4. SIGNATURE OF SENIOR COUNSEL

*David F. Smutny*  
Return this form to:

### 5. DATE SIGNED

May 31, 2007

H-135  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, D.C. 20580

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

In the Matter of

Paul L. Foster,  
Western Refining, Inc., and  
Giant Industries, Inc.

**Docket No. D09323**

**PUBLIC**

**DECLARATION OF DAVID F. SMUTNY**

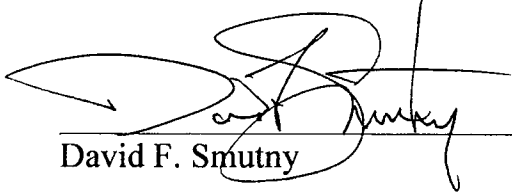
I, David F. Smutny, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for Defendants Paul L. Foster and Western Refining, Inc. I make this declaration pursuant to Rule 4.1(d) of the Federal Trade Commission's Rules of Practice.

2. I am a member of the Bars of the District of Columbia (Bar No. 435714) and Illinois (Bar No. 6204479). I am admitted to practice before the United States Court of Federal Claims. I further attest that I am in good standing within the legal profession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 30, 2007.

  
\_\_\_\_\_  
David F. Smutny

## **CERTIFICATE OF SERVICE AND COMPLIANCE**

I, Nara Neves, hereby certify that on June 4, 2007 copies of the foregoing **NOTICE OF APPEARANCE** were served as indicated:

**Hon. Stephen J. McGuire**  
**Chief Administrative Law Judge**  
**Federal Trade Commission**  
600 Pennsylvania Avenue, NW  
Room 113  
Washington, D.C. 20580  
(Via hand delivery)

**Donald S. Clark**  
**Federal Trade Commission**  
600 Pennsylvania Avenue NW  
Room H-135  
Washington, DC 20580  
**Tel: 202-326-3665**  
**dclark@ftc.gov; secretary@ftc.gov**  
(Via e-mail and hand delivery)

**Marc Schneider**  
**Peter Richman**  
**Thomas Lang**  
**Andrea Ryan**  
**Keitha Clopper**  
**Eric Sprague**  
**Karen Kazmerzak**  
**Jodie Williams**  
**Federal Trade Commission**  
600 Pennsylvania Avenue NW  
Washington, DC 20580  
**Tel: 202-326-2563**  
**mschneider@ftc.gov**  
**prichman@ftc.gov**  
**tlang@ftc.gov**  
**aryan@ftc.gov**  
**kclopper@ftc.gov**  
**esprague@ftc.gov**  
**kkazmerzak@ftc.gov**  
**jwilliams@ftc.gov**  
(Via e-mail and mail delivery)

**Tom D. Smith**  
**Jones Day**  
51 Louisiana Avenue NW  
Washington, DC 20001  
**Tel: 202-879-3971**  
**tdsmith@jonesday.com**  
(Via e-mail and mail delivery)

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.



Nara Neves  
HELLER EHRMAN LLP  
202.912.2638