

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

ASPEN TECHNOLOGY, INC.,

Respondent.

Docket No. 9310

ORDER DENYING MOTION TO COMPEL  
ADMISSIONS BY COMPLAINT COUNSEL TO  
RESPONDENT'S FIRST REQUEST FOR ADMISSIONS

I

On November 18, 2003, Respondent filed its motion to compel admissions by Complaint Counsel in response to Respondent's First Request for Admissions. Complaint Counsel filed its opposition on November 28, 2003. For the reasons set forth below, Respondent's motion is **DENIED**.

II

Respondent served on Complaint Counsel a set of 753 requests for admission asking Complaint Counsel to admit the authenticity of statements made by 64 customers and to admit to the factual points set forth in each statement. Respondent asserts that its requests for admission are an efficient way to reduce the issues for discovery and trial. Respondent argues that Complaint Counsel has a duty to admit or deny admission requests that relate to customer statements about product usage because Complaint Counsel has investigated the transaction at issue in this litigation and the industry for the past year and a half. Respondent further asserts that Complaint Counsel is obligated to review the statements made by the 64 customers, to make reasonable inquiries of the customers, and to make a good faith determination about which points Complaint Counsel can admit and which points Complaint Counsel can deny.

Complaint Counsel asserts that the statements by customers bear no indicia of trustworthiness and are inadmissible hearsay, as the statements relate primarily to the personal opinions of the authors as individuals, as opposed to expressing an authoritative position on behalf of the respective companies. Complaint Counsel argues that Respondent's casting of these

statements as requests for admission seeks to force Complaint Counsel to admit to the untested opinions of its witnesses. Complaint Counsel asserts that it is not obligated to seek out the 64 witnesses to try to evaluate the credibility of the witnesses' opinions.

III.

Pursuant to Rule 3.31(c) of the Commission's Rules of Practice, the frequency or extent of use of requests for admission shall be limited by the Administrative Law Judge if he determines that "the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more conventional, less burdensome, or less expensive," or if "the burden or expense of the proposed discovery outweigh its likely benefit." 16 C.F.R. § 3.31(c). A purpose of requests for admission is to narrow the issues for trial by relieving the parties of the need to prove facts that will not be disputed at trial and the truth of which can be easily ascertained. *In re General Motors*, 1977 FTC LEXIS 293, \*3 (1977). See also *In re Trans Union Corp.*, 1993 FTC LEXIS 116, \*2 (1993) (Parties should use requests for admission "to reach agreements as to facts which are not in dispute.").

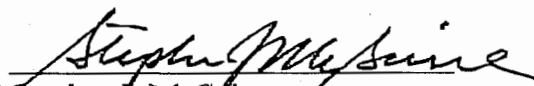
Federal case law interpreting the analogous Rule 36(a) of the Federal Rules of Civil Procedure which allows the service of requests for admission upon parties to civil actions indicates the purpose of this rule is to reduce the cost of litigation, *Burns v. Phillips*, 50 F.R.D. 187, 188 (N.D. Ga. 1970), by narrowing the scope of disputed issues, *Webb v. Westinghouse Electric Corp.*, 81 F.R.D. 431, 436 (E.D. Pa. 1978), facilitating the succinct presentation of the case to the trier of fact, *Ranger Ins. Co. v. Culberson*, 49 F.R.D. 181, 182-83 (N.D. Ga. 1969), and eliminating the necessity of proving undisputed facts. *Peter v. Arrien*, 319 F. Supp. 1348, 1349 (E.D. Pa. 1970). Properly used, requests for admission serve the expedient purpose of eliminating "the necessity of proving essentially undisputed and peripheral issues of fact." *Syracuse Broadcasting Corp. v. Newhouse*, 271 F.2d 910, 917 (2d Cir. 1959). Their proper, strategic use saves "time, trouble, and expense" for the court and the litigants. *Metropolitan Life Insurance Co. v. Carr*, 169 F. Supp. 377, 378 (D. Md. 1959). Because requests for admission are intended to save time of the parties and the court, burdensome requests distort that purpose and therefore are properly the subject of a protective order. *Wigler v. Electronic Data Systems, Corp.*, 108 F.R.D. 204, 207 (D. Md. 1985).

The requests for admissions at issue here do not appear to be essentially undisputed or peripheral issues of fact. Instead, they seek Complaint Counsel to admit to the opinions of customers. Under certain circumstances, Complaint Counsel may be obligated to make inquiry of third parties. A party is required to make an inquiry of persons under the responding party's control or where there is some identity of interest manifested. *T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co., Inc.*, 174 F.R.D. 38, 43 (S.D.N.Y. 1997); *Uniden America Corp. v. Ericsson, Inc.*, 181 F.R.D. 302, 304 (M.D.N.C. 1998). In the instant case, there has been no showing that the customers are under Complaint Counsel's control or that some identity of interest is manifest.

## IV.

To the extent that Respondent's Requests for Admission ask Complaint Counsel to admit the authenticity of statements made by 64 customers and to admit or deny the factual points set forth in each statement, IT IS HEREBY ORDERED that Respondent's motion to compel is **DENIED**.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: December 2, 2003