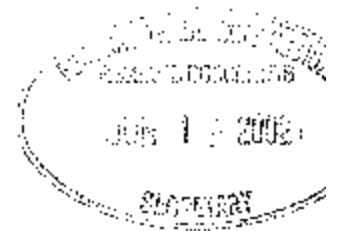


**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**



In the Matter of)	
)	
MSC.SOFTWARE CORPORATION,)	Docket No. 9299
a corporation.)	

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENT MSC.SOFTWARE'S MOTION FOR
SEVEN DAY ADVANCE NOTICE OF WITNESS ORDER**

Complaint Counsel believe that a two-day rolling notice of the appearance of a witness at trial is appropriate in this matter as oppose Respondent MSC's efforts to invoke a one-week and more rule period. A 48- hour notice is consistent with federal court and Commission practice and provides each side with sufficient notice to prepare for cross-examination. Of course, 48 hours would count only business days. Weekend days are not included. See § 4.3 of the Commission's Rules of Practice. MSC sites no authority or practice for its one-week rule.¹

The uncertainties of any trial proceeding make it difficult to predict the changing needs of the trial schedule. Thus, long advanced notice as sought by Respondent is not practical. The Manual for Complex Litigation, Third (1995), recognizes that when specifying the amount of advanced notice, there is a need for "balancing opposing counsel's need for time to prepare against the possibility that intervening developments will required changes." § 22.23.

Complaint Counsel's proposed forty-eight hour notice is consistent with federal court and Commission practice. For example, the parties followed a one-day notice rule in the recently litigated

¹ Respondent seeks a seven- to twelve-day notice requirement. For example, Respondent's proposed order would require notification on a Monday for a witness appearing on Friday of the following week.

FTC Swedish Match preliminary injunction merger action. *See FTC v. Swedish Match North America Inc.*, Civil Action No. 1:00CV01501 (TFH) (Sept. 5, 2000, Stipulated Order Regarding Hearing Arrangements) (“[w]itnesses to be called at the hearing shall be identified (in the order that they are to be called) by Noon the day prior to testifying with a good faith estimate of the expected time for direct examination.”). Additionally, we understand that the parties followed a 72-hour notice rule in the recently completed trial in *Schering-Plough*. *See Schering-Plough Corporation*, Docket No. 9297.

Respondent has already had sufficient opportunity to depose or interview all the witnesses on Complaint Counsel’s Final Witness List and to prepare for their cross-examination. Complaint Counsel notified MSC of its witnesses as early as April 26, 2002, (*see* Complaint Counsel’s Opposition to Respondent’s Motion for a Second Amended Scheduling Order) and most were on Complaint Counsel’s preliminary and revised witnesses lists.

Accordingly, Complaint Counsel urge the Court to deny Respondent's Motion and to enter an order establishing a forty-eight hour rolling notice for trial witnesses. Enclosed is a proposed order.

Respectfully submitted



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Dated: June 19, 2002

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

In the Matter of)	
)	
MSC SOFTWARE CORPORATION,)	Docket No. 9299
a corporation.)	
)	

**ORDER ESTABLISHING PROCEDURE FOR ADVANCED
NOTICE OF APPEARANCE OF WITNESSES AT TRIAL**

Except for good cause, the parties shall provide each other with 48 hours advanced notice of the appearance of any witness at trial.

Dated: _____

Hon. D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that on June 19, 2002, I caused a copy of Complaint Counsel's Response to Respondent MSC.Software's Motion for Seven Day Advance Notice of Witness Order to be served on the following persons:

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