

ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**



In the Matter of)
)
POM WONDERFUL LLC and)
ROLL GLOBAL LLC,)
as successor in interest to)
Roll International Corporation,)
companies, and)
)
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)
_____)

**Docket No. 9344
PUBLIC**

RESPONDENTS' MOTION REGARDING SCHEDULING OF CLOSING ARGUMENT

Pursuant to Rule 4.3(b) of the Commission's Rules of Practice and this Court's inherent authority, Respondents move this Court to schedule the closing argument for the above-referenced matter for March 5, 2012, March 6, 2012, or at another date in March convenient for the Court and Complaint Counsel. Respondents request that the Court not schedule closing argument on February 14, 2012, due to the unavailability of its lead trial counsel, Bert Fields, on that date.

Good cause exists for this motion because lead counsel for Respondents, Bert Fields, who will be delivering the closing argument on behalf of Respondents in this case, is trying a jury trial in the United States District Court for the Southern District of Florida and will be unable to prepare for or attend the closing argument for Respondents in this case should the argument be set for February 14, 2012. As set forth in the accompanying declaration, Mr. Fields is currently counsel for a defendant in a jury trial that commenced on January 23, 2012 and will likely last until after February 14, 2012 -- the date that the Court had suggested for closing arguments in this case. Given the complex nature of this case, the well-developed and extensive record, and

Mr. Fields's active role in the case, Respondents would be severely prejudiced should the closing argument be set for a date on which Mr. Fields is not available. Granting this motion will not affect the deadline for issuance of the Initial Decision in this matter and therefore will not unnecessarily delay the progression of the matter or require Commission approval under Rule 4.3(b). Accordingly, Respondents request that the motion be granted.

Respondents conferred with Complaint Counsel prior to filing of this motion, and Complaint Counsel has declined to consent. Complaint Counsel has indicated that, should the Court grant the motion, they would be available on March 5 or 6 for closing argument but not the remainder of that week.

Respectfully Submitted,

/s/ Skye Perryman

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Counsel for Respondents

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Statement of Meet and Confer

As indicated in the accompanying memorandum, Respondents' counsel contacted Complaint Counsel and they have declined to consent to this motion.

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CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of Respondents' **MOTION REGARDING SCHEDULING OF CLOSING ARGUMENT**, and that on this 25th day of January, 2012, I caused the foregoing to be served by FTC E-File, hand delivery and e-mail on the following:

Donald S. Clark
The Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
H-159
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Rm. H-110
Washington, DC 20580

I hereby certify that this is a true and correct copy of Respondents' **MOTION REGARDING SCHEDULING OF CLOSING ARGUMENT**, and that on this 25th day of January, 2012, I caused the foregoing to be served by e-mail on the following:

Mary Engle
Associate Director for Advertising Practices
Bureau of Consumer Protection
Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20580

Mary Johnson, Senior Counsel
Heather Hipsley
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Counsel for Respondents

Dated: January 25, 2012

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

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ROLL GLOBAL CORP.,)	
companies and)	Docket No. 9344
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Declaration of Bertram H. Fields

I, Bertram H. Fields, declare as follows:

1. I am lead trial counsel for Respondents POM Wonderful LLC (“POM”), Roll Global LLC (successor-in-interest to Roll International Corporation) (“Roll”), Stewart A. Resnick, Lynda R. Resnick, and Matthew Tupper (collectively “Respondents”) in the above-captioned matter. I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would competently testify thereto.

2. I am currently serving as trial counsel for counter-defendant in the case of *Chow, et al. v. Chau*, Case No. 1:09-cv-21892-WMH (S.D. Fla. 2009) (Hon. William M. Hoeverler presiding) pending in the United States District Court for the Southern District of Florida (“*Chow Action*”).

3. Jury trial in the *Chow Action* commenced on January 23, 2012 with jury selection and *voir dire*.

4. The parties anticipate that the *Chow Action* will last approximately fifteen to twenty trial days in duration.

5. Judge Hoeverler, a Senior Judge of the District Court, has ordered that trial in the *Chow Action* only take place four days a week.

6. Accordingly, based on current estimates for the length of trial, the *Chow Action* will not end until, at the earliest, on or about February 14, 2012, and, at the latest, on or about February 21, 2012.

7. By its e-mail dated January 20, 2012, the Court has indicated that it is considering scheduling closing argument for this matter on February 14, 2012 at 1:00 p.m.

8. Respondents have asked that I deliver the closing argument in this matter on their behalf.

9. As a result of my involvement in the *Chow Action*, I will not be able to either adequately prepare for or even attend closing argument on February 14. Given the complexity of this case and the vast evidentiary record, Respondents would suffer considerable prejudice if I were required to prepare for closing argument during the *Chow Action*. More importantly, a strong likelihood exists that I will not be able to even attend the closing argument given the estimated length of trial in the *Chow Action*.

10. Based upon the foregoing, good cause exists for a short continuance of the proposed February 14 date for closing argument. In order to prepare for closing argument in a sufficient manner, Respondents respectfully request that the February 14 hearing date be continued until the first week of March or to a date and time thereafter convenient to Court's (and Complaint Counsel's) calendar.

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

Executed on January 24, 2012



Bertram H. Fields