

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

_____)	
In the Matter of)	
)	
Axon Enterprise, Inc.)	
a corporation,)	Docket No. 9389
)	
and)	
)	
Safariland, LLC,)	
a partnership,)	
)	
Respondents.)	
_____)	

**ORDER ON RESPONDENT’S
MOTION TO ADJOURN HEARING**

On February 7, 2020, pursuant to Rule 3.41(b) of the Federal Trade Commission’s (“FTC”) Rules of Practice, Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”), filed a Motion to Adjourn the Hearing from May 21 through June 12, 2020 (“Motion”), due to the absence of Axon’s in-house litigation counsel, Pamela Petersen. On February 19, 2020, FTC Complaint Counsel filed an opposition to the Motion (“Opposition”), but does not oppose Axon’s separate request, first raised at the initial scheduling conference, that the hearing be recessed on Thursday and Friday, May 28 and 29, 2020, so that Axon’s lead counsel can attend another litigation matter out-of-state. For the reasons set forth below, the Motion is GRANTED in part and DENIED in part.

The evidentiary hearing in this matter is set to begin on May 19, 2020. Respondent proposes that the parties present opening statements on May 19 and May 20, but that the presentation of evidence be delayed until Monday, June 15, to accommodate the schedule of Ms. Petersen, Axon’s director of litigation and national appellate counsel, who will be out of the country on a previously scheduled, prepaid, personal trip. Respondent relies on FTC Rule 3.41, which provides in pertinent part:

Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

Respondent argues that Ms. Petersen is the person most knowledgeable and most experienced with Axon's business, particularly regarding the issues raised in this litigation, and that Ms. Petersen's participation in the hearing is required both as a litigator and as Axon's corporate representative, including for purposes of any settlement discussions that may occur. Respondent argues that the requested delay will not materially impact the overall timeline for resolving this case and will not cause any prejudice. Respondent Axon further notes that Respondent Safariland, LLC, does not oppose the Motion.

Complaint Counsel disputes that it is essential for Ms. Petersen to be present for the entire hearing, asserting that Ms. Petersen is not lead counsel and that Axon is well-represented by numerous qualified outside counsel, as well as a large in-house litigation team. Complaint Counsel further argues that a three-week adjournment to accommodate the vacation plans of in-house attorneys such as Ms. Petersen does not constitute a "brief interval[]" of the sort normally involved in judicial proceedings," as required under Rule 3.41.

Having fully considered the Motion, the Opposition, and the exhibits attached in support thereof, Respondent has failed to demonstrate that the requested adjournment meets the standard of Rule 3.41. An adjournment from May 21 until June 15 would be a delay of more than three weeks in a trial that Respondent asserts could consume over six weeks (Motion at 5) and is not a "brief interval." Nor does Respondent provide a persuasive basis for concluding that such length of delay – to accommodate personal plans of in-house counsel – is "of the sort normally involved in judicial proceedings." While Respondent might prefer to have Ms. Petersen personally attend each day of the presentation of evidence, Respondent's argument that Ms. Petersen is uniquely qualified to provide able assistance is conclusory and insufficiently supported. As Ms. Petersen acknowledges in her declaration attached to the Motion, "no one is irreplaceable." Motion Exhibit B ¶ 5. Respondent has ample time to prepare another in-house attorney to fill in during Ms. Petersen's absence. In addition, there is no assertion that Ms. Petersen will be unreachable during her vacation, should it be necessary.

For all the foregoing reasons, Respondent's Motion to Adjourn the Hearing from May 21 through June 12, 2020 is DENIED. The unopposed request for a two-day recess on May 28 and 29, 2020, to enable Axon's lead counsel to attend to another litigation matter out-of-state, is GRANTED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 28, 2020