

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
ECM BioFilms, Inc.,)
a corporation, also d/b/a)
Envioplastics International)
_____)

Docket No. 9358

**COMPLAINT COUNSEL’S RESPONSE TO
RESPONDENT’S FIRST SET OF REQUEST FOR ADMISSIONS**

Pursuant to Rule 3.32 of the Federal Trade Commission’s Rules of Practice for Adjudicative Proceedings, Complaint Counsel hereby submits the following objections and responses to Respondent’s First Request for Admissions (“RFA”).

GENERAL OBJECTIONS

1. Complaint Counsel objects to each RFA to the extent that it calls for information protected from discovery pursuant to sections 3.31(c)(2)-(4) of the Rules.
2. Complaint counsel objects to each RFA to the extent it seeks information that is subject to the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the non-testifying expert privilege, the deliberative privilege, the law enforcement privilege, the informant privilege, and the joint prosecution privilege, that is exempt from disclosure pursuant to confidentiality provisions set forth in the FTC Act, that is protected from disclosure by the privilege for information given to the FTC on a Pledge of Confidentiality, that is protected from disclosure under principles of financial privacy, that is subject to a protective order from another litigation, or that is subject to other applicable legal protection or privilege.
3. Complaint Counsel objects to each RFA to the extent it seeks information that is not relevant to the subject matter of the litigation and/or not reasonably calculated to lead to the

discovery of information relevant to the allegations of the complaint, to the proposed relief, or to Respondent's defenses.

4. Complaint Counsel objects to each RFA to the extent that it is overly broad, unduly burdensome, vague or ambiguous.

5. Complaint Counsel objects to each RFA to the extent it is not relevant to the pending proceeding against Respondent and/or does not relate to statements or opinions of fact or of the application of law to fact, and thereby exceed the scope of Rule 3.32, governing admissions.

6. By providing information in response to the RFA, Complaint Counsel does not concede that such information is relevant, material, or admissible in evidence.

7. Complaint Counsel's objections and responses to each RFA is based on information now known to Counsel. Complaint Counsel has not yet completed its discovery of the facts in this case or prepared for trial and therefore reserves its rights under the Commission's Rules of Practice to amend, modify, or supplement its objections and responses if it learns of new information.

8. This response addresses only information and materials collected or reviewed in the course of the investigation and prosecution of this case and that are in the possession, custody or control of the FTC Bureau of Consumer Protection. *See* FTC Rule 3.31(c)(2). Complaint Counsel objects to each RFA to the extent it seeks information outside this scope.

9. Each of the foregoing General Objections is incorporated in each of the Responses hereinafter set forth. Subject to and without waiving these objections, Complaint Counsel provides the following responses.

SPECIFIC OBJECTIONS AND RESPONSES

RFA 1:

That the FTC possesses evidence that ECM Plastics biodegrade.

RESPONSE TO RFA 1:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “FTC,” “evidence,” “ECM Plastics,” and “biodegrade.” Denied also to the extent the Response depends on expert opinion before the time designated for identification of experts and issuance of expert reports. *See* Scheduling Order, Dkt. No. 9358 (Nov. 21, 2013). Complaint Counsel will disclose testifying experts and their reports, including the bases and reasons for their opinions, in accordance with § 3.31A of the Commission’s Rules of Practice and the ALJ’s Scheduling Order in this case.

RFA 2:

Modern solid waste landfills in the U.S. are biologically active.

RESPONSE TO RFA 2:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “Modern solid waste landfills” and “biologically active.” Denied also to the extent the Response depends on expert opinion before the time designated for identification of experts and issuance of expert reports. *See* Scheduling Order, Dkt. No. 9358 (Nov. 21, 2013). Complaint Counsel will disclose testifying experts and their reports, including the bases and reasons for their opinions, in accordance with § 3.31A of the Commission’s Rules of Practice and the ALJ’s Scheduling Order in this case.

RFA 3:

The FTC and one or more attorneys at the FTC received a copy of the Article before February 14, 2014.

Response to RFA 3:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “FTC” and “attorneys at the FTC.” Complaint Counsel first received a copy of the Article on February 14, 2014, at 8:07 p.m. Complaint Counsel is not aware of any other attorney at the FTC having received a copy of the Article.

RFA 4:

On or before February 18, 2014, no FTC attorney had reviewed all documents revealing the sources of income of Dr. Ramani Narayan.

RESPONSE TO RFA 4:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “FTC attorney.” Complaint Counsel objects to the extent the RFA seeks information that is subject to the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the non-testifying expert privilege, the deliberative privilege, the law enforcement privilege, the informant privilege, and the joint prosecution privilege, that is exempt from disclosure pursuant to confidentiality provisions set forth in the FTC Act, that is protected from disclosure by the privilege for information given to the FTC on a Pledge of Confidentiality, that is protected from disclosure under principles of financial privacy, that is subject to a protective order from another litigation, or that is subject to other applicable legal protection or privilege.

RFA 5:

On or before February 18, 2014, no FTC attorney had identified all past and present shares of stock owned by Dr. Ramani Narayan.

RESPONSE TO RFA 5:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “FTC attorney.” Complaint Counsel objects to the extent the RFA seeks information that is subject to the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the non-testifying expert privilege, the deliberative privilege, the law enforcement privilege, the informant privilege, and the joint prosecution privilege, that is exempt from disclosure pursuant to confidentiality provisions set forth in the FTC Act, that is protected from disclosure by the privilege for information given to the FTC on a Pledge of Confidentiality, that is protected from disclosure under principles of financial privacy, that is subject to a protective order from another litigation, or that is subject to other applicable legal protection or privilege.

RFA 6:

On or before February 18, 2014, no FTC attorney had identified all corporate offices ever held, directorships ever held, trusteeships ever held, contracts ever executed by, and financial relationships involving Dr. Ramani Narayan.

RESPONSE TO RFA 6:

Denied. Complaint Counsel objects to RFA 6 on the grounds that it is overly broad, vague, and ambiguous, and is not relevant to the subject matter of the litigation and/or not reasonably calculated to lead to the discovery of information relevant to the allegations of the complaint, to the proposed relief, or to Respondent’s defenses. Complaint Counsel also objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the terms “FTC attorney.” Complaint Counsel objects to the extent the RFA seeks information that is subject to the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the non-testifying expert privilege, the deliberative privilege, the law enforcement privilege, the informant privilege, and the joint prosecution privilege, that is exempt

from disclosure pursuant to confidentiality provisions set forth in the FTC Act, that is protected from disclosure by the privilege for information given to the FTC on a Pledge of Confidentiality, that is protected from disclosure under principles of financial privacy, that is subject to a protective order from another litigation, or that is subject to other applicable legal protection or privilege.

RFA 7:

There is no other consumer perception study/survey other than the APCO Study and Synovate Study possessed by the FTC concerning public perception of the rate at which biodegradation takes place.

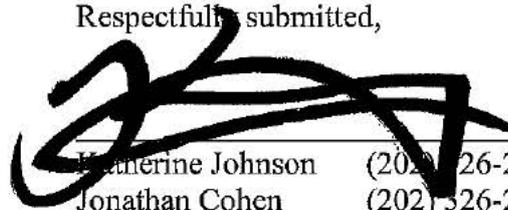
RESPONSE TO RFA 7:

Denied. Complaint Counsel objects to the request as argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous particularly with respect to the term “FTC.” Denied also to the extent the Response depends on expert opinion before the time designated for identification of experts and issuance of expert reports. *See* Scheduling Order, Dkt. No. 9358 (Nov. 21, 2013). Complaint Counsel further objects to the extent this request calls for a legal analysis of relevant facts and claims as such information is protected by the attorney work product doctrine. Complaint Counsel will disclose testifying experts and their reports, including the bases and reasons for their opinions, in accordance with § 3.31A of the Commission’s Rules of Practice and the ALJ’s Scheduling Order in this case. Complaint Counsel objects to the extent the RFA seeks information that is subject to the attorney-client privilege, the attorney work-product privilege, the investigative privilege, the non-testifying expert privilege, the deliberative privilege, the law enforcement privilege, the informant privilege, and the joint prosecution privilege, that is exempt from disclosure pursuant to confidentiality provisions set forth in the FTC Act, that is protected from disclosure by the privilege for information given to the FTC on a Pledge of Confidentiality, that is protected from disclosure under principles of financial privacy,

that is subject to a protective order from another litigation, or that is subject to other applicable legal protection or privilege. Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel admits that in response to the FTC's request for consumer perception research in connection with proposed revisions to the Guides for the Use of Environmental Marketing Claims, the FTC received two consumer perception studies: APCO and Synovate, which are part of the public record.

Dated: March 6, 2014

Respectfully submitted,



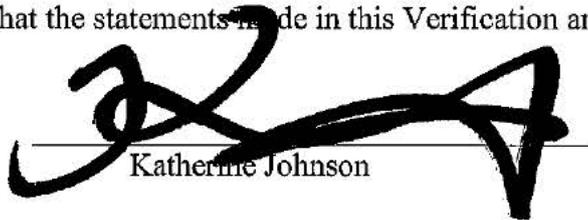
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600 Pennsylvania Avenue, NW
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VERIFICATION OF KATHERINE JOHNSON

I am an attorney of record in this matter and am authorized to make this verification for and on behalf of Complaint Counsel. I have read the foregoing Complaint Counsel's Response to Respondent's First Set of Request for Admissions, and am familiar with the contents thereof. The answers are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the statements made in this Verification are true and correct.

March 6, 2014



Katherine Johnson

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2014, I caused a true and correct copy of the paper original of the foregoing *Complaint Counsel's Response to Respondent First Set of Request for Admissions* to be served as follows:

One electronic copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy and one hard copy to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580

One electronic copy to **Counsel for the Respondent**:

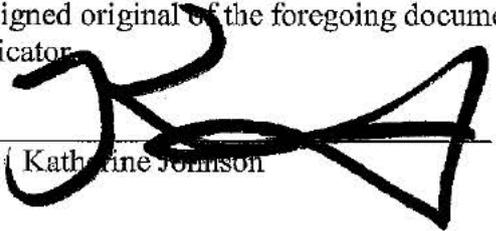
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I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

March 6, 2014


Katherine Johnson