UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Edith Ramirez, Chairwo Julie Brill Maureen K. Ohlhausen Joshua D. Wright Terrell McSweeny	oman
In the Matter of)	
ECM Biofilms, Inc.,)	
a corporation, also d/b/a/) Doc	cket No. 9358
Enviroplastics International	l)	
)	

ORDER SCHEDULING SUPPLEMENTAL BRIEFING AND DENYING CORRECTION REGARDING STATEMENTS MADE DURING ORAL ARGUMENT

This matter having been heard by the Commission upon the appeal of ECM Biofilms and the cross-appeal of Complaint Counsel and upon the respective briefs and oral arguments in support of their positions, the Commission has determined that supplemental briefing would assist it in resolving the issues presented. In accordance with Commission Rule 3.54, the Commission directs supplemental briefing limited to the following issues:

- A. Can the survey evidence in the record be interpreted as causal or experimental surveys with appropriate test and control groups? Would it be appropriate to do so? If so, please explain what inferences can be drawn from such an interpretation in light of relevant legal authority and statistical methods. If not, please explain why not.
- B. In light of relevant legal authority and statistical methods, what weight should the Commission give to the results of descriptive surveys, which measure an attitude, characteristic, or belief that survey respondents hold, relative to the results of causal surveys or experimental surveys, which use test and control groups to measure the effect of a specific variable?
- C. Is it possible to quantify the degree of convergence among the consumer surveys in the record in this case (APCO, Synovate, Frederick, and Stewart) or within any single survey? If so, please calculate the degree of convergence, if any, of these surveys. If not, please explain the significance of the inability to quantify convergence to an issue or issues on appeal.

Accordingly,

IT IS ORDERED THAT:

- 1. On or before June 22, 2015, ECM and Complaint Counsel shall file briefs, not to exceed 4,000 words (excluding any attachments), addressing *only* the foregoing issues;
- 2. On or before 14 days after service of the briefs described in Paragraph 1, ECM and Complaint Counsel may file responding briefs not to exceed 2,500 words (excluding any attachments); and
- 3. Attachments to briefs may include declarations from any experts who testified in this proceeding.

No extensions of time or word limits will be granted.

Additionally, we note that following oral argument, Complaint Counsel submitted a filing entitled Complaint Counsel's Correction Regarding Statements Made During Oral Argument. Respondent thereafter filed an Opposition arguing that Complaint Counsel's filing is not authorized under the Commission's Rules of Procedure. Given the Commission's order for supplemental briefing, the Commission finds Complaint Counsel's submission to be moot and has determined not to consider it.

Therefore,

IT IS FURTHER ORDERED THAT Complaint Counsel's Correction Regarding Statements Made During Oral Argument shall not be considered.

By the Commission.

Donald S. Clark Secretary

SEAL: ISSUED: May 29, 2015