

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)

POM WONDERFUL LLC and)
ROLL GLOBAL, as successor in interest)
to Roll International companies, and)

STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)

Docket No. 9344
PUBLIC

**RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO FILE REPLY**

In seeking to file a reply brief in support of its June 13, 2012 Motion to Reopen the Record, Complaint Counsel strains to manufacture imaginary "inconsistent factual assertions" where none exist as a pretext for extending the briefing in this proceeding and attempting to find support for the overbroad relief it seeks in this matter. Complaint Counsel has failed, however, to show the existence of any "recent important developments or controlling authority that could not have been raised earlier in the party's principal brief" pursuant to Rule of Practice 3.22(d), or that are relevant and probative of any issue in this appeal. Permission to file a Reply should be denied and the Motion to Reopen denied.

Complaint Counsel's objection that Matthew Tupper's employment status is "unsupported by the record" is perhaps the most striking of their desperate over-reaches. The record is clear and complete on this point. Mr. Tupper testified that he had given notice to his employer and planned on leaving the company and going into retirement at the end of 2011. Tupper, Tr. 2973-74. This evidence is undisputed; Mr. Tupper was cross-examined on this point. Transcript at 3034-36. Complaint Counsel's statements amount to argument, not "new facts" or law previously unknown. Complaint Counsel would have the Commission re-open the record indefinitely to locate Mr. Tupper and track his employment status.

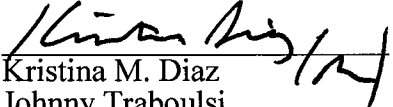
Nor do Complaint Counsel's complaints about the ads the company has recently run in response to the Initial Decision present any new law or facts, unavailable to counsel at the time the original brief was filed, that would justify prolonging the introduction of evidence in this proceeding. Complaint Counsel suggests that Respondents have made inconsistent factual statements by saying, on one hand, that "they have stopped the conduct at issue" in their Appeal Brief (filed June 18) while, on the other hand, purportedly admitting they have run certain of the originally challenged ads. This is legal argument for which no re-opening of the record or additional briefing is required.

Complaint Counsel misconstrue the facts. Respondents directly quoted verbatim conclusions from Initial Decision and ran advertisements that *the ALJ specifically found did not violate the FTCA*. Complaint Counsel's perception of an alleged factual inconsistency, therefore, lacks merit and should be rejected.

In short, Complaint Counsel fails to demonstrate any new "recent important developments or controlling authority" warranting leave to file a reply brief under Rule of Practice 3.22(a). At this stage, the Court should decline Complaint Counsel's unfounded invitation to subject the record to re-opening by the parties given the considerable hearing evidence already generated. For this reason and those set forth in Respondents' Opposition, Complaint Counsel's Motion to Reopen the Record and instant Motion for Leave, should both be denied in their entirety.

Dated: July 6, 2012

Respectfully submitted,


Kristina M. Diaz
Johnny Traboulsi
Brooke Hammond
Alicia Mew
Roll Law Group P.C.
11444 West Olympic Boulevard,
10th Floor
Los Angeles, CA 90064
Telephone: 310.966.8775

E-mail: kdiaz@roll.com

John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004-2401
Telephone: 202.662.5938
Facsimile: 202.778.5938
E-mail: JGraubert@cov.com
SPerryman@cov.com

Eddie Lazarus
Washington, D.C. 20016
E-mail: lazarus.eddie@gmail.com

Bertram Fields, Esq.
Greenberg Glusker Fields Claman &
Machtiger, LLP
1900 Avenue of the Stars, Suite 2100
Los Angeles, CA 90067
Telephone: 310.553.0687
Email:
bfields@greenbergglusker.com

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of Respondents' **OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR LEAVE TO FILE A REPLY**, and that on this 6th day of July, 2012, I caused the foregoing to be served by hand delivery and email on the following:

Donald S. Clark
The Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Rm. 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' **OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR LEAVE TO FILE A REPLY**, and that on this 6th day of July, 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
E-mail: mengle@ftc.gov

Mary Johnson, Senior Counsel
Heather Hipsley
Tawana Davis
Federal Trade Commission
Bureau of Consumer Protection
601 New Jersey Avenue, NW
Washington, DC 20580
E-mail: mjohnson1@ftc.gov
hhipsley@ftc.gov
tdavis@ftc.gov

Counsel for Complainant



John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004-2401
Telephone: 202.662.5938
Facsimile: 202.778.5938
E-mail: JGraubert@cov.com
SPerryman@cov.com

Kristina M. Diaz
Johnny Traboulsi
Brooke Hammond
Alicia Mew
Roll Law Group P.C.
11444 West Olympic Boulevard, 10th Floor
Los Angeles, CA 90064
Telephone: 310.966.8775
E-mail: kdiaz@roll.com

Eddie Lazarus
Washington, D.C. 20016
E-mail: lazarus.eddie@gmail.com

Bertram Fields, Esq.
Greenberg Glusker Fields Claman &
Machtiger, LLP
1900 Avenue of the Stars, Suite 2100
Los Angeles, CA 90067
Telephone: 310.553.0687
Email: bfields@greenbergglusker.com

Counsel for Respondents