

material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondents).

- March 5, 2004 - Deadline for all depositions.
- March 16, 2004 - Deadline for filing motions for summary decision.
- March 18, 2004 - Complaint Counsel provides to Respondents' counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 22, 2004 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.

Respondents' Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 24, 2004 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- March 29, 2004 - Deadline for filing responses to motions for summary decision.
- April 5, 2004 - Deadline for filing motions *in limine* and motions to strike.
- April 8, 2004 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- April 15, 2004 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the

- designated testimony to be presented by deposition and counter designations.
- April 20, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- April 23, 2004 - Parties file pretrial briefs.
- April 27, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- April 29, 2004 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- May 4, 2004 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.
2. Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by 5:00 p.m. on the designated date. Unless requested, the parties shall not serve courtesy copies on the ALJ of any papers (including discovery requests and responses) that are not required to be filed with the Office of the Secretary.
3. Service on the parties shall be by electronic mail (formatted in WordPerfect or Word) and shall be followed promptly by delivery of an original by hand or by U.S. mail, first class

postage prepaid, to the following addresses:

For Complaint Counsel:

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4. All pleadings that cite to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

5. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

6. The parties are limited to a total of 50 document requests, 50 interrogatories, and 50 requests for admissions, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Additional discovery may be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses to document requests, interrogatories, and requests for admission shall be due within 20 days of service. Objections to document requests, interrogatories, and requests for admission shall be due within 10 days of service.

7. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition.

8. The parties shall serve upon one another, at the time of issuance, copies of all

subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within five business days of receiving the documents.

9. The preliminary and final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause.

10. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

11. At the time an expert is first listed as a witness by a party, the listing party will provide to the other party:

- (a) materials fully describing or identifying the background and qualifications of the expert, list of all publications, and all prior cases in which the expert has testified or has been deposed; and
- (b) transcripts of such testimony in the possession, custody or control of the listing party or the expert.

At the time an expert report is produced, the listing party will provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion.

12. Applications for the issuance of subpoenas commanding a person to attend and give testimony at the adjudicative hearing must comply with 16 C.F.R. § 3.34, must demonstrate that the subject is located in the United States, and must be served on opposing counsel.

13. Witnesses shall not testify to a matter unless evidence is introduced sufficient to

support a finding that the witness has personal knowledge of the matter.

14. Fact witnesses shall not be allowed to provide expert opinions.

15. Properly admitted deposition testimony is part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court.

16. Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000) and must be supported by a declaration or affidavit by a person qualified to explain the nature of the documents.

17. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: both parties shall number their exhibits with a single series of consecutive numbers. Complaint Counsel's exhibits shall bear the designation CX and Respondents' exhibits shall bear the designation RX. (For example, the first exhibit shall be marked CX-1 for Complaint Counsel.) When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number.

18. The parties shall provide one another, and the Administrative Law Judge, no later than seventy-two hours in advance, a schedule that identifies by day the party's best estimate of the witnesses to be called to testify during the upcoming week of the hearing. The parties further shall provide one another with copies of any demonstrative exhibits twenty-four hours before they are used with a witness.

19. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will keep.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

November 5, 2003