

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



In the Matter of)
)
)

POLYPORE INTERNATIONAL, INC.,)
Respondent.)
_____)

Docket No. 9327

**ORDER GRANTING RESPONDENT'S MOTION
TO AMEND THE SCHEDULING ORDER**

I.

On January 16, 2009, Respondent submitted a motion to amend the Scheduling Order. Complaint Counsel submitted its opposition on January 26, 2009.

On January 28, 2009, Respondent submitted a motion for leave to file a reply brief. Complaint Counsel submitted an opposition to Respondent's motion for leave to file a reply brief on January 28, 2009.

For the reasons set forth below, Respondent's motion to amend the Scheduling Order is **GRANTED**. Respondent's motion for leave to file a reply brief is **DENIED**.

II.

Respondent proposes to extend by one month all remaining deadlines set forth in the Scheduling Order. Respondent argues that neither Complaint Counsel nor any non-party will be prejudiced by this extension of the relevant deadlines.

Complaint Counsel filed an opposition labeled "Confidential" and "Filed Under Seal."¹ Complaint Counsel opposes Respondent's motion, stating that it has offered to extend certain deadlines, but that it opposes a delay in the start of the trial. Complaint Counsel argues that any delay in the start of trial will harm consumers and is not warranted.

¹ "Filed Under Seal" is not a proper designation for pleadings under the Commission's Rules of Practice. See 16 C.F.R. § 3.22(b), 3.45(e).

III.

The Scheduling Order in this case, issued on October 22, 2008, sets February 13, 2009 as the deadline for the close of discovery and April 14, 2009 as the trial start date. Discovery in this case has been extensive. Numerous non-parties have resisted discovery, necessitating orders ruling on motions to quash or to compel. It is apparent that Respondent has not waited until the last moment to propound discovery and does need additional time to adequately prepare its defense at trial.

The Scheduling Order may be modified upon a showing of good cause. FTC Rule 3.21. Good cause exists when a deadline in a scheduling order "cannot be met despite the diligence of the party seeking the extension." *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002). Respondent has demonstrated good cause for extending the deadlines set forth in the Scheduling Order.

Respondent's motion is GRANTED. The remaining dates in the Scheduling Order are hereby extended by four additional weeks, as set forth below. All additional provisions in the October 22, 2008 Scheduling Order remain in effect.

- March 13, 2009 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- March 13, 2009 - Complaint Counsel provides expert witness reports.
- March 17, 2009 - Deadline for filing motions for summary decision.
- March 20, 2009 - Respondent's Counsel provides expert witness reports.
- March 20, 2009 - Complaint Counsel provides to Respondent's 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 27, 2009 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent

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 Respondent).

- March 27, 2009 - Respondent's 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.

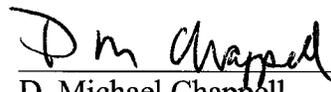
Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 27, 2009 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- March 31, 2009 - Deadline for filing responses to motions for summary decision.
- April 3, 2009 - Deadline for depositions of experts (including rebuttal experts).
- April 6, 2009 - Deadline for filing motions *in limine* and motions to strike. (Such motions shall be no longer than 2500 words.)
- April 9, 2009 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- April 16, 2009 - Deadline for filing responses to motions *in limine* and motions to strike.
- April 16, 2009 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- April 20, 2009 - Complaint Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- April 22, 2009 - 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 28, 2009 - Exchange proposed stipulations of law, facts, and authenticity.
- May 5, 2009 - Respondent's Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- May 6, 2009 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 7, 2009 - Final prehearing conference to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

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 12, 2009 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ORDERED:



 D. Michael Chappell
 Administrative Law Judge

Date: February 4, 2009