



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

_____)
In the Matter of)
)
DANIEL CHAPTER ONE,)
a corporation, and) DOCKET NO. 9329
)
JAMES FEJO,)
Respondents.)
_____)

**ORDER GRANTING COMPLAINT COUNSEL’S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES, PRODUCTION OF DOCUMENTS AND
RESPONSES TO REQUESTS FOR ADMISSIONS**

I.

On January 21, 2009, Complaint Counsel submitted a Motion and Memorandum to Compel Answers to Interrogatories, Production of Documents, and Responses to Requests for Admissions from Respondents (“Motion”). Specifically, the Motion requests an order compelling Respondents to provide: (1) Complete answers to Complaint Counsel’s Second Set of Interrogatories, Numbers 1 – 15; (2) Responses and all relevant documents responsive to Complaint Counsel’s Second Request for Production, Numbers 1 – 12, and 14; and, (3) Responses to Complaint Counsel’s Requests for Admissions, Numbers 1 - 38, and 42. In the alternative, Complaint Counsel asks that the matters addressed in such requests be deemed admitted for purposes of the litigation.

As of the date of this Order, Respondents have not submitted any opposition or other response to the Motion. For the reasons set forth below, the Motion is GRANTED.

II.

The Motion states that on December 12, 2008, Complaint Counsel served on Respondents its Second Set of Interrogatories and Second Request for Production of Documentary Material and Tangible Things, and on December 16, 2008, Complaint Counsel served Respondents with a set of Requests for Admissions. Complaint Counsel states that Respondents served objections to both the set of interrogatories and requests for production on December 25, and objections to the requests for admissions on December 29.

Respondents' objections, attached as exhibits to the Motion, show that Respondents objected and failed to respond to virtually all of the discovery requests, although Complaint Counsel states that Respondents produced three pages of documents in response to one request for production. Respondents' objections asserted various grounds, including vagueness, overbreadth, burden, and privilege, but most frequently, Respondents objected on the ground that responding to discovery would violate their constitutional rights under the First Amendment. Complaint Counsel states that it urged Respondents to set aside their objections, in light of this Court's January 9, 2009 Order granting Complaint Counsel's motion to compel responses to previously propounded discovery, which rejected Respondents' similar First Amendment objections, but that the parties were unable to resolve their dispute.

Complaint Counsel argues that Respondents waived their objections because they failed to serve them within ten days of service of the discovery, as required by the Scheduling Order entered in this case. Complaint Counsel further argues that the information it seeks, such as: financial data; information regarding suppliers, producers, and distributors of the products that are the subject of the Complaint (the "Challenged Products"); research, tests and studies regarding the Challenged Products; and, customer testimonials, are well within the scope of discovery.

III.

Additional Provision No. 10 of the Scheduling Order in this case, entered October 28, 2008, states that "[o]bjections to document requests, interrogatories, and requests for admission shall be due within 10 days of service" of such discovery. While the certificate of service included with Respondents' objections to the interrogatories and requests for production states that service occurred by electronic mail on December 24, a copy of an email transmittal from Respondents' counsel to Complaint Counsel, attached as an exhibit to the Motion, indicates service occurred at 12:00 midnight on December 25. In either event, Respondents did not serve the objections within the required 10 days. Respondents' objections to the requests for admissions, according to the certificate of service, were served December 29, 2008, and were similarly untimely. Accordingly, the objections are waived. Moreover, notwithstanding the waiver, the merits of Respondents' First Amendment objections to providing discovery have already been rejected. *See* Order Granting Complaint Counsel's Motion to Compel Production of Documents (January 9, 2009).

Respondents also did not submit a response to the pending Motion within the ten days allowed under the Commission's Rules of Practice. Commission Rule 3.22(c) states in pertinent part: "Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion." 16 C.F.R. § 3.22(c). Complaint Counsel's Motion was submitted January 21, 2009. Respondents did not request any extension of

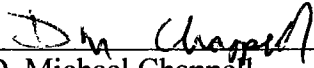
time to respond. Respondents have therefore waived any opposition, and are deemed to have consented to the relief requested in the Motion.

IV.

For all the above reasons, Complaint Counsel's Motion is GRANTED. Respondents shall within 10 days of the date of this Order:

1. Provide complete answers to Complaint Counsel's Second Set of Interrogatories, Numbers 1 – 15;
2. Provide responses and produce all relevant documents responsive to Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things, Numbers 1 – 12, and 14; and,
3. Provide responses to Complaint Counsel's Requests for Admissions, Numbers 1 – 38, and 42. If Respondents fail to respond to any request required by this paragraph, then the matters designated in such request(s) shall be deemed admitted for purposes of this litigation.

ORDERED:



D. Michael Chappell
Administrative Law Judge

DATED: February 11, 2009