

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

ORIGINAL



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In the Matter of )  
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The North Carolina Board of )  
Dental Examiners, )  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO. 9343

**ORDER DENYING RESPONDENT'S MOTION TO STRIKE  
MELANIE SABO'S APPEARANCE FROM THE RECORD**

**I.**

On March 11, 2011, Respondent filed a Motion to Strike Melanie Sabo's Appearance from the Record ("Motion"). Complaint Counsel filed its Opposition on March 18, 2011. For the reasons set forth below, Respondent's Motion is DENIED.

**II.**

Respondent requests that the Administrative Law Judge ("ALJ") strike all transcript references to an appearance by Melanie Sabo on behalf of the Federal Trade Commission ("FTC") at the prehearing conference and evidentiary hearing before the ALJ in this matter. Ms. Sabo is the Assistant Director of the FTC's Bureau of Competition for the Anticompetitive Practices Division, and direct supervisor of Complaint Counsel in this case. Respondent asserts that at the time of the filing of its motion, Ms. Sabo had not entered an appearance pursuant to FTC Rule 4.1(d) and that, despite having not entered an appearance in this matter, Ms. Sabo has held herself out as appearing on behalf of the Commission in these proceedings, including participating in a counsel-to-counsel conference and frequently conferring with Complaint Counsel.

Complaint Counsel argues that Respondent's attempt to strike Ms. Sabo is untimely, inexplicable, and without merit. Complaint Counsel states that Ms. Sabo has not appeared in this matter. Complaint Counsel further states that it is commonplace for the Assistant Director (and other members of the Bureau of Competition management) to be introduced at the beginning of a hearing. Complaint Counsel posits that mistakes in the listing of formal appearances are clerical in nature and easily handled outside of motion practice.

### III.

Respondent brings its Motion pursuant to Commission Rule 3.22(a), a general authority for ruling on motions, which sets forth, “[d]uring the time a proceeding is before an Administrative Law Judge, all other motions [besides those specified] shall be addressed to and decided by the Administrative Law Judge, if within his or her authority.” 16 C.F.R. § 3.22(a). However, Respondent offers no reason or legal authority to support ruling on the Motion in its favor to strike references to Ms. Sabo at the prehearing conference or trial in this matter. Respondent, as movant, has failed to meet its burden of persuasion that the Motion should be granted. Accordingly, Respondent’s Motion DENIED.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: April 1, 2011