

the failure to introduce the evidence at trial); (2) the extent to which the proffered evidence is probative; (3) whether the proffered evidence is cumulative; and (4) whether reopening the record would prejudice the non-moving party. *Brake Guard Products, Inc.*, 125 F.T.C. 138, 248 n.38 (1998).

We find that Complaint Counsel has acted with diligence, as the facts regarding publication of these claims and advertisements were not available until after the issuance of the Initial Decision. Based on our analysis of the remaining three factors, however, we do not find that Complaint Counsel's arguments warrant reopening the record in this matter to introduce the proposed new exhibits.

Accordingly,

IT IS ORDERED THAT Complaint Counsel's Motion to Reopen the Record is denied;
and

IT IS FURTHER ORDERED THAT Complaint Counsel's Motion for Leave to File a Reply is denied.

By the Commission.

Donald S. Clark
Secretary

ISSUED: July 25, 2012