

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



In the Matter of)
)
BENCO DENTAL SUPPLY CO.,)
a corporation,)
)
HENRY SCHEIN, INC.,)
a corporation, and)
)
PATTERSON COMPANIES, INC.,)
a corporation.)
_____)

DOCKET NO. 9379

**RESPONDENT BENCO DENTAL SUPPLY CO.’S MOTION TO ADMIT EXPERT
REPORTS FROM PROCEEDINGS INCORPORATED BY REFERENCE IN EXPERT
REPORT IN THIS PROCEEDING**

In accordance with FTC Rule 3.43(b), Respondent Benco Dental Supply Co. respectfully moves to admit RX1140-42, which are expert reports of Benco Dental’s expert witness, Dr. John Johnson, from *SourceOne Dental, Inc. v. Patterson Companies, Inc.*, 15-cv-5440 (E.D.N.Y.) and *In Re: Dental Supplies Antitrust Litigation*, 1:16-cv-00696 (E.D.N.Y.) that are specifically incorporated by reference in Dr. Johnson’s expert report in the current proceeding.

Where one party did not participate in the prior proceeding and does not consent to admission, Rule 3.43(b) nevertheless permits the admission of prior expert reports on a motion showing (1) that the prior expert reports would not be duplicative, (2) that they would not present unnecessary hardship to a party or delay to the proceedings, and (3) that they would aid in the determination of the matter. The requested expert reports meet these requirements.

To be clear, the expert report prepared by Dr. John Johnson in the present matter is fully self-contained; it sets forth a complete statement of all opinions Dr. Johnson intends to express in this matter as well as the basis and reasons for those opinions, the data, materials and other

information he considered in forming those opinions, and his exhibits used in support for his opinions, in accordance with Rule 3.31A(c). Because certain work performed by Dr. Johnson in his prior reports is also relevant to this matter, however, Dr. Johnson explicitly referred to his prior reports in the relevant sections of his current report.

These prior reports meet the standards of Rule 3.43(b). *First*, Dr. Johnson's prior reports would not be duplicative of his report in the current proceeding because they contain distinct analyses not present in his current report.

Second, the requested prior expert reports will not present unnecessary hardship to Complaint Counsel. Complaint Counsel have had copies of these expert reports from early in this case (indeed, long before they had access to Dr. Johnson's current report). Dr. Johnson's current report made clear through more than 20 cross-references the specific sections of the prior reports that Complaint Counsel might wish to consult in connection with specific sections of the current report. Complaint Counsel admitted Dr. Johnson's prior reports (combined) as Exhibit 3 at its recent deposition of Dr. Johnson in this matter, and asked multiple questions about them. During his deposition, Dr. Johnson also pointed out to Complaint Counsel sections of his prior reports that responded to questions asked by Complaint Counsel.

Third, access to the full information backing Dr. Johnson's report will help the Court to assess Dr. Johnson's testimony in this matter, just as it helped Complaint Counsel question Dr. Johnson during his deposition in this matter.

For all these reasons, we respectfully ask that the Court admit RX1140-42, the prior expert reports of Dr. Johnson.

Dated: October 11, 2018

Respectfully submitted,

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I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.

October 11, 2018

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Notice of Electronic Service

I hereby certify that on October 12, 2018, I filed an electronic copy of the foregoing RESPONDENT BENCO DENTAL SUPPLY CO.'S MOTION TO ADMIT EXPERT REPORTS FROM PROCEEDINGS INCORPORATED BY REFERENCE IN EXPERT REPORT IN THIS PROCEEDING, with:

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