

ORIGINAL

PUBLIC

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



In the Matter of)
)
)
ECM BioFilms, Inc.,)
a corporation, also d/b/a)
Envioplastics International,)
Respondent.)
_____)

DOCKET NO. 9358

**ORDER ON NON-PARTY BIO-TEC'S MOTION
TO QUASH SUBPOENA *DUCES TECUM***

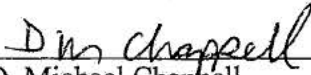
On February 28, 2014, non-party Bio-Tec Environmental, LLC ("Bio-Tec") filed a Motion to Quash Subpoena *Duces Tecum* ("Motion") served on it by Respondent ECM BioFilms, Inc. ("ECM").

Non-party Bio-Tec filed its Motion pursuant to Federal Trade Commission ("FTC") Rule 3.34(c), which provides: "Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by § 3.22(g)." 16 C.F.R. § 3.34(c). The subpoena that Bio-Tec seeks to have quashed was signed on February 13, 2014, and sought compliance by February 28, 2014. Thus, Bio-Tec's Motion is timely filed. In its Motion, Bio-Tec includes the statement required by FTC Rule 3.22(g), certifying that it had conferred with counsel for Respondent in an attempt to resolve by agreement the issues raised in the Motion.

Rule 3.22(d) sets forth: "Within 10 days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge . . . , 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(d). Bio-Tec's Motion was filed on February 28, 2014. In its Certificate of Service, Bio-Tec's attorney certifies that it served a copy of its Motion on counsel for Respondent by electronic mail upon Lou Caputo, Emord & Associates, at LCaputo@emord.com. Mr. Caputo has filed a Notice of Appearance in this matter in which he provided his email address as that same email address: LCaputo@emord.com.

Respondent has not filed an opposition, or otherwise notified the Office of Administrative Law Judges that the underlying dispute has been resolved within 10 days of service of Bio-Tec's Motion, as required by Rule 3.22(d). Therefore, pursuant to Rule 3.22(d), Respondent shall be deemed to have consented to the granting of the relief requested in the motion, and the subpoena is hereby QUASHED. However, Bio-Tec's additional request that it be "awarded its attorney's fees and costs, as well as such other relief, both legal and equitable, to which it may show itself justly entitled" is DENIED. Accordingly, Bio-Tec's Motion is GRANTED IN PART and DENIED IN PART.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 18, 2014