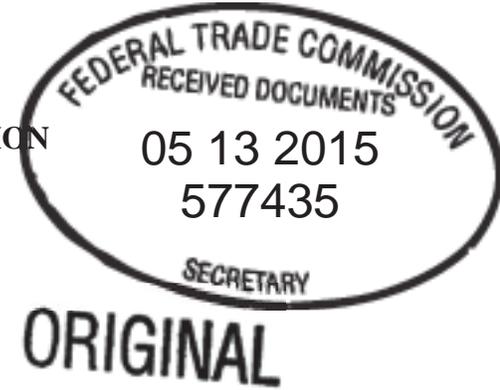


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

)
In the Matter of) PUBLIC
)
)
LabMD, Inc.,) Docket No. 9357
)
a corporation,)
)
Respondent.)
)
_____)

**COMPLAINT COUNSEL’S OPPOSITION TO
RESPONDENT’S MOTION TO STRIKE COMPLAINT COUNSEL’S
OPPOSITION TO MOTION TO DISQUALIFY CHAIRWOMAN RAMIREZ**

On May 6, 2015, Respondent LabMD, Inc. (“Respondent” or “LabMD”) filed a “Motion to Strike Complaint Counsel’s Opposition to Respondent’s Motion to Disqualify Chairwoman Edith Ramirez or, In the Alternative, Motion for Leave to File Reply in Support of Motion to Disqualify Commissioner [sic] Edith Ramirez” (“Motion”). The Commission should deny LabMD’s Motion because Complaint Counsel opposes the relief sought in the Motion, and, therefore, Complaint Counsel was required to have filed an opposition.

Contrary to LabMD’s representation, Rule 3.22 of the Commission’s Rules of Practice governs all motions in this proceeding, and must be read in conjunction with other rules that relate to specific relief. *See* 16 C.F.R. § 3.22(a) (stating requirements for various motions, including Rule 4.17); *see also* 16 C.F.R. §§ 3.24 (summary decision), 3.38 (motions to compel and discovery sanctions), 4.17 (disqualification of Commissioners). Rule 3.22(d) provides in part that a party must answer any written motion “[w]ithin 10 days after service,” or it “shall be deemed to have consented to the granting of the relief asked for in the motion.” 16 C.F.R.

§ 3.22(d). Complaint Counsel does not consent to the disqualification of the Chairwoman because, as addressed in Complaint Counsel's Opposition, LabMD's unsupported allegations fall woefully short of the standard required. *See* Complaint Opposition to Motion to Disqualify Chairwoman Edith Ramirez from this Administrative Proceeding (Apr. 30, 2015) ("Opposition"). Complaint Counsel was thus required to oppose LabMD's Motion or "be deemed to have consented" to the Chairwoman's disqualification. *See id.* The Commission should therefore deny LabMD's Motion to strike Complaint Counsel's Opposition.

LabMD also failed to meet the standard required for the Commission to grant it leave to file a reply. Complaint Counsel's Opposition, which Rules 3.22 contemplates, is not a "recent important development[] or controlling authority that could not have been raised earlier in the party's principal brief." *Id.* (discussing no right of reply for moving party). The Commission should therefore also deny LabMD's alternative relief of leave to file a reply.

Dated: May 13, 2015

Respectfully submitted,



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Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2015, I caused the foregoing document to be filed electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be transmitted *via* electronic mail and delivered by hand to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I further certify that I caused a copy of the foregoing document to be served *via* electronic mail to:

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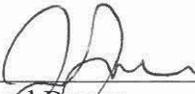
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CERTIFICATE FOR ELECTRONIC FILING

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 document that is available for review by the parties and the adjudicator.

May 13, 2015

By: _____


Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection