

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



In the Matter of

1-800 Contacts, Inc.,  
a corporation

Docket No. 9372

**STIPULATION AND PROPOSED ORDER REGARDING DISCOVERY ISSUES  
RELATING TO RESPONDENT’S REQUESTS FOR ADMISSION**

WHEREAS, Respondent 1-800 Contacts, Inc. (“1-800 Contacts” or “Respondent”) served its First Set of Requests for Admissions on September 22, 2016, to which Complaint Counsel responded on October 3 and October 27, 2016;

WHEREAS, Respondent served its Second Set of Requests for Admissions on January 9, 2017;

WHEREAS, Respondent and Complaint Counsel agreed that Complaint Counsel’s responses to Respondent’s Second Set of Requests for Admissions would be served no later than January 24, 2017, at 5:00 p.m. ET;

WHEREAS, on January 13, 2017, Respondent served a Notice of Deposition on Complaint Counsel pursuant to 16 C.F.R. § 3.33(a) and (c)(1) (hereinafter “Notice of Deposition”), which scheduled a deposition of Complaint Counsel or their designee for January 27, 2017;

WHEREAS, on January 20, 2017, counsel for Respondent and Complaint Counsel met and conferred regarding the Notice of Deposition; Complaint Counsel communicated its objections to the Notice of Deposition and intent to raise its objections in a motion with the

Court seeking to prevent the deposition from going forward; counsel for Respondent explained the need for and rationale underlying the Notice of Deposition; and counsel for Respondent, in response to certain representations by Complaint Counsel, agreed to narrow the scope of the Notice of Deposition; and

WHEREAS, after Complaint Counsel serve their responses to Respondent's Second Set of Requests for Admissions, counsel will again meet and confer regarding the Notice of Deposition in the hope of resolving the remaining disputes regarding the Notice of Deposition,

NOW, THEREFORE, IT IS HEREBY STIPULATED, SUBJECT TO THE APPROVAL OF THE COURT, AS FOLLOWS:

1. Promptly after the service of Complaint Counsel's responses to Respondent's Second Set of Requests for Admissions, Complaint Counsel and Respondent's counsel will confer regarding those responses.

2. The deposition of Complaint Counsel or their designee, which deposition had been scheduled in the Notice of Deposition for January 27, 2017, will be adjourned and, if it should proceed, will be taken on a mutually agreeable date that is no later than February 24, 2017, or such later date as is approved by the Court.

3. Within two business days after the conclusion of the meet-and-confer described in paragraph 1 above, Respondent's counsel will inform Complaint Counsel whether they wish to go forward with the deposition described in paragraph 2 above.

4. If Respondent's counsel advises Complaint Counsel that they wish to proceed with the deposition described in paragraph 2 above, Complaint Counsel may file a Motion

for a Protective Order or Motion to Quash raising any and all objections to the deposition that they could have raised had such motion been filed prior to January 27, 2017. For the avoidance of doubt, Complaint Counsel shall not object to the timeliness of the deposition so long as counsel for Respondent complies with the deadlines set forth herein. Any such motion filed by Complaint Counsel regarding the deposition described in paragraph 2 above shall be deemed timely if it is filed within ten days of receiving notice from Respondent's counsel that they intend to go forward with the deposition.

IT IS SO STIPULATED.

DATED: January 23, 2017

Respectfully submitted,

/s/ Steven M. Perry

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***Counsel for 1-800 Contacts, Inc.***

Dated: January 23, 2017

/s/ Dan Matheson

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*Counsel Supporting the Complaint*

**ORDER**

IT IS SO ORDERED.

Dated: January \_\_, 2017

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on January 23, 2017, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

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

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

DATED: January 23, 2017

By: /s/ Eunice Ikemoto  
Eunice Ikemoto

**CERTIFICATE FOR ELECTRONIC FILING**

I hereby 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.

DATED: January 23, 2017

By: /s/ Steven M. Perry  
Steven M. Perry

Notice of Electronic Service

**I hereby certify that on January 23, 2017, I filed an electronic copy of the foregoing Stipulation and Proposed Order re Discovery Issues Relating to Respondent's Requests for Admission, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
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Washington, DC, 20580

**I hereby certify that on January 23, 2017, I served via E-Service an electronic copy of the foregoing Stipulation and Proposed Order re Discovery Issues Relating to Respondent's Requests for Admission, upon:**

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