

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



ORIGINAL

In the Matter of)
)
1-800 Contacts, Inc.,)
a corporation,)
)
Respondent.)

DOCKET NO. 9372

**ORDER DENYING RESPONDENT'S REQUEST FOR EXCEPTION TO
WI-FI ACCESS RULE TO EXAMINE WITNESSES USING INTERNET**

I.

On April 17, 2017, Respondent 1-800 Contacts, Inc. ("Respondent") filed a Request for Exception to Wi-Fi Access Rule to Examine Witnesses Using Internet ("Motion"). Federal Trade Commission ("FTC") Complaint Counsel filed its Opposition on April 17, 2017. For the reasons set forth below, Respondent's Motion is DENIED.

II.

Consistent with local rules in various jurisdictions, under the Logistics for Hearing Memorandum issued to the Parties on April 5, 2017, connection to the Internet, by Wi-Fi/wireless or otherwise, is not allowed in the courtroom. Respondent seeks an exception to this rule for the purpose of examining witnesses through the display of actual Internet pages, which Respondent says will greatly enhance the presentation of the case. Specifically, Respondent states that the use of actual page results will allow the witnesses to demonstrate the features or links in a manner that static printouts do not allow.

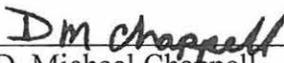
Complaint Counsel notes that Respondent proposes to capture and save each screen shown to the witness as a PDF file, and to label each screen shown to the witness with an exhibit number. Complaint Counsel argues that this proposal is inappropriate because discovery has closed, these screen captures are not on any Party's exhibit list, and no newly generated documents should be considered for the truth of any matter asserted therein. Complaint Counsel further contends that there is no reason to believe that the Court would benefit from watching witnesses or attorneys type inputs into web pages and that, thus far in the proceeding, both Parties have relied upon screen shots to illustrate the results of various Internet searches and Internet navigation.

III.

Respondent has provided no authority or support for its novel request. To allow Respondent to proceed as requested would disrupt the normal flow of the hearing and the normal presentation of evidence. The potential for confusion from walking a witness through various Web sites outweighs any benefit that could be achieved by the process. In addition, to allow Respondent to create new evidence at trial through captured screen shots would be unfair. Furthermore, the expert with whom Respondent seeks to use this method has already provided her expert report and the scope of the expert's testimony is limited to that report.

Accordingly, Respondent's Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 18, 2017