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

In the Matter of Benco Dental Supply Co., a corporation, Henry Schein, Inc., a corporation, and Patterson Companies, Inc., a corporation. Respondents.	Docket No. 9379

ORDER ON POST-TRIAL BRIEFS

I. Post-trial filings schedule

Pursuant to Federal Trade Commission Rule of Practice 3.46(a), each party may file proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof, within 21 days of the closing of the hearing record; and each party may file reply findings of fact, conclusions of law, and briefs within 10 days of service of the initial proposed findings (collectively, "post-trial filings"). 16 C.F.R. § 3.46(a). Pursuant to Rule 4.3(b), for good cause shown, the Administrative Law Judge may extend any time limit prescribed by the rules in this chapter, except those not applicable here. 16 C.F.R. § 4.3(b).

The record from this multi-week trial is extensive, involving numerous expert witnesses and complex issues. Additional time for the opening briefs and replies will ensure that the parties have adequate time to brief the issues and be thorough and careful in replying to each other's proposed findings. In addition, in this case, Respondents will submit joint proposed findings of fact on issues common to all Respondents and will also submit individual proposed findings on non-common issues. The parties submitted to the Office of Adminstrative Law Judges ("OALJ") a joint request to extend the deadlines for post-trial briefing, seeking an extension of time to April 11, 2019 for filing concurrent post-trial briefs, proposed findings of fact, and conclusions of law, and to June 6, 2019

for filing concurrent reply briefs and replies to proposed findings of fact and conclusions of law. Receiving the parties' filings on the requested schedule will also ensure that judicial resources are appropriately allocated among all pending cases, including a case awaiting an Initial Decision.

Based on the foregoing, and the parties' joint request to extend the deadlines for post-trial briefing to the dates listed below, good cause exists under Rule 4.3 to extend the deadlines for post-trial briefing.

Accordingly, the deadlines for post-trial filings are as follows:

April 11, 2019	Deadline for filing concurrent post-trial briefs, proposed findings of fact, and conclusions of law; and
June 6, 2019	Deadline for filing concurrent reply briefs and replies to proposed findings of fact.

The parties shall serve the OALJ with three hard copies of all post-trial briefs and one electronic version of all post-trial briefs. Briefs and proposed findings and replies thereto shall be printed double-sided and shall be spiral bound or coil bound. Velo binding or comb binding shall not be used. The electronic version shall be in MS-Word (.doc/.docx) format, using Times New Roman 12 point font. Electronic service on the OALJ shall be made to OALJ@ftc.gov.

The parties shall serve the OALJ with an electronic set of all admitted exhibits, including demonstratives that were used during trial, within 3 days of the close of the record.

II. Mandatory rules for post-trial briefs

The following requirements apply to post-trial briefs, proposed findings of fact, conclusions of law, post-trial reply briefs, and replies to proposed findings of fact, and shall be strictly followed:

- 16 C.F.R. § 3.46 sets forth express requirements for proposed findings of fact and conclusions of law. In accordance with Rule 3.46(a), **Complaint Counsel shall provide a proposed order for relief, together with supporting facts and law, and Respondent shall specifically reply thereto**.

- All proposed findings of fact shall be supported by specific references to the evidentiary record.

- All legal contentions, including, but not limited to, contentions regarding liability and the proposed remedy, shall be supported by applicable legal authority.

- All factual assertions made in a party's brief shall cite to a corresponding proposed finding of fact. Citations to individual documents or items of testimony that do not also reference a corresponding proposed finding of fact may be disregarded.

- The parties shall address how evidence related to divestiture presented in this case is material to the decision, including but not limited to, the likelihood of anticompetitive effects from the merger and/or as to any remedy. The parties shall specifically include briefing in support of or in opposition to the proposed remedy, including each and every provision of the proposed order (other than definitions, boilerplate, or non-substantive provisions).

- Do not cite to testimony for the truth of the matter asserted if the testimony was admitted for a purpose other than for the truth of the matter asserted. If such testimony is cited, the party shall indicate in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.

- Do not cite to evidence that was admitted for a limited purpose for any purpose other than the theory under which it was admitted.

- Do not cite to evidence that was determined at trial to be "disregarded" or "not considered."

- Do not cite to documents that are not in evidence, documents that have been withdrawn, or documents that have been rejected.[1]

- Do not cite to demonstrative exhibits as substantive evidence.

- Do not cite to expert testimony to support factual propositions that should be established by fact witnesses or documents.

- Do not cite to an offer of proof, or to testimony or documents that were elicited as part of an offer of proof.

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[1] The parties are directed to comply with the Order Granting Respondents' Motion to Strike, issued in *Chicago Bridge & Iron Co.*, Docket 9300. *See* 2003 FTC LEXIS 98 (June 12, 2003).

- Violations of the requirements of this Order should be pointed out by opposing counsel in the reply brief or the reply to proposed findings of fact.

- When citing to trial testimony, the parties shall identify that testimony by the witness' name, the letters "Tr." and the transcript page number. Do not provide line numbers or the word "at" before the transcript page number. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (Smith, Tr. 1098). If more than one source is used for the same proposition, the format that shall be used is: (Smith, Tr. 1098; Jones, Tr. 153).

- When citing to deposition testimony or testimony from an investigational hearing transcript ("IHT") that was admitted in evidence, the parties shall cite to that testimony by setting forth the exhibit number, and then, in parentheses, the deponent's name, the letters "Dep." or "IHT," and the transcript page number. Do not provide line numbers. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (RX100 (Smith, Dep. at 1098)).

- When deposition testimony or testimony from an IHT that was admitted in evidence has been cited by a party, and the opposing party has an objection to the use of such testimony, the opposing party shall point out its objection to such excerpt in its reply to the proposed finding, or such objection shall be deemed waived.

- Do not use "*Id.*" as a cite for proposed findings of fact or reply findings of fact.

- Do not cite to more than one copy of the same document (*i.e.*, if RX100 and CX200 are different copies of the same document, cite to only one exhibit number).

- Reply briefs shall be limited to refuting issues raised by the opposing side and should not be used merely to bolster arguments made in the opening post-trial briefs.

- Reply briefs shall reply to the arguments in the same order as the arguments were presented by the opposing party in its opening brief.

- Reply findings of fact shall set forth the opposing party's proposed finding of fact in single space and then set forth the reply in double space. Reply findings

of fact shall be numbered to correspond to the findings that the reply findings are refuting and shall use the same outline headings as used by the opposing party in its opening proposed findings of fact. If you have no specific response to the opposing party's proposed finding of fact, set forth the opposing party's proposed finding of fact and then state that you have no specific response or do not disagree.

An example of the format for reply findings that shall be followed is:

> 39. Jarrett Inc. was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, publicly traded on the American Stock Exchange, with its principal place of business at 1740 Lake Needwood Drive, Suite 300, Arlington, VA, 22201. (CX328 at 1253; CX021 at 1003; Hanson, Tr. 6732).
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> **Response to Finding No. 39:**
> Respondent has no specific response.

- Reply findings of fact should be used only to directly contradict the other side's proposed findings, and should not be used merely to restate the proposition in language which is more favorable to your position.

ORDERED:

D M Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: February 21, 2019