

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES
Washington, D.C.



In the Matter of

ECM BioFilms, Inc.,
a corporation, also d/b/a
Envioplastics International,

Respondent.

Docket No. 9358

PUBLIC

RESPONDENT ECM BIOFILM'S SUPPLEMENT TO MOTION FOR SANCTIONS, TO EXCLUDE COMPLAINT COUNSEL'S REBUTTAL WITNESS, AND FOR LEAVE TO INCLUDE SURREBUTTAL REPORT

Pursuant to Commission Rules 3.22(d) Respondent, ECM BioFilms, Inc. ("ECM") hereby respectfully requests that the Court consider one point of clarification¹ in response to Complaint Counsel's above-referenced opposition pleading, filed July 21, 2014. On pages 7-8 of their response, Complaint Counsel argued that ECM's motion to submit a rebuttal report under Rule 3.31A(a) was out of time because ECM should have filed, according to Complaint Counsel, by July 7, 2014. That point is in error, for the following reasons:

1. Complaint Counsel served ECM with Dr. Frederick Michel's "rebuttal" report on June 30th at 11:46PM Eastern, well after business hours closed. Complaint Counsel then served ECM with the mandatory Rule 3.31A(c) information on the morning of July 1, 2014.² Thus, Complaint Counsel completed service of its rebuttal report on July 1, 2014. *See* 16 C.F.R.

¹ ECM's opening motion noted that its filing was timely (page 1, footnote 1), but ECM now explains in further detail in response to a direct challenge on that point.

² *See* Exhibit S to ECM's opening motion. If anything, therefore, Complaint Counsel's rebuttal report was not timely completed by the June 30, 2014 deadline and that is another basis on which to deny Complaint Counsel's introduction of Dr. Michel as an expert witness.

3.31A(c) (noting that “each report” shall be accompanied by the “data, materials, or other information considered by the witness in forming the opinions...”).

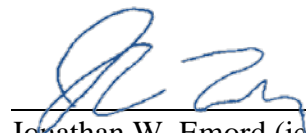
2. Friday, July 4, 2014, was a federal holiday which did not count against ECM’s filing deadline when the period for a response is under 7 days. *See* 16 C.F.R. § 4.3(a).

3. Under Rule 4.3(a), the calculation for the time period in question begins “with the first business day following that on which the act, event, or development initiating such period of time shall have occurred, which, in this case, is July 1, 2014. *See* 16 C.F.R. § 4.3(a).

4. ECM’s deadline to file its motion for leave under Rules 3.31A(a) and 4.3(a) began from July 2, 2014, and the deadline was therefore July 9, 2014, the date upon which ECM filed its motion (excluding weekends and holidays).

ECM respectfully requests that the Court receive this information in consideration of the motions now pending.

Respectfully submitted,



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DATED: July 21, 2014

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the Office of the Secretary through the e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-113
Washington, DC 20580
Email: secretary@ftc.gov

One electronic courtesy copy to the Office of the Administrative Law Judge:

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

One electronic copy to Counsel for Complainant:

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I certify that I retain a paper copy of the signed original of the foregoing document that is available for review by the parties and adjudicator consistent with the Commission's Rules.

Respectfully submitted,

/s/ Jonathan W. Emord

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