

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

**RESPONDENT 1-800 CONTACTS, INC.'S REQUEST FOR EXCEPTION TO WI-FI
ACCESS RULE TO EXAMINE WITNESSES USING INTERNET**

Given the subject matter of this hearing, Respondent 1-800 Contacts, Inc. requests an exception to the Court's rule prohibiting Wi-Fi in the courtroom. This request is made for the limited purpose of examining witnesses through the display of actual internet pages.

Examining the witnesses with "live" internet pages will greatly enhance the presentation of the case. The Complaint involves internet advertising, in particular advertising shown in response to user queries on search engines, and alleges that Respondent's settlement agreements have restricted competitors' ability to advertise. Search engine results pages contain numerous links to other webpages, including advertiser sites, sites related to organic results, and other search engine pages. Through an examination using actual internet pages, the Court will be able to see better the interconnected nature of these sites. Moreover, the witnesses will be able to describe more easily the interconnected nature of search engine results and the various linked sites. For instance, if the Court were to have questions about features or links on a search engine results page, the use of actual results pages will allow the witness to demonstrate the feature or link in a manner that static printouts do not allow. In addition, the search engines have

interactive pages designed to provide information to advertisers (e.g., Google Trends, which provides interactive information regarding the historical number of searches conducted on queries). The display of actual internet pages will allow for inputs into these sites that are not captured in static printouts.

If Respondent's request were granted, Respondent would display actual internet pages to witnesses pursuant to a protocol (described below) designed to preserve the record and to protect each side's ability to further examine the witness using the same results. Respondent would use this procedure with Complaint Counsel's next witness, Dr. Susan Athey, who is tendered as an expert in analyzing search engine data.

The parties met and conferred in good faith on multiple occasions to work through potential concerns raised by Complaint Counsel. Although Complaint Counsel have not agreed to the proposed procedures, the protocol discussed below reflects Respondent's best effort to address the reasonable concerns raised by Complaint Counsel.

To allow the Court to better evaluate the request, Respondent is prepared to present to the Court a short demonstration of the procedures discussed below, which would take only a few minutes. If the Court would find such a demonstration useful, Respondent could do so prior to the start of the next witness on Tuesday, April 18, 2017, at 10:30 a.m., or earlier if the Court desires.

PROPOSED PROTOCOL

Browser: Respondent would use Internet Explorer. To prevent the user search history from influencing any search results, Respondent would use the "Private" mode, clear the browser search history, and clear all cookies.

Preserving the Record: To preserve the record, Respondent would capture each screen shown the witness. Each screen capture would be saved as a PDF and labeled with an exhibit number.

Protecting the Ability to Examine the Witness: To ensure the parties' ability to re-examine the witness with regard to each webpage, Respondent would (1) open each link in a new tab (preserving the original screen) and (2) save each page as a "webpage." These steps preserve the links on each page, allowing the parties to go back to the page with the same links to further examine the witness.

DATED: April 17, 2017

Respectfully submitted,

/s/ Sean Gates

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Counsel for Respondent 1-800 Contacts, Inc.

CERTIFICATE OF COUNSEL REGARDING MEET AND CONFER

I, Sean Gates, hereby certify that on April 7, 12, and 15, 2017, I conferred with Complaint Counsel in a good faith effort to come to an agreement with regard to Respondent's request. The parties also exchanged numerous emails on the subject. We were unable to reach agreement.

DATED: April 17, 2017

Respectfully submitted,

/s/ Sean Gates

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2017, I filed **RESPONDENT 1-800 CONTACTS, INC.'S REQUEST FOR EXCEPTION TO WI-FI ACCESS RULE TO EXAMINE WITNESSES USING INTERNET** 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: April 17, 2017

By: /s/ Sean Gates
Sean Gates

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: April 17, 2017

By: /s/ Sean Gates
Attorney

Notice of Electronic Service

I hereby certify that on April 17, 2017, I filed an electronic copy of the foregoing Respondent's Request re Internet, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
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Donald Clark
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I hereby certify that on April 17, 2017, I served via E-Service an electronic copy of the foregoing Respondent's Request re Internet, upon:

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