

ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )

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

Docket No. 9358

PUBLIC DOCUMENT



**COMPLAINT COUNSEL'S CLARIFICATION REGARDING RESPONDENT'S  
SANCTIONS MOTION**

In Complaint Counsel's Opposition to Respondent's sanctions motion, we submitted a declaration stating, in material part, that "Complaint Counsel received the article [published in POLYMER DEGRADATION & STABILITY] well after business hours on Friday, February 14, 2014, at approximately 8:00 p.m." J. Cohen Dec. ¶ 6 (Mar. 10, 2013). This is accurate.

Additionally, the declaration also provides that "Complaint Counsel has not communicated in any way with Frederick Michel, Eddie Gómez, OARDC [Ohio State Agricultural Research & Development Center], or anyone at Ohio State." *Id.* at ¶ 7. This is also accurate.

Out of an abundance of caution, however, Complaint Counsel brings to the Court's attention that yesterday, we learned that two FTC attorneys (not representing Complaint Counsel) worked with Michel as a consulting expert on unrelated matters involving biodegradability claims other companies asserted.<sup>1</sup> In the course of evaluating Michel's credentials, these attorneys received a draft of the article ultimately published. Complaint Counsel never had any knowledge regarding Michel's engagement (or the draft article) until yesterday. Additionally, as our Opposition explains, Complaint Counsel had no knowledge regarding the article itself before Friday evening, February 14.

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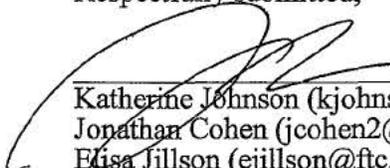
<sup>1</sup> One of the two attorneys was involved in the pre-Complaint investigation of Respondent, but departed the agency approximately eight months before the Complaint was filed.

**PUBLIC DOCUMENT**

We are reviewing our prior discovery responses expeditiously to ascertain whether Complaint Counsel should amend or supplement them.

Dated: March 13, 2014

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One copy through the FTC's efilng system and one electronic courtesy copy to the **Office of the Secretary:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room H-159  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

One electronic and one and one paper 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 the Respondent:**

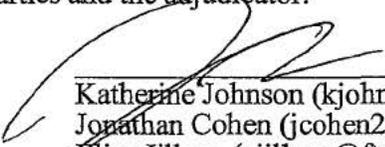
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I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: March 13, 2014



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