

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.,)	Docket No. 9379
a corporation, and)	
Patterson Companies, Inc.,)	
a corporation.)	
Respondents.)	
_____)	

**ORDER EXTENDING TIME FOR FILING INITIAL
DECISION PURSUANT TO COMMISSION RULE 3.51**

Federal Trade Commission (“FTC”) Rule of Practice 3.51(a) provides that “[t]he Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order” 16 C.F.R. § 3.51(a). The last reply proposed findings of fact and conclusions of law and briefs were filed on June 6, 2019. Pursuant to Rule 3.51, the Initial Decision would be issued on or before August 15, 2019. FTC Rule 3.51(a) provides also that “[t]he Administrative Law Judge may extend [this time period] by up to 30 days for good cause.” 16 C.F.R. § 3.51(a).

The Commission’s Complaint involves an alleged illegal agreement concerning the sale of dental supply products to dental practices in the United States. The Complaint alleges that Respondents Benco Dental Supply Co. (“Benco”), Henry Schein, Inc. (“Schein”), and Patterson Companies, Inc. (“Patterson”), distributors of dental supplies, agreed not to sell to dental buying groups, and that this agreement constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. Complaint ¶¶ 80-88. The Complaint further alleges that Benco invited a competitor, Burkhardt Dental Supply (“Burkhardt”), to collude in a joint agreement to refuse to sell to dental buying groups, and that this invitation constitutes an unfair method of competition in violation of Section 5 of the FTC Act. Complaint ¶¶ 89-90. Each Respondent denies that it entered into an agreement to refuse to

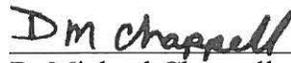
sell to dental buying groups. Each Respondent asserts that it acted independently in its approach to buying groups and that its approach to buying groups was different from the approaches of the other Respondents. And, each Respondent asserts that it had legitimate economic reasons for not dealing with buying groups. In addition, Benco denies that it invited Burkhardt to collude.

The record from this multi-week trial is extensive, involving numerous witnesses and complex issues. Over 5,070 exhibits were admitted into evidence. Sixty-five witnesses testified, either live or by deposition, including four expert witnesses, and there are 5,670 pages of trial transcript.

Each of the three Respondents submitted separate proposed findings of facts, briefs, and reply briefs. In addition, Respondents submitted joint proposed findings of facts and conclusions of law and a consolidated reply to Complaint Counsel's proposed findings of fact. Complaint Counsel submitted its proposed findings of fact and conclusions of law and its brief and submitted a reply to each of Respondents' filings. The parties submitted a total of 6,110 proposed findings of fact. The parties' proposed findings of fact, conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs total 7,139 pages. Thus, the amount of information to review is extraordinarily high.¹

For the foregoing reasons, good cause exists to extend the deadline for filing the *in camera* version of the Initial Decision in this matter by up to 30 days, to September 16, 2019.²

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 5, 2019

¹ By comparison, in the last non-merger, anticompetitive conduct case, the parties submitted a total of 3,066 proposed findings of fact and 2,869 pages of proposed findings of fact and conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs.

² Pursuant to Commission Rule 3.45(f), the public version of the Initial Decision is filed within five business days of the filing of the *in camera* version of the Initial Decision.