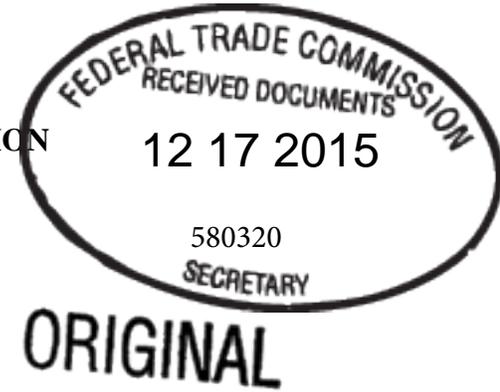


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

_____)
In the Matter of) PUBLIC
)
LabMD, Inc.,) Docket No. 9357
a corporation,)
Respondent.)
_____)

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENT’S
CROSS-MOTION TO STRIKE NOTICE OF APPEAL OR IN THE
ALTERNATIVE TO REQUIRE A MORE DEFINITE STATEMENT
AND/OR ALLOW RESPONDENT TO FILE AN OVERLENGTH
ANSWERING BRIEF PURSUANT TO RULE 3.52(K)**

Complaint Counsel’s Notice of Appeal is proper, and LabMD’s cross-motion should be denied in its entirety. Rule 3.52(b) requires that a notice of appeal “shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from.” Rule 3.52(b), 16 C.F.R. § 3.52(b) (emphasis added). Complaint Counsel’s Notice of Appeal (“Notice”) meets these requirements, specifying the appeal is taken against LabMD from:

the Initial Decision and Order entered by the Honorable D. Michael Chappell in the above-captioned matter, and any Findings of Fact and Conclusions of Law or the absence of findings of fact or conclusions of law related to the FTC Act violation alleged in the Complaint.

Notice at 1. The Notice makes clear that Complaint Counsel is appealing the entire Initial Decision and Order entered in this action. While LabMD urges a more specific articulation of Complaint Counsel’s grounds for appeal, Cross-Motion at 7, Rule 3.52(b) does not. This

resolves the matter.

Because Complaint Counsel's Notice of Appeal is proper, LabMD is not entitled to any of the relief sought in its cross-motion, including its request for a more definite statement and its request for leave to file an overlength answering brief in response to Complaint Counsel's appeal brief.

To the extent that the Commission nonetheless considers LabMD's request for leave to file an overlength answering brief independently of LabMD's cross-motion to strike, it should be denied for the additional reason that LabMD has failed to meet its burden. Cross-Motion at 7. "Extensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit." Rule 3.52(k), 16 C.F.R. § 3.52(k). LabMD claims that its compliance with Rule 3.51(b) somehow justifies increasing the existing word count limit. Cross-Motion at 7. LabMD does not identify "[a]ny objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the initial decision," as required by cited Rule 3.51(b), that LabMD seeks to challenge. Nor does LabMD make any showing – much less a "strong showing" – of how "undue prejudice would result from complying with the existing [word count] limit," as required by Rule 3.52(k). In addition, LabMD has failed to marshal a single FTC decision in which the Commission extended the word count limitation for an answering appeal brief under similar circumstances. LabMD should not be permitted to do so here.

Conclusion

For these reasons, Complaint Counsel respectfully requests that the Commission deny Respondent's cross-motion in its entirety.

Dated: December 17, 2015

Respectfully submitted,



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Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2015, I caused the foregoing document to be filed electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be transmitted *via* electronic mail and delivered by hand to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I further certify that I caused a copy of the foregoing document to be served *via* electronic mail to:

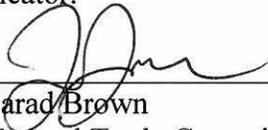
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Counsel for Respondent LabMD, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I 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.

December 17, 2015

By: 
Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection