

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES



In the Matter of

1-800 CONTACTS, INC.,
a corporation

PUBLIC

Docket No. 9372

1-800 CONTACTS, INC.'S STATEMENT OF EXPLANATION
REGARDING COMPUTATION OF TIME

In footnote 1 of the Court's January 4, 2017, Order Denying Request for Interlocutory Appeal, the Court noted that Respondent's answer to Complaint Counsel's Request for Interlocutory Appeal was due on December 29, 2016, but was served and filed on December 30, 2016. Respondent submits this statement to explain the manner by which it computed the due date for its answer and requests clarification, to whatever extent the Court deems it appropriate to provide such clarification, regarding the computation of time in similar circumstances.

Complaint Counsel's Request for Interlocutory Appeal was filed on December 23, 2016. Pursuant to Rule 3.23(b), Respondent's answer was due "within three days after the request for determination was filed." Pursuant to Rule 4.3(a), computation of this time period began on "the first business day following" the filing of the Request for Interlocutory Appeal on December 23, 2016. In light of the weekend of December 24 and 25 and the holiday on December 26, the time period for computing the due date of the answer began on Tuesday, December 27. The third day, as noted in footnote 1 of the Court's Order, was Thursday, December 29, 2016. However,

Respondent had been served by electronic delivery in accordance with Rule 4.4(e). Thus, Respondent added one day to the prescribed period within which to file its answer, in accordance with its understanding of Rule 4.3(c). This led Respondent to conclude that its answer was due on Friday, December 30, 2016.

Although counsel obviously cannot by agreement amend filing deadlines without the Court's approval, counsel for Respondent did inquire of Complaint Counsel during the meet-and-confer held on December 23, 2016, whether Complaint Counsel agreed that Respondent's answer was due on Friday, December 30, 2016. Complaint Counsel indicated that they also had computed the due date for Respondent's answer as Friday, December 30, 2016.

If Respondent miscalculated the due date for its answer to the Request for Interlocutory Appeal, it apologizes for its mistake in doing so. To the extent that the Court finds it appropriate to do so, it would be helpful to counsel for all parties if there was some clarification regarding whether the additional day that Respondent understood should be added pursuant to Rule 4.3(c) should or should not continue be included in time computations going forward.

DATED: January 5, 2017

Respectfully submitted,

/s/ Gregory P. Stone

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2017, I served a copy of **1-800 CONTACTS, INC.'S STATEMENT OF EXPLANATION REGARDING COMPUTATION OF TIME** via electronic mail on the following Counsel Supporting the Complaint:

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DATED: January 5, 2017

By: /s/ Gregory P. Stone
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Notice of Electronic Service

I hereby certify that on January 05, 2017, I filed an electronic copy of the foregoing 1-800 Contacts, Inc.'s Statement of Explanation Regarding Computation of Time, with:

D. Michael Chappell
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Donald Clark
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I hereby certify that on January 05, 2017, I served via E-Service an electronic copy of the foregoing 1-800 Contacts, Inc.'s Statement of Explanation Regarding Computation of Time, upon:

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