

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



ORIGINAL

In the Matter of)
)
)
1-800 Contacts, Inc.,)
a corporation,)
)
Respondent.)
_____)

DOCKET NO. 9372

**ORDER DENYING COMPLAINT COUNSEL'S MOTION TO COMPEL
RESPONDENT'S ANSWER TO INTERROGATORY**

I.

On December 22, 2016, Federal Trade Commission ("FTC") Complaint Counsel filed a Motion to Compel Response to Interrogatory No. 8, pursuant to FTC Practice Rule 3.38, 16 C.F.R. § 3.38 ("Motion"). Complaint Counsel seeks an order compelling Respondent to provide a full and complete response to Interrogatory 8. Respondent 1-800 Contacts, Inc. ("Respondent") filed an opposition to the Motion on January 3, 2017 ("Opposition"). Among other arguments, Respondent asserts that Complaint Counsel's Motion is untimely and should be denied on that ground.

By Order issued January 4, 2017, Complaint Counsel was directed to file a reply. Complaint Counsel filed its reply on January 10, 2017 ("Reply"). Because Complaint Counsel's Motion is untimely, it is DENIED.

II.

The record submitted on the Motion shows the following relevant chronology:

On September 8, 2016, Complaint Counsel served its First Set of Interrogatories on Respondent (Motion Exhibit A, Tab 1).

October 11, 2016, Respondent served Responses of Respondent 1-800 Contacts to Complaint Counsel's First Set of Interrogatories (Motion Exhibit A, Tab 2) ("October 11 Response").

On October 17, 2016, according to Complaint Counsel's Meet and Confer Statement, the parties met and conferred regarding the sufficiency of a number of Interrogatory answers, including Respondent's answer to Interrogatory 8 (Motion Meet and Confer Statement).

On October 21, 2016, Respondent stated by email to Complaint Counsel that it intended to file Amended Responses to Complaint Counsel's Interrogatories, including Interrogatory 8, no later than October 31, 2016 (Motion Exhibit A, Tab 4).

On October 31, 2016, Respondent served Amended Responses of Respondent 1-800 Contacts, Inc. to Complaint Counsel's First Set of Interrogatories (Motion Exhibit A, Tab 5) ("October 31 Response"). Respondent amended its response to Interrogatory 8 in its October 31 Response. *Compare* Exhibit A, Tab 2 at 15 *with* Tab 5 at 20-21.

November 7, 2016 is identified by Complaint Counsel, in Complaint Counsel's Meet and Confer Statement, as the last date on which Complaint Counsel and Respondent communicated in a good faith effort to resolve issues raised by Respondent's objections to Complaint Counsel's Interrogatories (Motion Meet and Confer Statement).

On November 7, 2016, Complaint Counsel sent an email to Respondent's counsel, referring to the meet and confer and stating: "As we discussed, Respondent will provide amended responses to Interrogatories 1 and 7. We have reached impasse on Interrogatories 8, 9, and 12" (Opposition Exhibit A).

On November 22, 2016, Respondent served Amended Responses of Respondent 1-800 Contacts, Inc. to Complaint Counsel's First Set of Interrogatories (Motion Exhibit A, Tab 6) ("November 22 Response"). Respondent did not amend its response to Interrogatory 8 in its November 22 Response. *Compare* Exhibit A, Tab 5 at 20-21 *with* Tab 6 at 23-24.

On December 22, 2016, Complaint Counsel filed this Motion to Compel Response to Interrogatory 8.

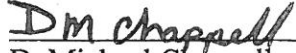
III.

Under the Scheduling Order issued in this case, "[a]ny motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests. . . ." September 7, 2016 Scheduling Order, Additional Provision 10. Complaint Counsel argues that it filed its Motion within 30 days of the November 22 Response and the Motion is therefore timely. Respondent argues that Complaint Counsel failed to file the Motion within 30 days of the date that the parties reached an impasse as to the sufficiency of Respondent's October 31 Response to Interrogatory 8, which was on November 7, 2016.

Based on the chronology of events set forth above, Respondent served its Amended Response to Interrogatory 8 on October 31, 2016 and the Parties' negotiations as to the sufficiency of this Response ended in an impasse on November 7, 2016. Complaint Counsel failed to file its Motion within 30 days of either of these dates and thus its Motion is untimely.

See OSF Healthcare Sys., 2012 WL 588757 at *1 (Feb. 13, 2012) (declining to deny motion to compel as untimely where the parties were actively engaged in negotiations to narrow the scope of discovery). Accordingly, Complaint Counsel's Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: January 12, 2017

Notice of Electronic Service

I hereby certify that on January 12, 2017, I filed an electronic copy of the foregoing Order Denying Complaint Counsel's Motion to Compel Respondent's Answer to Interrogatory, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Donald Clark
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I hereby certify that on January 12, 2017, I served via E-Service an electronic copy of the foregoing Order Denying Complaint Counsel's Motion to Compel Respondent's Answer to Interrogatory, upon:

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