ORIGINAL

PUBLIC

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

In the Matter of	)	
	)	
ECM BioFilms, Inc.,	)	DOCKET NO. 9358
a corporation, also d/b/a	)	
Enviroplastics International,	)	
Respondent.	)	

ORDER ON POST-TRIAL BRIEFS

I. Post-trial briefing schedule

Pursuant to Federal Trade Commission Rule of Practice 3.46(a), each party may file proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof, within 21 days of the closing of the hearing record; and each party may file reply findings of fact, conclusions of law, and briefs within 10 days of service of the initial proposed findings. 16 C.F.R. § 3.46(a). Pursuant to Rule 4.3(b), for good cause shown, the Administrative Law Judge may extend any time limit prescribed by the rules in this chapter, except those not applicable here. 16 C.F.R. § 4.3(b).

The record from this multi-week trial is extensive. Because of the many scientific and technical issues presented by this case, thorough and careful replies are particularly important. Additional time for replies will help ensure that the parties have adequate time to be thorough and careful in replying to each other's proposed findings, including in distinguishing the admitted evidence from evidence that was not offered or admitted for the truth of the matter asserted or was conditionally admitted. Based on the number of expert witnesses and the complex scientific and technical issues involved, good cause exists under Rule 4.3 to extend the deadline for filing post-trial Reply Briefs and Replies to Proposed Findings.

In accordance with Commission Rules 3.46 and 4.3, the deadlines for post-trial briefs are as follows:

September 25, 2014	Deadline for filing concurrent post-trial briefs, proposed findings of fact, and conclusions of law; and

October 16, 2014	Deadline for filing concurrent reply briefs and replies to proposed findings of fact.

The parties shall serve each other with electronic copies of all post-trial pleadings immediately after filing such pleadings.

The parties shall serve the Office of Administrative Law Judges (OALJ) with three hard copies of all post-trial briefs and one electronic version of all post-trial briefs. The electronic version shall be in MS-Word (.doc/.docx) format, using Times New Roman 12 point font. Electronic service on the OALJ shall be made to OALJ@ftc.gov.

II. Mandatory rules for post-trial briefs

The following requirements apply to post-trial briefs, proposed findings of fact, conclusions of law, post-trial reply briefs, and replies to proposed findings of fact, and shall be strictly followed:

- 16 C.F.R. § 3.46 sets forth express requirements for proposed findings of fact and conclusions of law. In accordance with Rule 3.46(a), **Complaint Counsel shall provide a proposed order for relief, together with supporting facts and law, and Respondent shall specifically reply thereto**.

- All proposed findings of fact shall be supported by specific references to the evidentiary record. All conclusions of law, including, but not limited to, liability and the proposed remedy, shall be supported by applicable legal authority. The parties shall specifically include briefing in support of or in opposition to the proposed order.

- Do not cite to testimony for the truth of the matter asserted if the testimony was admitted for a purpose other than for the truth of the matter asserted. If such testimony is cited, the party shall indicate in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.

- Do not cite to evidence that was admitted for a limited purpose for any purpose other than the theory under which it was admitted.

- Do not cite to evidence that was determined at trial to be "disregarded" or "not considered."

- Do not cite to documents that are not in evidence, documents that have been withdrawn, or documents that have been rejected.[1]

[1] The parties are directed to comply with the Order Granting Respondents' Motion to Strike, issued in *Chicago Bridge & Iron Co.*, Docket 9300 (June 12, 2003), http://www.ftc.gov/ os/adjpro/d9300/ 030612aljordrantrespmotostrike.pdf.

- Do not cite to demonstrative exhibits as substantive evidence.

- Do not cite to expert testimony to support factual propositions that should be established by fact witnesses or documents.

- Do not cite to an offer of proof or testimony or documents that were elicited on an offer of proof.

- Violations of the requirements of this Order should be pointed out by opposing counsel in the reply brief or reply to proposed findings of fact.

- When citing to trial testimony, the parties shall identify that testimony by the witness' name, the letters "Tr." and the transcript page number. Do not provide line numbers or the word "at" before the transcript page number. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (Smith, Tr. 1098). If more than one source is used for the same proposition, the format that shall be used is: (Smith, Tr. 1098; Jones, Tr. 153).

- When citing to deposition testimony or testimony from an investigational hearing transcript ("IHT") that was admitted in evidence, the parties shall cite to that testimony by setting forth the exhibit number, and then, in parentheses, the deponent's name, the letters "Dep." or "IHT," and the transcript page number. Do not provide line numbers. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (RX 100 (Smith, Dep. at 1098)).

- When deposition testimony or testimony from an IHT that was admitted in evidence has been cited by a party, and the opposing party has an objection to the use of such testimony, the opposing party shall point out its objection to such excerpt in its reply to the proposed finding, or such objection shall be deemed waived.

- Do not use "*Id.*" as a cite for proposed findings of fact or reply findings of fact.

- Do not cite to more than one copy of the same document (*i.e.*, if RX 100 and CX 200 are different copies of the same document, cite to only one exhibit number).

- Reply briefs shall be limited to refuting issues raised by the opposing side and should not be used merely to bolster arguments made in the opening post-trial briefs.

- Reply briefs shall reply to the arguments in the same order as the arguments were presented by the opposing party in its opening brief.

- Reply findings of fact shall set forth the opposing party's proposed finding of fact in single space and then set forth the reply in double space. Reply findings of fact shall be numbered to correspond to the findings that the reply findings are refuting and shall use the same outline headings as used by the opposing party in its opening proposed findings of fact. If you have no specific response to the opposing party's proposed finding of fact, set forth the opposing party's proposed finding of fact and then state that you have no specific response or do not disagree.

An example of the format for reply findings that shall be followed is:

> 39. Jarrett Inc. was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, publicly traded on the American Stock Exchange, with its principal place of business at 1740 Lake Needwood Drive, Suite 300, Arlington, VA, 22201. (CX 328 at 001253; CX 021 at 1003; Hanson, Tr. 6732).
>
> **Response to Finding No. 39:**
> Respondent has no specific response.

- Reply findings of fact should be used only to directly contradict the other side's proposed findings, and should not be used merely to restate the proposition in language which is more favorable to your position.

- Briefs and proposed findings and replies thereto shall be printed double-sided and shall be spiral bound or coil bound. Velo binding or comb binding shall not be used.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: September 3, 2014