

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



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

DOCKET NO. 9372

**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 pursuant to § 3.46” 16 C.F.R. § 3.51(a). The last reply proposed findings and conclusions and briefs were filed July 13, 2017. Pursuant to Rule 3.51, therefore, the Initial Decision would be issued on or before September 21, 2017. FTC Rule 3.51(a) further provides 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 record requiring review and analysis in this matter is voluminous. Over 1,250 exhibits were admitted. The Parties submitted 4,071 proposed findings of fact (1,954 by Federal Trade Commission Complaint Counsel (“Complaint Counsel”) and 2,117 by Respondent). The Parties’ proposed findings of fact and conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs total 3,514 pages.

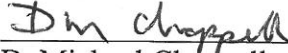
The Commission’s Complaint alleges that Respondent violated Section 5 of the FTC Act by entering into agreements with 14 other online retailers of contact lenses through which competitors agreed not to bid in any online search advertising auction for the use of the search term “1-800-Contacts” or variations thereof, and to employ negative keywords in paid search advertising to prevent competitors’ advertising from appearing in response to an internet search query for “1-800-Contacts” (the “Challenged Agreements”). Complaint ¶¶ 22, 24, 33. Respondent’s Answer asserts, among other things, that the Challenged Agreements were settlement agreements to resolve bona fide litigation over

competitors' use of its trademark, and denies that such agreements are anticompetitive or unlawful. Answer ¶¶ 20-24, 31, 33-34.

Forty-three witnesses testified, either live or by deposition. Complaint Counsel called three expert witnesses and one rebuttal expert witness and Respondent called five expert witnesses. The expert witnesses opined on many areas including consumer internet search behavior and the potential for consumer confusion as relevant to the restrictions in the Challenged Agreements, the scope of trademark protections, and the potential effects of the Challenged Agreements, including economic analysis thereof.

Based on the foregoing, good cause exists to extend the deadline for filing the Initial Decision in this matter by up to 30 days, to October 23, 2017.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 11, 2017