

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS

IN THE MATTER OF

**POM WONDERFUL LLC,
ROLL INTERNATIONAL CORP.,
STEWART A. RESNICK,
LYNDA RAE RESNICK,
AND
MATTHEW TUPPER**

Docket No. 9344. Order, July 25, 2012

Order denying Complaint Counsel's motions to reopen the record and for leave to reply.

ORDER RULING ON MOTION TO REOPEN THE RECORD AND MOTION
FOR LEAVE TO FILE A REPLY

On June 13, 2012, Counsel for the Complaint filed a Motion To Reopen the Record in this matter ("June 13 Motion"), and to admit into the record "(1) certain POM product advertisements that Respondents created after the issuance of the Initial Decision; and (2) the Declaration of William Ducklow authenticating these advertisements." On June 25, 2012, Respondent Matthew Tupper and the other Respondents respectively filed Oppositions to the June 13 Motion. On July 2, 2012, Counsel for the Complaint filed a Motion For Leave To File Reply in support of the June 13 Motion.

The evidence that Complaint Counsel attempt to introduce into the record includes (1) advertisements disseminated by Respondents that include quotes from the ALJ's Initial Decision; and (2) other advertisements, some of which are already in the record, and the meaning of which Complaint Counsel are already in the process of appealing to the Commission.

Under Commission Rules 3.51(e)(1) and 3.54(a), 16 C.F.R. §§ 3.51(e)(1), 3.54(a), a party may move to "reopen the proceeding

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for the reception of further evidence" at any time before the Commission issues its decision. *Brake Guard Products* sets forth the applicable standard for reopening the record. Under that test, "the Commission considers: (1) whether the moving party can demonstrate due diligence (that is, whether there is a bona fide explanation for the failure to introduce the evidence at trial); (2) the extent to which the proffered evidence is probative; (3) whether the proffered evidence is cumulative; and (4) whether reopening the record would prejudice the non-moving party. *Brake Guard Products, Inc.*, 125 F.T.C. 138, 248 n.38 (1998).

We find that Complaint Counsel has acted with diligence, as the facts regarding publication of these claims and advertisements were not available until after the issuance of the Initial Decision. Based on our analysis of the remaining three factors, however, we do not find that Complaint Counsel's arguments warrant reopening the record in this matter to introduce the proposed new exhibits.

Accordingly,

IT IS ORDERED THAT Complaint Counsel's Motion to Reopen the Record is denied; and

IT IS FURTHER ORDERED THAT Complaint Counsel's Motion for Leave to File a Reply is denied.

By the Commission.

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IN THE MATTER OF

RENOWN HEALTH

Docket No. C-4366. Order, August 3, 2012

Order directing Renown Health to suspend enforcement of the non-compete provisions against Renown's cardiologist employees.

ORDER TO SUSPEND ENFORCEMENT OF RENOWN NON-COMPETE

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Renown Health of Reno Heart Physicians ("RHP"), and Renown Health (hereafter referred to as "Renown Health" or "Respondent Renown") having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Renown with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent Renown, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent Renown of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Renown that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Renown has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its