

Interlocutory Orders, Etc.

IN THE MATTER OF

ECM BIOFILMS, INC.
D/B/A
ENVIROPLASTICS INTERNATIONAL*Docket No. 9358; Order, April 8, 2014*

Order responding to Complaint Counsel's motion seeking a continuance of the evidentiary hearing.

ORDER RESCHEDULING HEARING DATE

On October 18, 2013, the Federal Trade Commission issued the Administrative Complaint in this adjudicative proceeding and scheduled the evidentiary hearing for June 18, 2014. On March 18, 2014, Complaint Counsel filed a Motion which, among other things, requests that the Commission continue the evidentiary hearing for three months, arguing that such additional time is "the time minimally necessary to complete discovery."¹ Respondent opposes any such delay, arguing that a three-month delay "will substantially increase costs but will not yield any more substantive information than Complaint Counsel now possesses."²

On April 1, 2014, Chief Administrative Law Judge Chappell issued an Order ruling on Complaint Counsel's Motion.³ As

¹ Complaint Counsel's Motion To Certify Scheduling Issues to the Commission and Request for Interim Relief at 12, In the Matter of ECM Biofilms, Inc. et al, F.T.C. Docket No. 9358 (Mar. 18, 2014) [hereinafter Motion], available at <http://www.ftc.gov/system/files/documents/cases/140318ccmtntocertify.pdf>.

² ECM BioFilm's Opposition To Complaint Counsel's Motion To Certify Scheduling Issues and For Interim Relief, *in camera*, at 2, In the Matter of ECM Biofilms, Inc. et al, F.T.C. Docket No. 9358 (Mar. 28, 2014) (quoted language public, but redacted public version of Opposition not yet filed).

³ Order On Complaint Counsel's Motion To Certify Scheduling Issues To the Commission and Request For Interim Relief, In the Matter of Biofilms, Inc. et al, F.T.C. Docket No. 9358 (Apr. 1, 2014) [hereinafter ALJ Order], available at <http://www.ftc.gov/system/files/documents/cases/140401ordercertifycommn.pdf>.

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Judge Chappell points out, the only issue raised by the Motion that is certifiable to the Commission is Complaint Counsel's request for a continuance of the evidentiary hearing.⁴ As authorized by the Commission Rules, Judge Chappell has addressed and resolved all of the other issues raised by Complaint Counsel's Motion, and we need not address them here.

On the issue before us – Complaint Counsel's request for a 90-day continuance of the evidentiary hearing – Judge Chappell recommends that the hearing be continued for 45 days. He concludes that, while the parties "are entitled to full and fair discovery," Complaint Counsel's request for a 90-day continuance "is not sufficiently justified."⁵ Specifically, Judge Chappell notes that Complaint Counsel asked that the discovery deadlines in the case be extended by 45 days but at the same time requested a 90-day continuance. As Judge Chappell also observes, Respondent opposes the request for continuance, but, in its own motion to compel and for sanctions, also seeks to extend the fact discovery deadline. Judge Chappell therefore recommends that the Commission continue the evidentiary hearing for 45 days, to August 5, 2014.⁶ We agree with the recommendation of Judge Chappell.

Based on the foregoing, we find there is good cause to continue the evidentiary hearing to August 5, 2014. Accordingly,

IT IS ORDERED that the evidentiary hearing in this proceeding be, and it hereby is, rescheduled to begin at 10:00 a.m. on August 5, 2014, at the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580.

⁴ Commission Rule 3.22(a), 16 C.F.R. § 3.22(a), provides that during the time an adjudicative proceeding is before an Administrative Law Judge, all motions on which the ALJ has the authority to rule "shall be addressed to and decided by the Administrative Law Judge." Only the Commission has the authority to change the date of the hearing. See Commission Rule 3.21(c), 16 C.F.R. § 3.21(c).

⁵ ALJ Order, *supra* note 3, at 3.

⁶ *Id.* at 1.

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By the Commission.

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IN THE MATTER OF

MCWANE, INC.

AND

STAR PIPE PRODUCTS, LTD.

Docket No. 9351; Order, April 11, 2014

Opinion and Order denying respondent's application for a stay of the Commission's Final Order in this matter.

**DECISION AND ORDER DENYING RESPONDENT'S APPLICATION FOR
STAY OF ORDER PENDING REVIEW BY U.S. COURT OF APPEALS**

On March 13, 2014, Respondent McWane, Inc. applied for a stay of the Commission's Final Order in this matter, pending judicial review by an appropriate U.S. court of appeals. Complaint Counsel opposes the stay. For the reasons discussed below, McWane has failed to demonstrate that a stay is warranted. It has shown neither a likelihood of success on appeal, nor that it will suffer irreparable harm absent a stay. It has also failed to show that staying the order would be in the public interest. Accordingly, the Commission denies McWane's application.¹

The Commission's Opinion and Final Order in this matter issued on January 30, 2014.² The Commission held that McWane unlawfully maintained its monopoly of the domestic ductile iron pipe fittings market by means of exclusive dealing imposed through its Full Support Program. The Commission's order prohibits McWane from: (1) implementing or enforcing any condition, policy, or practice requiring exclusivity with a customer; (2) implementing or enforcing any retroactive rebate

¹ Commissioner Wright dissents from the Commission's decision to deny McWane's request for a stay on the ground that he believes McWane is likely to succeed on the merits of its appeal, for reasons stated in his dissenting opinion on the merits of this case.

² The Commission's opinion in this matter is available at <http://www.ftc.gov/system/files/documents/cases/140206mcwaneopinion.pdf>. The order is available at <http://www.ftc.gov/system/files/documents/cases/140206mcwaneorder.pdf>.