

Interlocutory Orders, Etc.

IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, January 18, 2017

Order extending the time period for issuing a ruling on Complaint Counsel's Motion for Partial Summary Decision.

**ORDER EXTENDING TIME PERIOD FOR RULING ON MOTION FOR
PARTIAL SUMMARY DECISION**

In order to give thorough consideration to the issues presented by Complaint Counsel's Motion for Partial Summary Decision in this proceeding, the Commission has determined, pursuant to Rule 4.3(b), 16 C.F.R. § 4.3(b), to further extend the time period for issuing a ruling on that Motion until February 1, 2017.

IT IS SO ORDERED.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, February 1, 2017

Opinion and Order granting Complaint Counsel's Motion for Partial Summary Decision regarding Respondent's Second and Third Defenses.

OPINION AND ORDER OF THE COMMISSION

By OHLHAUSEN, Acting Chairman:

Introduction

Internet search engines like Google and Bing sell advertising opportunities to firms across an array of different industries through computerized auctions. This matter involves agreements entered into between an online retailer of contact lenses, Respondent 1-800 Contacts, Inc., and certain of its rivals that allegedly limited competition in internet-search-advertising auctions and restricted truthful, non-misleading advertising.

The alleged background facts are straightforward. Between 2004 and 2013, 1-800 Contacts and various of its competitors agreed not to bid on each other's trademarks as keywords in internet-search-advertising auctions. They further agreed to take steps to prevent their advertisements from appearing in response to search queries that contain each other's trademarked keywords. Although 1-800 Contacts disputes the characterization of those arrangements, the Complaint refers to them as "bidding agreements." Those agreements followed trademark infringement challenges or threatened challenges by 1-800 Contacts to rivals' bidding on "1-800 Contacts" and other trademarks as keywords in online search advertising. Although it resolved most of its trademark-infringement disputes through these agreements, 1-800 Contacts lost the only one of these cases that proceeded to judgment. *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1234-35, 1243-49 (10th Cir. 2013) (finding that Lens.com's bidding on 1-800 Contacts' trademarked keyword created no likelihood of confusion).