

Interlocutory Orders, Etc.

IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, November 7, 2018

Order to extend the time period for issuing a final decision and order until November 14, 2018.

ORDER EXTENDING TIME PERIOD FOR ISSUING FINAL DECISION AND ORDER

In order to give full consideration to the issues presented by the appeal in this proceeding, the Commission has determined, pursuant to Rule 4.3(b), 16 C.F.R. § 4.3(b), to extend the time period for issuing a final decision and order until November 14, 2018.

IT IS SO ORDERED.

By the Commission, Commissioner Wilson not participating.

Interlocutory Orders, Etc.

IN THE MATTER OF

**BENCO DENTAL SUPPLY CO.,
HENRY SCHEIN, INC.,
AND
PATTERSON COMPANIES, INC.**

Docket No. 9379. Order, November 26, 2018

Opinion and Order denying Respondent Patterson's Motion for Summary Decision.

OPINION AND ORDER OF THE COMMISSION

By Commissioner Rebecca Kelly Slaughter, for the Commission:

This case involves the distribution of dental supply products to dental practices in the United States. The Respondents, Benco Dental Supply Co. ("Benco"), Henry Schein, Inc. ("Schein"), and Patterson Companies, Inc. ("Patterson"), are full-service distributors that sell consumable dental supplies and equipment to dentists and dental practices. Consumables include gloves, bibs, cement, and sterilization and prevention products, while equipment includes such items as x-ray machines, lights, compressors, and dental chairs.

The Commission's Complaint alleges that the Respondents have violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, by coordinating and agreeing among themselves not to offer discounted prices or otherwise negotiate with certain groups of customers known as "buying groups," "group purchasing organizations," "GPOs," or "buying clubs." We refer to these organizations herein as "buying groups."

Approximately 30 days before the scheduled trial date, Respondent Patterson filed a Motion for Summary Decision (the "Motion") pursuant to Rule 3.24 of the Commission's Rules of Practice. Patterson's Motion concerns Patterson only. Patterson asserts that Complaint Counsel's evidence is insufficient to allow a reasonable trier of fact to conclude that Patterson conspired with the other Respondents to restrict discounting to buying groups. Complaint Counsel oppose the Motion. For the reasons stated in this Opinion, we deny Patterson's Motion.

I. COMPLAINT ALLEGATIONS AND PROCEDURAL BACKGROUND

On February 12, 2018, the Commission issued a four-count administrative complaint against Benco, Schein, and Patterson. The Complaint charges all three Respondents with three counts of restraint of trade (conspiracy) under Section 5 of the FTC Act for an alleged concerted scheme to refuse to negotiate with, or offer discounts to, buying groups. The first count charges the Respondents with a conspiracy under the rule of *per se* illegality, while the second and third counts charge the same conduct as an "inherently suspect" violation and a violation of the truncated rule of reason, respectively. Additionally, the Complaint charges Respondent Benco with one count of unfair methods of competition, based on an alleged invitation to collude.