

Interlocutory Orders, Etc.

IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, December 19, 2018

Order granting in part respondent's motion to exceed the word count limits set forth in Commission Rule 3.22(c), 16 C.F.R. § 3.22(c).

ORDER EXTENDING WORD COUNT LIMITATIONS

On December 10, 2018, Respondent 1-800 Contacts filed an Application for a partial stay of the Commission Final Order in this matter.¹ On December 11, Respondent filed a Motion requesting that the Commission permit its Application; Complaint Counsel's Answer, if any; and Respondent's Reply, if any, to exceed the word count limits set forth in Commission Rule 3.22(c), 16 C.F.R. § 3.22(c).² In particular, Respondent requests that the Commission increase the word limit for its Application and for Complaint Counsel's Answer to 5,350 words, and that the Commission increase the word limit for Respondent's Reply to 2,500 words. Respondent advises that Complaint Counsel do not oppose the Motion.

Commission Rule 3.56(d), 16 C.F.R. § 3.56(c), which governs applications for stay of Commission Final Orders, does not include a word count limit. Therefore, the word count limits set forth in Commission Rule 3.22(c) for motions other than dispositive motions apply to applications for stay, answers thereto, and replies in support of such applications. Commission Rule 3.52(k), 16 C.F.R. § 3.52(k), provides, with respect to appellate briefs, that "[e]xtensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit." The same principles apply to all other filings in adjudicative proceedings. Here, however, the parties are following an abbreviated schedule with respect to Respondent's Application "[i]n order to

avoid conflicts with religious holidays and the New Year's holiday."³ Consequently, Respondent filed its Application on December 10, 2018, sixteen days before it was due, and Complaint Counsel's Answer was due December 18, 2018. Respondent has advised that its Application contains 5,332 words, and it would be unfair to require Complaint Counsel to adhere to a lower word count limit. No such basis, however, exists for a corresponding increase in the word count limit for any Reply that may be filed. Accordingly,

IT IS ORDERED THAT Respondent's Application and Complaint Counsel's Answer may each contain up to 5,350 words; and

1 See Respondent 1-800 Contacts, Inc.'s Application For A Stay Pending Review By A United States Court of Appeals (Dec. 10, 2018), <https://www.ftc.gov/system/files/documents/cases/121018respondentappstaypendingreviewuscourtappeals593147.pdf>.

2 See Respondent's Unopposed Motion To Exceed the Word Count Limit in 16 C.F.R. § 3.22(c) (Dec. 11, 2018), <https://www.ftc.gov/system/files/documents/cases/121118respondentunopposedmotion593161.pdf>.

3 See Joint Motion Regarding the Schedule For Respondent's Application For Stay (Dec. 10, 2018), <https://www.ftc.gov/system/files/documents/cases/121018jointmotionrespappforstay593148pdf.pdf>.

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IT IS FURTHER ORDERED THAT any Reply that may be filed may contain no more than 1,500 words, as provided by Commission Rule 3.22(c), 16 C.F.R. § 3.22(c).

By the Commission, Commissioner Wilson not participating.

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IN THE MATTER OF

IMPAX LABORATORIES, INC.

Docket No. 9373. Order, December 28, 2018

Order staying proceedings and extending deadlines in the event of a lapse in appropriations.

ORDER REGARDING SCHEDULING

In the event that a lapse in appropriations results in a shutdown of most Commission operations, the Commission hereby directs that this proceeding be fully stayed for the duration of the shutdown and for an additional five business days thereafter. Accordingly,

IT IS SO ORDERED.

By the Commission.