

Interlocutory Orders, Etc.

IN THE MATTER OF

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

Docket No. 9379. Order, September 12, 2019

Order extending the Administrative Law Judge's time to file his Initial Decision.

ORDER EXTENDING TIME TO FILE INITIAL DECISION

Rule 3.51(a) of the Commission Rules of Practice provides that an Initial Decision shall be filed "within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order." 16 C.F.R. § 3.51(a) (2019). The rule further provides that "[t]he Administrative Law Judge may extend any of these time periods by up to 30 days for good cause. The Commission may further extend any of these time periods for good cause." *Id.* The last reply proposed findings of fact and conclusions of law were filed on June 6, 2019, and pursuant to Rule 3.51(a), the 70-day period was set to expire on August 15, 2019. For good cause shown, on August 5, 2019, Chief Administrative Law Judge D. Michael Chappell extended the time period until September 16, 2019. Judge Chappell has now filed a request that the Commission further extend the time for filing the Initial Decision in this matter until October 18, 2019. For the reasons set forth below, the Commission has determined to grant that request.

The Commission issued the complaint in this matter on February 12, 2018, alleging that the respondents entered into an agreement constituting an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45. The complaint further alleged that one of the respondents invited a competitor to collude, in violation of Section 5 of the FTC Act. Each of the three respondents denied the allegations in the complaint. A multi-week trial commenced October 16, 2018, and pursuant to Rule 3.44(c), the hearing record was closed on February 21, 2019.

Judge Chappell has now requested that the Commission extend the time for filing the Initial Decision until October 18, 2019. In his request, Judge Chappell notes that the record from the multi-week trial was extensive. Sixty-five witnesses testified, including four experts, the trial transcript was 5,670 pages long, and over 5,070 exhibits were admitted into evidence. Judge Chappell further notes that the briefing record was similarly voluminous, that it includes briefs and proposed findings from each of the three respondents, and that the parties' combined findings of fact, conclusions of law, post-trial briefs, and replies thereto, total 7,139 pages. As Judge Chappell indicates, this substantial record must be thoroughly reviewed in order to give full consideration to the issues presented in the proceeding.

Accordingly,

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IT IS ORDERED that the time for filing the Initial Decision in this matter be, and hereby is, extended until October 18, 2019.

By the Commission.