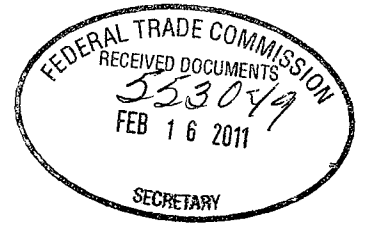


ORIGINAL



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)
)
)
POM WONDERFUL LLC and,)
ROLL INTERNATIONAL CORP.,)
)
companies, and)
)
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)
_____)

Docket No. 9344

PUBLIC DOCUMENT

**COMPLAINT COUNSEL’S MOTION TO SHORTEN RESPONDENTS’ TIME TO
RESPOND TO THE MOTION TO AMEND SCHEDULING ORDER**

Under to Rule 3.23(d), Complaint Counsel respectfully moves for: 1) an order requiring Respondents to file their opposition, if any, to this motion within three days, *i.e.*, no later than February 22, 2011, and 2) an order shortening Respondents’ time to respond to the *Complaint Counsel’s Motion to Amend Scheduling Order* to five days, *i.e.*, no later than February 24, 2011. FTC Rule of Practice for Adjudicative Proceedings 3.22(d) (stating that the time to respond can be required “within such . . . shorter time as may be designated by the Administrative Law Judge . . .”).

In *Complaint Counsel’s Motion to Amend Scheduling Order*, Complaint Counsel seeks leave to depose Dr. Aviram after the current close of fact discovery. Dr. Aviram, a physician and researcher living in Haifa, Israel, has been named as a fact witness by Respondents in their initial witness list. *Respondents’ Preliminary Witness List* at 4 (Dec. 15, 2010). According to that list, “Respondents anticipate that Dr. Aviram will testify *regarding Respondents’ defenses*, his research regarding pomegranates and POM products, and his interactions with Respondents.” *Id.*

(emphasis added). Dr. Aviram and his research, performed at the Technion Institute in Israel, have been repeatedly cited in Respondents' advertising. *E.g.*, Compl. Exhibits E, I at 5, J, K, L, and M at 3.

Currently, Dr. Aviram has agreed to be deposed on March 7, 2011, in Haifa, Israel.¹ Complaint Counsel is scheduled to leave for Israel on March 5, 2011. Complaint Counsel seeks to shorten Respondents' time to respond to the accompanying *Motion to Amend Scheduling Order* to allow adequate time to schedule and prepare for Dr. Aviram's deposition, if permitted by the Court. If the Respondents were allowed to respond to the *Motion to Amend Scheduling Order* in the ten-day response time permitted under Rule 3.22(d), only four business days would remain before the proposed March 7, 2011 deposition of Dr. Aviram.² The five-day response time will not prejudice Respondents because they have been aware of Complaint Counsel's desire to depose Dr. Aviram since early January and were notified on February 14, 2011 that Dr. Aviram had consented to a March 7, 2011 deposition. For the foregoing reasons, Complaint Counsel respectfully asks that the Court order the Respondents to file their opposition, if any, to this motion by February 22, 2011, and order Respondents to file a response, if any, to *Complaint Counsel's Motion to Amend Scheduling Order* by February 24, 2011.³

Date: February 16, 2011

/s/ Janet M. Evans
Janet M. Evans (202) 326-2125

¹ Because Dr. Aviram has consented to the deposition, the Israeli government does not object to the taking of this deposition in Israel.

² Complaint Counsel does not believe that Commission Rule 3.38 (which sets shorter deadlines to respond to motions for orders compelling discovery) is applicable to the Motion to Amend the Scheduling Order.

³ Complaint Counsel seeks a decision on this issue on or before March 3, 2011, as it currently is scheduled to leave for Israel early on March 5, 2011.

Mary L. Johnson (202) 326-3115
Federal Trade Commission
Bureau of Consumer Protection
601 New Jersey Avenue, NW
Washington, DC 20580

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

POM WONDERFUL LLC and)
ROLL INTERNATIONAL CORP.,)
companies, and)

DOCKET NO. 9344

STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)

[PROPOSED] ORDER REQUIRING RESPONDENTS TO FILE AN OPPOSITION, IF ANY, TO COMPLAINT COUNSEL'S MOTION TO SHORTEN RESPONDENTS' TIME TO RESPOND TO THE MOTION TO AMEND SCHEDULING ORDER

Based upon the parties' arguments, there is good cause to shorten Respondents' time to file an opposition, if any, to *Complaint Counsel's Motion to Shorten Respondents' Time to Respond to the Motion to Amend Scheduling Order*. Therefore, pursuant to Rule 3.22(d), Complaint Counsel's motion is GRANTED. Respondents are ORDERED to file an opposition, if any, to *Complaint Counsel's Motion to Shorten Respondents' Time to Respond to the Motion to Amend Scheduling Order* by February 22, 2011.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

POM WONDERFUL LLC and)
ROLL INTERNATIONAL CORP.,)
companies, and)

DOCKET NO. 9344

STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)
_____)

**[PROPOSED] ORDER REQUIRING RESPONDENTS TO FILE AN OPPOSITION
TO COMPLAINT COUNSEL'S MOTION TO AMEND SCHEDULING ORDER**

Based upon the parties' arguments, there is good cause to shorten Respondents' time to file an opposition, if any, to *Complaint Counsel's Motion to Amend Scheduling Order*.

Therefore, pursuant to Rule 3.22(d), Complaint Counsel's motion is GRANTED. Respondents are ORDERED to file an opposition, if any, to *Complaint Counsel's Motion to Amend Scheduling Order* by February 24, 2011.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

STATEMENT REGARDING MEET AND CONFER

In accordance with Paragraph 4 of the Court's Scheduling Order, the undersigned counsel certify that Complaint Counsel engaged in a good faith effort to meet and confer with Respondents' Counsel regarding *Complaint Counsel's Motion to Shorten Respondents' Time to Respond to the Motion to Amend Scheduling Order*.

On February 16, 2011, Complaint Counsel emailed Respondents' Counsel, John Graubert and Skye Perryman, at 1:54 PM to advise them of Complaint Counsel's plan to file today the instant Motion to Shorten Respondents' Time to Respond to the Motion to Amend Scheduling Order. By that email, Complaint Counsel requested that Respondents' Counsel respond to them regarding the requested relief no later than 4 PM today. According to Complaint Counsel's email records, Mr. Graubert and Ms. Perryman read the email request at 2:11 PM and 1:55 PM, respectively. As of 4:50 PM, February 16, 2011, the parties have been unable to reach an agreement.

Dated: February 16, 2011

/s/ Janet M. Evans
Janet M. Evans (202) 326-2125
Mary L. Johnson (202) 326-3115
Federal Trade Commission
Bureau of Consumer Protection
601 New Jersey Avenue, NW
Washington, DC 20580 2010

CERTIFICATE OF SERVICE

I certify that on February 16, 2011 I caused the filing and serving of *Complaint Counsel's Motion to Shorten Respondents' Time to Respond to the Motion to Amend Scheduling Order* upon the following as set forth below:

One electronic copy via the FTC E-Filing System to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580

One paper copy via hand delivery and one electronic copy via email to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy via email to:

John D. Graubert, Esq.
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington DC 20004-2401
Email: Jgraubert@cov.com

Kristina Diaz, Esq.
Roll Law Group
kdiaz@roll.com

Bertram Fields, Esq.
Greenberg Glusker
bfields@greenbergglusker.com

Attorneys for Respondents

Date: February 16, 2011

/s/ Janet M. Evans
Janet M. Evans
Complaint Counsel