

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
POM WONDERFUL LLC and ROLL)
GLOBAL, as successor in interest to Roll)
International companies and)
)
STEWART A. RESNICK, LYNDA RAE)
RESNICK, and MATTHEW TUPPER,)
individually and as officers of the)
companies.)
)

Docket No. 9344
PUBLIC



MOTION FOR LEAVE TO FILE A REPLY

Pursuant to Rule 3.22(d) of the Commission’s Rules of Practice, Respondents respectfully request leave to file a Reply under 450 words in response to Complaint Counsel’s Opposition to Respondents’ Motion to Extend the Closing of the Record and to Compel Complaint Counsel to Further Define the Advertisements and Claims at Issue in this Case. This Reply is necessary to bring to the Court’s attention an issue that could not have been raised Respondents’ opening motion, namely Complaint Counsel’s characterization of Respondents’ counsel’s role in the *Ocean Spray* proceeding. As outlined in their motion for an extension of time to close the record, due to the fact Complaint Counsel sought to call a rebuttal witness, the hearing did not conclude until early November, which means that Respondents’ counsel are now largely unavailable to draft and finalize post-trial briefing until December. In their Opposition, Complaint Counsel mischaracterizes Respondents’ counsel’s role in the proceedings. Respondents would be prejudiced if they not permitted to explain Complaint Counsel’s mischaracterization of their counsel’s participation in the parallel proceeding and their inability to participate fully in post-trial briefing within the next several weeks.

For the foregoing reasons, Respondents request that this motion be granted. A conditional copy of Respondents' Reply has been attached hereto as Exhibit A for the Court's convenience.

Dated: November 17, 2011

Respectfully submitted,

/s/ Skye Perryman

John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Tel.: 202-662-5938
Facsimile: 202-778-5938
Email: JGraubert@cov.com
SPerryman@cov.com

Kristina M. Diaz
ROLL LAW GROUP PC
11444 W. Olympic Blvd.
10th Floor
Los Angeles, CA 90064
Tel.: 310-966-8775
Email: KDiaz@roll.com

Bertram Fields
GREENBERG, GLUSKER LLP
1900 Avenue of the Stars
Los Angeles, CA 90067
Tel.: 310-201-7454
Email: BFields@ggfirm.com

Counsel for Respondents

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

In the Matter of)	
)	
POM WONDERFUL LLC and ROLL)	Docket No. 9344
GLOBAL, as successor in interest to Roll)	PUBLIC
International companies and)	
)	
STEWART A. RESNICK, LYNDA RAE)	
RESNICK, and MATTHEW TUPPER,)	
individually and as officers of the)	
companies.)	

MEET AND CONFER STATEMENT

Respondents' Counsel contacted Complaint Counsel on November 17, 2011. Complaint Counsel declined to consent to Respondents' request for a Reply.

Dated: November 17, 2011

Respectfully submitted,

/s/ Skye Perryman

John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Tel.: 202-662-5938
Facsimile: 202-778-5938
Email: JGraubert@cov.com
SPerryman@cov.com

Kristina M. Diaz
ROLL LAW GROUP PC
11444 W. Olympic Blvd.
10th Floor
Los Angeles, CA 90064
Tel.: 310-966-8775
Email: KDiaz@roll.com

Bertram Fields
GREENBERG, GLUSKER LLP
1900 Avenue of the Stars
Los Angeles, CA 90067
Tel.: 310-201-7454
Email: BFields@ggfirm.com

Counsel for Respondents

EXHIBIT A

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

In the Matter of)	
)	
POM WONDERFUL LLC and ROLL)	Docket No. 9344
GLOBAL, as successor in interest to Roll)	PUBLIC
International companies and)	
)	CONDITIONALLY
STEWART A. RESNICK, LYNDA RAE)	SUBMITTED
RESNICK, and MATTHEW TUPPER,)	
individually and as officers of the)	
companies.)	

**RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION FOR AN EXTENSION
OF TIME TO CLOSE THE RECORD**

In its opposition, Complaint Counsel suggests that POM Wonderful LLC's ("POM") pending lawsuit, *POM Wonderful LLC v. Ocean Spray Cranberries, Inc.*, CV09-00565 DDP (RZx) (C.D. Cal.) ("Ocean Spray") does not necessitate a further delay because it is "implausible that 'the entire Roll Law Group team'...are working full time on the Ocean Spray litigation and therefore that the Respondents are unable to meet the post-trial briefing schedule in this matter." (Oppn. at 5.) In support of this bold assertion, Complaint Counsel examines the dockets of both cases and notes only that Bert Fields has entered an appearance both the *Ocean Spray* case and the instant action. (*Id.*)

Complaint Counsel's cursory review and reliance on the PACER docket, however, does not reflect an accurate understanding of Roll Law Group's involvement in both cases. While it is true that certain Roll Law Group attorneys involved in this case have not entered formal appearances in the *Ocean Spray* action, a very significant number of attorneys devoted for the last year to the FTC litigation and to pre-trial and post-trial briefing in the FTC case are now consumed by the *Ocean Spray* matter (and some have been devoted to the *Ocean Spray* litigation

for the last several months). With the exception of John Graubert from the Covington & Burling firm, for example, Respondents' entire bench at the FTC trial is currently working on the *Ocean Spray* trial, where Pom's health benefit claims are also at issue. Both Kristina Diaz, from Roll Law Group and Mr. Fields are, in fact, acting as lead trial counsel in the *Ocean Spray* case.

Moreover, Complaint Counsel knows full well that several persons with Roll Law Group who are defending the FTC litigation, including Brooke Hammond, Alicia Mew, Johnny Traboulsi, and Adam Zaffos—all of whom are on the service list of Complaint counsel, have also been heavily involved in the preparation of the *Ocean Spray* case and are currently working on that trial. In addition, several other members of the FTC defense team (at least 4 others) who are not identified on Complaint Counsel's service list are also working on the *Ocean Spray* matter, as they must, until trial concludes. Many of these lawyers play integral roles in both actions, and all of them are involved in the FTC briefing. This should come as no surprise to Complaint Counsel, who have always understood that a common nucleus of attorneys from Roll Law Group have worked, and continue to work, on both cases, irrespective of whether or not, a formal notice of appearance has been entered.

Dated: November 17, 2011

Respectfully submitted,

/s/ Skye Perryman

John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Tel.: 202-662-5938
Facsimile: 202-778-5938
Email: JGraubert@cov.com
SPerryman@cov.com

Kristina M. Diaz
ROLL LAW GROUP PC
11444 W. Olympic Blvd.
10th Floor
Los Angeles, CA 90064
Tel.: 310-966-8775
Email: KDiaz@roll.com

Bertram Fields
GREENBERG, GLUSKER LLP
1900 Avenue of the Stars
Los Angeles, CA 90067
Tel.: 310-201-7454
Email: BFields@ggfirm.com

Counsel for Respondents

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
POM WONDERFUL LLC and)	
ROLL GLOBAL LLC,)	
as successor in interest to Roll)	
International Corporation,)	
)	
companies, and)	Docket No. 9344
)	PUBLIC
STEWART A. RESNICK,)	
LYNDA RAE RESNICK, and)	
MATTHEW TUPPER, individually and)	
as officers of the companies.)	

CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of Respondents' **MOTION FOR LEAVE TO FILE A REPLY**, and that on this 17th day of November, 2011, I caused the foregoing to be served by FTC E-File, hand delivery and e-mail on the following:

Donald S. Clark
The Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
H-159
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Rm. H-110
Washington, DC 20580

I hereby certify that this is a true and correct copy of Respondents' **MOTION FOR LEAVE TO FILE A REPLY**, and that on this 17th day of November, 2011, I caused the foregoing to be served by e-mail on the following:

Mary Engle
Associate Director for Advertising Practices
Bureau of Consumer Protection
Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20580

Mary Johnson, Senior Counsel
Heather Hipsley
Tawana Davis
Federal Trade Commission
Bureau of Consumer Protection
601 New Jersey Avenue, NW
Washington, DC 20580

Counsel for Complainant

/s Skye Perryman

John D. Graubert
Skye L. Perryman
COVINGTON & BURLING LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004-2401
Telephone: 202.662.5938
Facsimile: 202.778.5938
E-mail: JGraubert@cov.com
SPerryman@cov.com

Kristina M. Diaz
Roll Law Group P.C.
11444 West Olympic Boulevard, 10th Floor
Los Angeles, CA 90064
Telephone: 310.966.8775
E-mail: kdiaz@roll.com

Bertram Fields
Greenberg Glusker
1900 Avenue of the Stars
21st Floor
Los Angeles, California 90067
Telephone: 310.201.7454

Counsel for Respondents

Dated: November 17, 2011