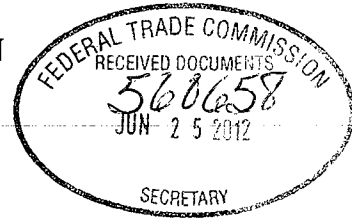


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

ORIGINAL



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

Docket No. 9344
PUBLIC

**RESPONDENT MATTHEW TUPPER'S OPPOSITION TO
COMPLAINT COUNSEL'S MOTION TO REOPEN THE RECORD**

Respondent Matthew Tupper incorporates by reference the arguments raised by Respondents in their Opposition to Complaint Counsel's Motion to Reopen the Record filed concurrently herewith. In addition to the arguments raised therein, Mr. Tupper also submits the following, additional grounds why the record should not be re opened in this matter:

Complaint Counsel seeks to reopen the record to admit certain advertisements made by Respondent POM Wonderful LLC ("POM") after the public issuance of the Initial Decision on May 21, 2012, and following Mr. Tupper's departure from POM approximately seven months ago. The advertisements sought to be admitted are not probative of any claim against Mr. Tupper and are highly prejudicial in light of Mr. Tupper's departure. In determining whether to reopen the record, the Commission considers: (1) whether the moving party can demonstrate due diligence; (2) the extent to which the proffered evidence is probative; (3) whether the evidence is cumulative; and (4) and whether reopening the record would prejudice the non-moving party. *In re Brake Guard Products, Inc.* 125 F.T.C. 138 (1998).

In its Motion, Complaint Counsel claims, among other things, that "Respondents' new POM product advertisements are highly probative of whether the provisions of the Order issued

by the ALJ are adequate to address Respondents' conduct in the future" and suggest that "Respondents continue to engage in the deceptive conduct that Complaint Counsel challenged at trial..." (Mot. at 5.) As the record demonstrated, however, Mr. Tupper retired from POM at the end of 2011 and no longer has any involvement with the company. (RFF 53-54.)

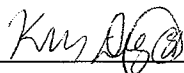
If the Commission grants Complaint Counsel's Motion, POM's recent advertising campaign, if anything, is only further evidence that Mr. Tupper had no control over the dissemination of POM's advertising. The evidence is undisputed that Mr. Tupper retired at the end of 2011. As such, Mr. Tupper certainly did not play (and could not have played) any role in launching POM's "aggressive advertising campaign" as alleged by Complaint Counsel in the Motion to Reopen the Record. (Mot. at 6.) Thus, because POM's advertising practices after the Initial Decision cannot be attributed to Mr. Tupper given his long absence from the company and clear lack of control, the probative value of such new evidence, if any, should only aid the Commission in a determination that Mr. Tupper is not liable and that any order against him would be both without merit and purposeless.

Finally, it would be patently inequitable and prejudicial to consider any such new "evidence" created after Mr. Tupper's departure to support an order against him. There is no basis in the law to support this view and Complaint Counsel has not presented any such authority.

For the foregoing reasons and those incorporated in Respondents' separate opposition, Complaint Counsel's Motion to Reopen the Record should be denied.

Dated: June 25, 2012

Respectfully submitted,



Kristina M. Diaz, Esq.
Alicia Mew, Esq.
Johnny Traboulsi, Esq.
Brooke Hammond, Esq.
Roll Law Group P.C.
11444 West Olympic Blvd., 10th Floor
Los Angeles, CA, 90064
Tel: 310.966.8400
Fax: 310.966.8810
Email: kdiaz@roll.com

John Graubert, Esq.
Skye Perryman, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.662.6000
Fax: 202.662.6291
Email: jgraubert@cov.com

Bertram Fields, Esq.
Greenberg Glusker Fields
Claman & Machtinger, LLP
1900 Avenue Of The Stars, Suite 2100
Los Angeles, Ca 90067
Tel: 310.553.3610
Fax: 310.553.0687
Email: Bfields@Greenbergglusker.Com

CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of Respondents' **OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO REOPEN THE RECORD**, and that on this 25th day of June, 2012, I caused the foregoing to be served by hand delivery and email on the following:

Donald S. Clark
The Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Rm. 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' **OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO REOPEN THE RECORD**, and that on this 25th day of June, 2012, 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
E-mail: mengle@ftc.gov

Mary Johnson, Senior Counsel
Heather Hipsley
Tawana Davis
Federal Trade Commission
Bureau of Consumer Protection
601 New Jersey Avenue, NW
Washington, DC 20580
E-mail: mjohnson1@ftc.gov
hhipsley@ftc.gov
tdavis@ftc.gov

Counsel for Complainant

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
Johnny Traboulsi
Brooke Hammond
Alicia Mew
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, Esq.
Greenberg Glusker Fields Claman &
Machtinger, LLP
1900 Avenue of the Stars, Suite 2100
Los Angeles, CA 90067
Telephone: 310.553.0687
Email: bfields@greenbergglusker.com

Counsel for Respondents