



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Paul L. Foster,
Western Refining, Inc., and
Giant Industries, Inc.

Docket No. D09323

PUBLIC

DECLARATION OF DAVID F. SMUTNY

I, David F. Smutny, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for Defendants Paul L. Foster and Western Refining, Inc. I make this declaration pursuant to Rule 4.1(d) of the Federal Trade Commission's Rules of Practice.

2 I am a member of the Bar of the District of Columbia (D.C. No. 425714).

CERTIFICATE OF SERVICE AND COMPLIANCE

I, Nara Neves, hereby certify that on June 4, 2007 copies of the foregoing **NOTICE OF APPEARANCE** were served as indicated:

Hon. Stephen J. McGuire
Chief Administrative Law Judge

Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 113
Washington, D.C. 20580
(Via hand delivery)

Donald S. Clark
Federal Trade Commission

600 Pennsylvania Avenue NW
Room H-135
Washington, DC 20580
Tel: 202-326-3665
dclark@ftc.gov; secretary@ftc.gov
(Via e-mail and hand delivery)

Marc Schneider

Thomas Lang
Andrea Ryan
Keitha Clopper
Eric Sprague
Karen Kazmerzak
India Williams

Tom D. Smith
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001
Tel: 202-879-3971
tdsmith@jonesday.com
(Via e-mail and mail delivery)

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.



Nara Neves
HELLER EHRMAN LLP
202.912.2638