



ARGUMENT

Sun Clinical's motion was filed without a good faith attempt to confer in breach of

Commission Rule 3.22(a) and is essentially an attempt to have the Court reconsider its previous

Matter of Lab. Corp. of Am. et al., No. 9345 at 3 (F.T.C. February 8, 2011) (Chappell, J.);
Hoelzel v. First Select Corp., 214 F.R.D. 634, 635-36 (D. Colo. 2003) (good faith attempt to confer not made where counsel made a phone call, learned opposing counsel was unavailable for the next two days, and filed motion to compel the next day). Accordingly, the motion should be dismissed for failure to comply with rule 3.22(a)

B. Sun Clinical's Motion Attempts to Relitigate Issues Already Decided by the

Court

Sun Clinical's motion should also be dismissed because it is nothing more than a second attempt to obtain the "broader" protective order that was considered and rejected by this Court

last month. See *Order Denying Sun Clinical's Motion for Broader Protective Order, In the Matter of Lab. Corp. of Am. et al.*, Docket No. 9345 (F.T.C. January 28, 2011) (Chappell, J.). Sun Clinical tries to distinguish the present motion by emphasizing that the documents now at

C. The Protective Order in this Case Is Sufficient to Protect Sun Clinical's Interests

LabCorp does not take issue with Sun Clinical's general proposition that its confidential business information should be protected from public disclosure. But Sun Clinical's reliance on case law advocating issuance of a protective order to safeguard confidential information is inapposite because *there is already a protective order in place. As the Court has already found*

the protective order entered by the Court is sufficient to protect Sun Clinical's confidential business information.

proceeding.” *In re Kaiser Alum. & Chem. Corp.*, No. 9080 1976 FTC LEXIS 68 at *19-20 (Nov. 12, 1976); see also *In the Matter of Intel Corp.* at 2 (quoting *In re Kaiser Alum. & Chem. Corp.*).

with physician groups and health plans, and paragraphs seven and eight request information on bids Sun Clinical has made to provide services to physician groups since 2005. Paragraph sixteen requests information about Sun Clinical's network of patient service centers and lab facilities. All of these requests directly address Sun Clinical's status as a competitor and its

ability to compete in the relevant product market for the time period at issue in this case.

Corey W. Roush
Benjamin F. Holt
Hogan Lovells US LLP

Washington, DC 20004-1109
(202) 637-5600 (telephone)
(202) 637-5910 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed via hand delivery an original with signature and one paper copy and via FTC e-file a PDF copy that is a true and correct copy of the ~~_____~~

original of the foregoing document with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580
secretary@ftc.gov

I also certify I delivered via electronic mail and hand delivery a copy of the foregoing to ~~_____~~