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

ORIGINAL

In the Matter of LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Respondents.	DOCKET NO. 9345

ORDER DENYING SUN CLINICAL'S MOTION TO QUASH OR LIMIT SUBPOENA DUCES TECUM

I.

On February 4, 2011, third party Sun Clinical Laboratories ("Sun Clinical") filed a "Motion to Quash and/or Limit Subpoena Duces Tecum and Protective Order"

III.

A. Meet and Confer Requirement

Rule 3.22 of the Commission's Rules of Practice requires that each motion to quash shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. 16 C.F.R. § 3.22(g). Sun Clinical attaches to its Motion a signed declaration from counsel describing the telephone calls it placed to Respondents' counsel on February 2, 2011 and February 3, 2011, and the e-mail it sent to Respondents' counsel on February 3, 2011. The declaration further recites that counsel for Sun Clinical was informed that counsel for Respondents were travelling for the preliminary injunction hearing in the related federal action between the parties.[1] Sun Clinical avers that it filed its Motion on February 4, 2011, due to the 10 day time limit in the Commission's Rules for filing motions to quash. *See* 16 C.F.R. § 3.34(c) ("Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith.").

Counsel have a duty to make an effort in good faith to confer with opposing counsel before filing a motion to quash. 16 C.F.R. § 3.22(g). The efforts undertaken by Sun Clinical scarcely amount to an effort in good faith to resolve the dispute. What

action to obtain the information sought; or (iii) the burden and expense of the proposed discovery outweigh its likely benefit. 16 C.F.R. § 3.31(c)(2). In addition, the Administrative Law Judge may deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding. 16 C.F.R. § 3.31(d).

[redacted]

trade secrets, asserting that disclosure would ruin Sun Clinical's competitive standing and grant its competitors all the information needed to effectively strategize against Sun Clinical's business plans and wipe out its business. As Sun Clinical was previously informed in the January 28, 2011 Order, courts routinely address concerns that a business' confidential information will be disclosed to competitors by issuing a protective order restricting information to outside counsel only. Such a Protective Order has been entered in this case. *See* January 28, 2011 Order at 2.

"The fact that discovery might result in the disclosure of sensitive competitive [redacted]

request is unduly burdensome. *FTC v. Dresser Indus., Inc.*, 1977 U.S. Dist. LEXIS 16178 at *12 (D.D.C. 1977); *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *9 (Jan. 15, 2009). "Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience