

The Board might have credibly pled ignorance of the stringent standards for an interlocutory appeal pursuant to Commission Rule 3.23(b) when it filed its first application for interlocutory appeal on February 2, 2011. The Commission's Order of February 9, 2011, however, clearly instructed the Board regarding the plain meaning of Rule 3.23(b). Disregarding the Commission's Order, the Board once again falls far short of establishing any of the elements. Accordingly, the present application should be summarily denied.

Respectfully submitted,

s/ Richard B. Dagen
Richard B. Dagen
William L. Lanning
Michael J. Bloom
Melissa Westman-Cherry
Counsel Supporting Complaint
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue NW
Washington, DC 20580

Dated: March 4, 2011

("In this case, the ALJ denied Respondent's application to take an interlocutory appeal on a timely basis [under Rule 3.23(b)]. No interlocutory appeal therefore may be taken.").

BAEA
II I
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In the Matter of)

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Respondent.)

D9343

P P
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administrative law judges that the Commission will exercise broadly its undisputed authority to review interlocutory rulings will tend toward the atrophy of their sense of responsibility for the impact of their rulings on the proceedings before them.”). Judge Chappell, in his discretion, denied the Rule 3.23(b) certifications necessary for this interlocutory appeal, and, thus, the Board’s application was improvidently filed.

Accordingly, ~~III~~ the Board’s application for interlocutory
Commission review of the denial of its disclosure motion be, and it hereby is, ~~D~~

By the Commission, Commissioner Brill recused.

Donald S. Clark
Secretary

SEAL.
ISSUED:

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I hereby certify that on March 4, 2011, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

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

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Noel Allen
Allen & Pinnix, P.A.
333 Fayetteville Street
Suite 1200
Raleigh, NC 27602
nla@Allen-Pinnix.com

~~FILE~~
TT

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

March 4, 2011

By: s/ Richard B. Dagen
Richard B. Dagen