

UNITED STATES OF AMERICA
BEFORE THE FEDERAL

08 07 2012
561450

Rule 3.43(b) requires admission of all ~~evidence~~ that is “relevant, material, and reliable,” unless that evidence is more prejudicial than probative, or its presentation would cause “undue delay, waste of time, or needless presentation of cumulative evidence.” 16 C.F.R. § 3.43(b). Significantly, the Commission amended Rule 3.43(b) in 2009 to add language that expressly ~~allows~~ the admission of IH transcripts:

If otherwise meeting the standards for ~~admissibility~~ described in this paragraph, depositions, ~~investigational hearings,~~ prior testimony in Commission or other proceedings, expert reports, and any ~~other~~ form of hearsay, shall be admissible and shall not be excluded solely on ~~the~~ ground that they are or contain hearsay.

Id. (emphasis added). ~~In addition,~~ Rule 3.43(b) requires admission of all relevant party-opponent statements. ~~Id.~~ (“Statements or testimony by a party-opponent, if relevant, shall be admitted.”) (emphasis added).

In short, Respondent's own actions demonstrate the reliability of IH transcripts in this case.

II. Admission of the IH Transcripts Will Not Unduly Waste Time Or Duplicate Evidence

Respondent's Motion also baselessly asserts that admission of any IH transcripts will waste time and duplicate evidence. Respondent's Motion, however, never explains how admitting the IH transcripts would cause any undue delay. To the contrary, Paragraph 19 of the Court's Scheduling Order ensures the opposing deposition transcripts will not be read into the record or presented to the Court without the Court's

III. Respondent Has No Basis for Opposing Admission of IH Transcripts for McWane Executives

Respondent's Motion as it pertains to IH transcripts of McWane executives must also fail. With respect to party opponent testimony, 3.43(b) states, "Statements or

prehearing conference on August 30, 2012. ² Respondent's Motion tries to circumvent this Court's specific procedures ³ for objections to designations of specific IH testimony, it should be denied.

Conclusion

For the above reasons, Complaint Counsel respectfully requests that this Court deny Respondent's Motion.

Dated: August 7, 2012

Respectfully submitted,

/s/ Monica Castillo

Edward D. Hassi, Esq.
Geoffrey M. Green, Esq.
Linda M. Holleran, Esq.
Thomas H. Brock, Esq.
Michael J. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.
Monica M. Castillo, Esq.

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-3496
Electronic Mail: ehassi@ftc.gov

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
)	PUBLIC
McWANE, INC.,)	
Respondent.)	DOCKET NO. 9351
)	
)	

DECLARATION OF MONICA M. CASTILLO

Pursuant to 28 U.S.C. § 1746, I make the following statement:

1. My name is Monica M. Castillo. I am making this statement in *In the Matter of McWane, Inc.*, FTC Docket No. 9351, in support of Complaint Counsel’s opposition to McWane, Inc.’s Motion *in Limine* to Preclude Complaint Counsel Proposed Proffer of Investigational Hearing Transcripts at Trial (“Motion”). All statements in this Declaration are based on my personal knowledge as a Staff Attorney for the U.S. Federal Trade Commission, Bureau of Competition, and if called upon to testify, I could competently do so.
2. Complaint Counsel produced the Investigational Hearing (“IH”) transcripts for all 18 witnesses from its Part 2 investigations to Respondent at the beginning of Part 3 discovery. There were 19 transcripts in total, since there were two investigational hearings of a single witness.
3. During Part 3 discovery, Respondent deposed each IH witness. At deposition, Respondent examined the witness’ credibility and the bases for their prior testimony, and often asked IH witnesses to re-affirm their prior IH testimony.

4. The Part 3 depositions were brief, as Complaint Counsel and Respondent split single, 7-hour days with witnesses who were directly involved in

CERTIFICATE FOR ELECTRONIC FILING

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~~ original of the signed document that is available for review ~~by~~ the parties and the adjudicator.

August 7, 2012

By: s/ Thomas H. Brock
Thomas H. Brock