

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LITIGATION

In the Matter of

Axon Enterprise, Inc.  
a corporation,

and

Safariland, LLC,  
a partnership,

Respondents

Docket No. 9389

ORDER ON RESPONDENT'S  
MOTION TO ADJOURN

On February 7, 2020, pursuant to Rule 3.41(b) of the Federal Trade Commission's ("FTC") Rules of Practice, Respondent Axon Enterprise, Inc. ("Axon") filed a Motion to Adjourn the Hearing from May 21 through June 12, 2020. In the absence of Axon's inclusion in litigation counsel, Respondent Complaint Counsel filed an opposition to the Motion. Axon's separate request, filed in this matter on May 14, 2020, was recessed on Thursday, May 14, 2020. For the reasons set forth below, the Motion is DENIED in part and GRANTED in part.

The evidentiary hearing in this matter is set to begin on May 19, 2020. Respondent proposes that the parties present opening statements on May 19, 2020, but that the presentation of evidence be delayed until Monday, May 25, 2020. Ms. Petersen, Axon's director of litigation, provided a declaration which provides in pertinent part:

Hearings shall proceed with the same level of expeditiousness and shall be held at one place and shall continue, except for brief intervals of suspension normally involved in judicial proceedings, without suspension until concluded.


Respondent argues that Ms. Petersen is the person most knowledgeable and most experienced with Axon's business. Respondent argues that the requested delay will not materially impact the overall timeline for resolving this case and will not cause any prejudice. Respondent further argues that Respondent's Motion for a Continuance of the hearing is not opposed by the Motion.

Complaint Counsel disputes that this case is essential for Ms. Petersen to be present for the entire hearing, asserting that Ms. Petersen is not a lead counsel and that her work is represented by numerous qualified in-house counsel as well as a judge in whose jurisdiction Counsel further argues that a three-week adjournment to accommodate an out-of-office attorney such as Ms. Petersen does not constitute a "brief interval" as required under Rule 3.41.

Having fully considered the Motion, the Commission and the comments submitted in support thereof, Respondent has failed to establish that the requested adjournment meets the standard of Rule 3.41. An adjournment from May 21 until June 15 would be a delay of more than three weeks. Respondent's assertion that the delay is not a "brief interval" is not supported by the evidence. Respondent provides no basis for concluding that such a period of delay – to accommodate personal obligations – is reasonable in judicial proceedings. While the Commission might prefer to have Ms. Petersen personally attend each day of the presentation for evidence, Respondent's argument that Ms. Petersen is uniquely qualified to provide able assistance is conclusory and insufficiently supported. As Ms. Petersen acknowledges in her declaration attached to the Motion, "my absence is inevitable." Motion Exhibit B ¶ 5. Respondent has ample time to prepare another in-house attorney to appear during Ms. Petersen's absence. In addition, the Commission is not persuaded that Ms. Petersen's presence during her vacation, should it be necessary.

For all the reasons stated, Respondent's Motion to Adjourn the hearing from May 21 through June 12, 2020 is DENIED. The requested request for a two-day recess until May 29, 2020, to enable Axon's lead counsel to attend to another matter is GRANTED.

ORDERED:

  
D. Michael Clapp  
Chief Administrative Law Judge

Date: February 28, 2020