

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

03 16 2018

590038

In the Matter of

Otto Bock HealthCare North  
America, Inc.,  
a corporation,

Respondent.

Docket No. 9378



**COMPLAINT COUNSEL'S RESPONSE TO FOURROUX PROSTHETICS, INC.'S  
AMENDED MOTION TO QUASH SUBPOENAS DUCES TECUM AND MOTION TO  
QUASH SUBPOENAS AD TESTIFICANDUM**

Both Complaint Counsel and Respondent have served subpoenas *duces tecum* (“document subpoenas”) on Fourroux Prosthetics, Inc., which Fourroux Prosthetics has moved the Court to quash. As set forth below, Complaint Counsel does not oppose this motion, so long as Respondent does not oppose the motion either. If Respondent pursues document production from Fourroux, however, Complaint Counsel at least must have the opportunity to participate in any meet and confer between Respondent and Fourroux, as if our subpoena were still outstanding, to ensure that any production is not one-sided in favor of Respondent.

Complaint Counsel and Respondent also both served subpoenas *ad testificandum* (“deposition subpoenas”) on Keith Watson, the owner of Fourroux. Complaint Counsel opposes the motion of Fourroux to quash these subpoenas because Mr. Watson’s deposition is necessary for the litigation. However, Complaint Counsel sees no need for a separate deposition of Fourroux, as noticed by Respondent, and therefore does not oppose Fourroux’s motion to quash the Rule 3.31(c)(1) notice that Respondent served on the company.





citation omitted); *Plant Genetic Systems, N.V. v. Northrup King Co., Inc.*, 6 F.Supp.2d 859, 862 (E.D. Mo. 1998) (stating that a motion to quash should be denied where third party “has done little more than make the bare assertion that it is burdensome for it to comply”); *Ispat Inland, Inc. v. Kemper Environmental, Ltd.*, 2007 WL 737786 at \*2 (D. Minn. March 8, 2007) (same).

Fourroux incorrectly contends that the deposition subpoenas are improper, and should be quashed, because “Otto Bock and the FTC would be better-served by obtaining their desired information from a different third-party,” and that certain categories of information are already in the possession of Respondent. Motion to Quash at 4, 5. There is no basis in the law for the contention that, because information may potentially be available from one third party, it is not proper for a litigant to seek that

Fourroux also contends that information is better sought from one of “several trade organizations that can provide exactly the information that these parties desire.” Motion to Quash at 4. To the extent that argument is intended to apply to Mr. Watson’s subpoena, there is no evidence on the record that any of these trade associations does, in fact, possess all relevant information sought by the deposition subpoenas directed to Mr. Watson, or that any organization thus represents the “single source likely to have all of the necessary information,” referenced by the Commission in its *Humana* Order. *In the matter of subpoena Duces Tecum issued to Humana, Inc.*, F.T.C. File No. 161-0026 (Jun. 5, 2017) at 5. Indeed, the source most likely to have all of the necessary information about Fourroux’s purchasing practices and views of the market and its participants is Mr. Watson.

**3. Complaint Counsel Does not Oppose Fourroux’s Motion to Quash the Rule 3.31(c)(1) Deposition Subpoena Issued by Respondent to Fourroux**

Complaint Counsel does not oppose Fourroux’s motion to quash the Rule 3.31(c)(1) deposition subpoena that Respondent has served on Fourroux requiring testimony from a corporate representative. It is Complaint Counsel’s position that testimony from Mr. Watson, Fourroux’s owner, will provide both Complaint Counsel and Respondent counsel adequate access to information about how Fourroux’s business operates and participates in the marketplace for prosthetic products, including the microprocessor-controlled knee market.

**CONCLUSION**

For the foregoing reasons, this Court should reject Fourroux’s motion to quash the deposition subpoenas issued to Keith Watson in his personal capacity. Complaint Counsel does not oppose Fourroux’s motion to quash the document subpoenas issued to Fourroux by Respondent and by Complaint Counsel, or Fourroux’s motion to quash the deposition subpoena issued to Fourroux seeking testimony from a corporate representative.

Dated: March 16, 2018

Respectfully Submitted,

/s/ Daniel Zach

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## **CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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I also certify that I delivered via electronic mail a copy of the foregoing document to:

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

March 16, 2018

By: /s/ Daniel Zach