

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
JUDGE



In the Matter of

Docket No. 9372

1-800 Contacts, Inc.
a corporation

**RESPONDENT 1-800 CONTACTS' MOTION FOR LEAVE TO FILE A
REPLY BRIEF IN SUPPORT OF MOTION FOR DISCOVERY FROM THE
COMMISSION PURSUANT TO RULE 3.36**

Pursuant to Rule 3.22 of the Rules of Practice for Adjudicative Proceedings, Respondent 1-800 Contacts, Inc. respectfully moves for leave to file the attached four-page proposed reply

brief in support of its Motion for Discovery From the Commission Pursuant to Rule 3.36. It

[REDACTED]

[REDACTED]

opposition.

3. Respondent also seeks leave to file a reply to address Complaint Counsel's argument that a party that seeks the issuance of a Rule 3.36 subpoena must demonstrate a "special showing of need." Opp. at 1, 2. Because that standard does not appear in Rule 3.36 and is inconsistent with the language that is in Rule 3.36, 1-800 Contacts had no reason or

[REDACTED]

PUBLIC

Phone: (415) 512-4085

Fax: (415) 512-4085

Copyright © 1999 Contracta, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

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

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

DATED: October 18, 2016

By: /s/ Justin P. Raphael
Justin P. Raphael

CERTIFICATE FOR ELECTRONIC FILING

I hereby 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.

DATED: October 18, 2016

By: /s/ Justin P. Raphael

Notice of Electronic Service

I hereby certify that on October 19, 2016, I filed the following documents with the Court and the Clerk of the Court:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

ggreen@ftc.gov
Complaint

Nathaniel Hopkin
Attorney

Federal Trade Commission
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

nhopkin@ftc.gov
Complaint

Charles A. Loughlin
Attorney
Federal Trade Commission
cloughlin@ftc.gov
Complaint

Daniel Matheson
Attorney
Federal Trade Commission
dmatheson@ftc.gov
Complaint

Charlotte Slaiman
Attorney
Federal Trade Commission
cslaiman@ftc.gov
Complaint

Mark Taylor
Attorney
Federal Trade Commission
mtaylor@ftc.gov
Complaint

Gregory P. Stone
Attorney
Munger, Tolles & Olson LLP
gregory.stone@mto.com
Respondent

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Justin P. Raphael
Munger, Tolles & Olson LLP
Justin.Raphael@mto.com
Respondent

Sean Gates
Charis Lex P.C.
sgates@charislex.com
Respondent

Mika Ikeda
Attorney
Federal Trade Commission
mikeda@ftc.gov
Complaint

Justin Raphael
Attorney

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

In the Matter of

PUBLIC

Docket No. 9372

I, Justin P. Raphael, declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel for Respondent 1-800 Contacts, Inc. in this matter. I am duly licensed to practice law before the courts of the State of California and have appeared in the action pursuant to Rule 4.1 of the Commission's Rules of Practice. I previously submitted a Declaration in Support of Respondent's Motion for Discovery From the Commission Pursuant to Rule 3.36 in this matter on October 3, 2016.

2. I submit this Supplemental Declaration in Support of Respondent's Motion for Leave to File a Reply in Support of Motion for Discovery From the Commission Pursuant to Rule 3.36. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to them.

3. On September 20, 2016, I participated in a telephone conference with Complaint Counsel Daniel Matheson and Kathleen Clair. During this telephone

[REDACTED]

foregoing is true and correct.

[REDACTED]

/s/Justin P. Raphael
Justin P. Raphael

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW, Room 11112

[REDACTED]

Washington, DC 20580

CERTIFICATE FOR ELECTRONIC FILING

I hereby 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

[REDACTED]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

1-800 CONTACTS, INC.,
a corporation

PUBLIC

Do Not

[PROPOSED] ORDER GRANTING
RESPONDENT'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF
MOTION FOR DISCOVERY FROM THE COMMISSION PURUSANT TO
RULE 3.36

Upon consideration of Respondent's Motion for Leave to File a Reply in

Support of Motion for Discovery from the Commission Pursuant to Rule 3.36
[REDACTED]

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

DATED:

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

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

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

DATED: October 18, 2016

By: /s/ Justin P. Raphael

CERTIFICATE FOR ELECTRONIC FILING

I hereby 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.

DATED: October 18, 2016

By: /s/ Justin P. Raphael
Justin P. Raphael

PUBLIC

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

In the Matter of

1-800 CONTACTS, INC.,
a corporation

PUBLIC

Docket No. 9372

RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR DISCOVERY FROM THE
COMMISSION PURSUANT TO RULE 3.36

Complaint Counsel do not dispute the relevance of affidavits and requests related to

[REDACTED]

have not reviewed them.

I. RULE 3.36 DOES NOT REQUIRE A SHOWING OF A SPECIAL NEED

Complaint Counsel are incorrect that Rule 3.36 required Respondent to

demonstrate a "special need" for the proposed discovery. *Opp. at 17, 46. Rule 3.36 says*

[REDACTED]

nothing about a "special showing of need" or "special need." Complaint Counsel cite no case

“with reasonable particularity.” 16 C.F.R. § 3.36(b). As explained in Respondent’s Motion and below, the proposed subpoena meets these standards.

II. COMPLAINT COUNSEL’S BURDEN ARGUMENTS LACK ANY BASIS

Unable to dispute the relevance of the information requested, the Complaint Counsel argues that the proposed subpoena is overly broad and burdensome. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

First, reporting to the familiar refrain of “16 C.F.R. § 3.36(b)”, the Complaint Counsel argues that the proposed subpoena is overly broad and burdensome. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation. The proposed subpoena is not overly broad or burdensome. It is limited to the information requested in the Complaint and is necessary to the Commission’s investigation.

subpoena's supposed burden. At any rate, according to Complaint Counsel's own authority, the remedy for an overbroad request (which this is not) would be to deny the motion without prejudice and with leave to renew the motion as to a narrower subpoena. See *In Re Associated*

[REDACTED]

Second, Complaint Counsel suggest that the subpoena would require the Commission to produce confidential information provided by third parties. Opp. at 5. Complaint Counsel, however, do not identify any document, type of document or category of

[REDACTED]

which have a large proportion of documents regarding...
[REDACTED]

Nor do Complaint Counsel explain how such studies would “reveal the mental

[REDACTED]

III. CONCLUSION

Respondent’s Motion for Discovery From the Commission Pursuant to Rule 3.36
should be granted.

DATED: October 18, 2016

Respectfully submitted,

/s/ Justin P. Raphael

Gregory P. Stone, Esq. (gregory.stone@mto.com)
Steven M. Perry, Esq. (steven.perry@mto.com)

Garth T. Vincent, Esq. (garth.vincent@mto.com)
Stuart N. Senator, Esq. (stuart.senator@mto.com)
Gregory M. Sergi, Esq. (gregory.sergi@mto.com)

MINOR TOLLS & CONCESSIONS

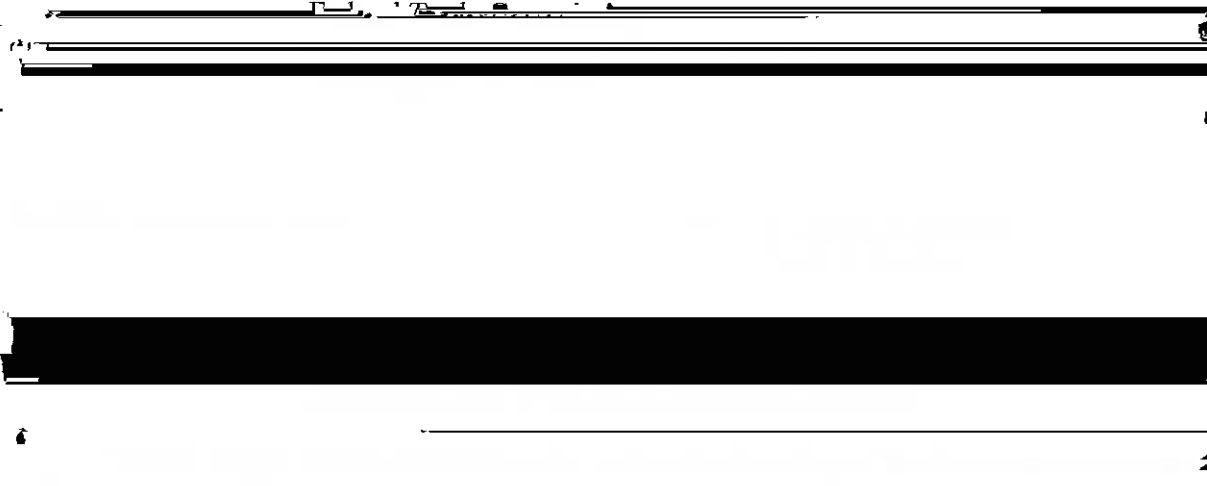
355 South Grand Ave, 35th Floor
Los Angeles, CA 90071

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

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

The Honorable D. Michael Chappell
Administrative Law Judge



600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

DATED: October 18, 2016

Rv: /s/ Justin P. Ramboal