

UNITED STATES OF AMERICA

BEFORE

11 16 2016

705

COMMISSIONERS

In the Matter of

1-800 CONTACTS, INC.,
a corporation

Docket No. 9372

**RESPONDENT 1-800 CONTACTS, INC.'S RESPONSES TO COMPLAINT COUNSEL'S
SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR
MOTION FOR PARTIAL SUMMARY DECISION; RESPONDENT'S SEPARATE AND
CONCISE STATEMENT OF MATERIAL FACTS THAT PRESENT GENUINE ISSUES
FOR TRIAL**

Pursuant to Rule 3.24, Respondent 1-800 Contacts, Inc. ("1-800 Contacts") submits, in

support of its opposition to Complaint Counsel's motion for partial summary decision, the

[REDACTED]

Response by 1-800 Contacts: The statement in paragraph 1 is undisputed.

2. 1-800 Contacts has more U.S. online sales of contact lenses than any other retailer. Matheson Decl. Tab 2, Answer ¶ 1.

Response by 1-800 Contacts: The statement in paragraph 2 is undisputed.

3. 1-800 Contacts sent cease-and-desist letters to online contact lens retailers who

[REDACTED]

advertisements appeared in response to a search engine query for "1-800 Contacts" (or variations thereof). Matheson Decl. Tab 2, Answer ¶ 17.

Response by 1-800 Contacts: The statement in paragraph 3 is undisputed. A few

[REDACTED]

}³

5. 1-800 Contacts filed complaints in federal court against certain of those online

[REDACTED]

contact lens retailers for trademark infringement. Matheson Decl. Tab 2, Answer ¶ 18.

Response by 1-800 Contacts: The statement in paragraph 5 is disputed because it is

[REDACTED]

³ Because Complaint Counsel have taken the position that the identity of any party that settled a trademark infringement suit brought by Respondent is confidential Respondent has, without

} Matheson Decl. Tab 3.

8. 1-800 Contacts entered into an agreement with {

} **Matheson Decl. Tab 4, {**

} 1-800 Contacts later entered into another agreement with {

} which provided that the earlier agreement would remain in full force.

Matheson Decl. Tab 5 1

} The later

agreement was incorporated in a consent decree entered by a court. Matheson Decl. Tab 6,

CX0316 (Order of Permanent Injunction). **“Prohibited Acts shall not include (i) use of the**

other Party’s Trademarks on the Internet in a manner that would not constitute an

infringing use in a non-Internet context, e.g., the use on the Internet of comparative

advertising, parodies, and similar non-infringing, uses; and (ii) the purchase by either

Party of the key words that are generic words such as “contacts,” “contact lens,” and

“lens” (and both Parties acknowledge that any advertisements triggered by such key words

are not prohibited under this agreement.).Response by 1-800 Contacts: 1-800 Contacts

disputes the statements in paragraph 8 as incomplete and misleading, and disputes the

characterization of the agreements as unsupported and inaccurate. 1-800 Contacts entered into a

“Settlement Agreement” with {

} Matheson Decl. Tab 4. 1-800

Contacts subsequently filed a complaint in United States District Court against {

} Matheson Decl. Tab

5, {

} Matheson Decl. Tab 6.

9. 1-800 Contacts entered into an agreement with {

} Matheson Decl. Tab 7, {

}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 9 as incomplete and misleading. 1-800 Contacts entered into a "Settlement Agreement" with {

} Matheson Decl. Tab 7.

10. 1-800 Contacts entered into an agreement with {

} Matheson Decl. Tab 8, {

}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 10.



} Matheson Decl. Tab 8.

11. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 9, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 11 as

H (Complaint filed against {
} Matheson Decl. Tab 9; Perry Decl., Ex.
}).

12. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 10, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 12 as incomplete and misleading. 1-800 Contacts entered into a "Settlement Agreement" with {

} Matheson Decl. Tab 10.

13. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 11, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 13 as

} Matheson Decl. Tab 11.

14. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 12, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 14 as incomplete and misleading. 1-800 Contacts entered into a "Settlement Agreement" with {

} Matheson Decl. Tab 12.

15. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 13, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 15 as

} Matheson Decl. Tab 13.

16. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 14, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 16 as

} Matheson Decl. Tab 14.

17. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 15, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 17 as

} Matheson Decl. Tab 15.

18. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 16, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 18 as
incomplete and misleading. 1-800 Contacts disputes the statements in paragraph 18 as

} Matheson Decl. Tab 16.

19. 1-800 Contacts entered into an agreement with {
}. Matheson Decl. Tab 17, {
}.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 19 as

Response by 1-800 Contacts: Complaint Counsel cite no evidence or other factual basis for the statements contained in paragraph 23. Nevertheless, for purposes of the present motion only, 1-800 Contacts does not dispute the statements in paragraph 23.

24. Search engines use an auction process to sell advertising space on the search engine results page. Matheson Decl. Tab 1, Compl. ¶ 10; Tab 2, Answer ¶ 10. Advertisers seeking to place advertisements on a search engine results page submit bids to the search engine. A bid denotes the maximum amount the advertiser is willing to pay to the search engine each time a user clicks on a displayed advertisement.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 24. The only support provided for those statements is a citation to paragraph 10 of the Complaint and the corresponding Answer by 1-800 Contacts. 1-800 Contacts did not in its Answer admit the statements in paragraph 24. 1-800 Contacts admitted only “that the process by which some search engine companies currently sell certain types of advertising on their search engine results

[REDACTED]

page includes variants of certain auction elements.” Matheson Decl. Tab 2, Answer ¶ 10.

Complaint Counsel have not cited any other evidence to support the statements in paragraph 24

[REDACTED]

outstanding discovery requests by both Complaint Counsel and 1-800 Contacts.

[REDACTED]

[REDACTED]

the advertiser.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 25.

Complaint Counsel provided no citations or other factual support for those statements.

Moreover, as the Federal Trade Commission, Division of Advertising Practices, Bureau of Competition has recognized, “the ways in which search engines retrieve and present results, and the devices on which consumers view these results, are constantly evolving Online search

[REDACTED]

[REDACTED]

issues of fact.

[REDACTED]

contains that particular term or terms. Matheson Decl. Tab 1, Compl. ¶ 13; Tab 2, Answer ¶¶ 13, 24.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 26. The only support provided for those statements is a citation to paragraph 13 of the Complaint and the corresponding Answer by 1-800 Contacts. 1-800 Contacts did not in its Answer admit the statements made in paragraph 26. 1-800 Contacts admitted “that some search engines allow an advertiser to specify ‘negative keywords.’ 1-800 Contacts avers that the advertiser often has options for the effect to be given to negative keywords, and that those options are not explained or even mentioned in paragraph 13 [of the Complaint]. The remaining allegations in paragraph 13 [of the Complaint] are too broad and generalized for 1-800 Contacts to admit, and 1-800 Contacts therefore denies them.” Matheson Decl. Tab 2, Answer ¶ 13. Moreover, as the

Federal Trade Commission, Division of Advertising Practices, Bureau of Competition has

[REDACTED]

recognized, “the ways in which search engines retrieve and present results, and the devices on which consumers view these results, are constantly evolving Online search is far from static, and continues to evolve.” Letter by Mary K. Engle, Associate Director (dated June 24,

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 27. Complaint Counsel provided no citations or other factual support for those statements.

Moreover, as the Federal Trade Commission, Division of Advertising Practices, Bureau of

Competition has recognized "the ways in which search engines retrieve and present results and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

disputed issues of fact.

28. While the Bidding Agreements were phrased in various ways, each required a

[REDACTED]

keywords.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 28.

Complaint Counsel do not cite to any evidence or other factual support for those statements.

Notably, Complaint Counsel do not cite in support of the statements in paragraph 28 (or the

statements in any other paragraph) any instance in which any of the statements at [REDACTED]

[REDACTED]

[REDACTED]

• {

} Matheson Decl. Tab 3, {
}

- {

} Matheson Decl. Tab 9, {
}

- {

} Matheson Decl. Tab 14, {
}.

Furthermore, the Settlement Agreements contain important exceptions, including a broad exception for “comparative advertising,” that Complaint Counsel ignore in paragraph 28. For example:

- {

}

- {

Tab 7, { } Matheson Decl.
};

To the extent the Settlement Agreements and the one Contact Lens Sourcing and Services Agreement prohibited the parties from using each other’s trademarks as Internet search keywords

to trigger their own Internet paid search advertisements, that is a simple and commonplace

[REDACTED]

within the scope of the Lanham Act. *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 130 (2d Cir. 2009) (holding a search engine's sale of a trademark as a keyword to trigger Internet search advertisements must be covered by the Lanham Act otherwise "operators of search engines

[REDACTED]

}; Tab 4, {
}; Tab 7, {
}; Tab 8, { }.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 29.

In fact, the Settlement Agreements in question prohibited the parties from particular, specific, and narrow *uses* of each other’s trademarks (brand names and URLs), such as:

- {
} Matheson Decl. Tab 3, {
}
- {
} Matheson Decl. Tab 4, {
}
- {
} Matheson Decl. Tab 7, {
};
- {
} Matheson Decl. Tab 8, {
}.

Furthermore, the Settlement Agreements contain important exceptions, including a broad exception for “comparative advertising,” that Complaint Counsel ignore in paragraph 29. For example:

- {

Matheson Decl. Tab 4, {
}

}

- {

Tab 7, {
};

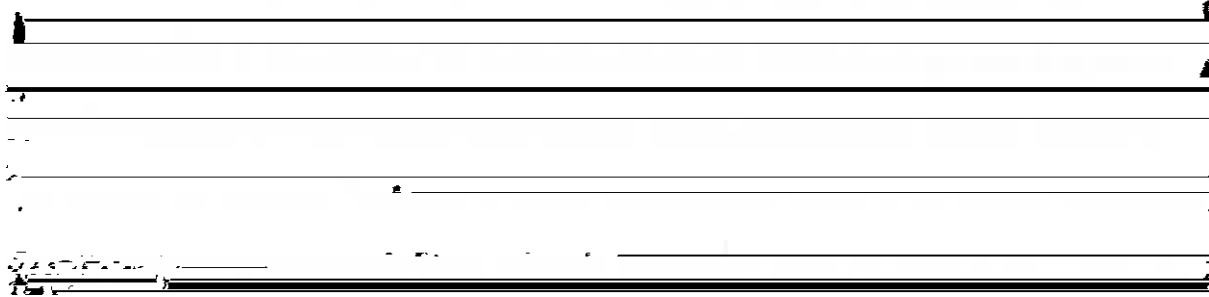
} Matheson Decl.

- {

} {

};

To the extent the Settlement Agreements at issue prohibited the parties from using each other's trademarks as Internet search keywords to trigger their own Internet paid search advertisements, that is a simple and commonplace prohibition on a "use" of the trademark that the courts specifically and repeatedly have held is within the scope of the Lanham Act



intention nor the letter of the Lanham Act”): *Network Automation Inc. v. Advanced Sys*

Concepts, Inc., 638 F.3d 1137, 1145 (9th Cir. 2011). Thus, such a use is prohibited by federal trademark law if, for example, it is “likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, . . . or as to the origin, sponsorship, or approval of . . . goods [or] services.”

~~CONFIDENTIAL~~

} . Matheson Decl. Tab 9, {

}; Tab 10, {

}; Tab 11, {

}; Tab 12, {

; Tab 13, {

};

Tab 15, {

}; Tab 16, {

}.
}

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 30.

In fact, the Settlement Agreement at issue prohibited 1-800 Contacts from using the name “1-800 Contacts” in any way.

narrow *uses* of each other's trademarks (brand names and URLs), such as: {

} Matheson Decl. Tab 9, {

See also Matheson Decl. Tab 10, {

}; Tab 11, {

}; Tab 12, {

}; Tab 13, {

}; Tab 15, {

}; Tab 16, {

}.

Furthermore, the Settlement Agreements at issue contain important exceptions, including a broad exception for “comparative advertising,” that Complaint Counsel ignore in paragraph 30.

For example: {

} Matheson Decl. Tab 9, {

} *See also* Tab 10, {

}; Tab 11, {

}; Tab 12, {
}; Tab 13, {
}; Tab 15, {
}; Tab 16, {
}.

To the extent the Settlement Agreements at issue prohibited the parties from using each other's trademarks as Internet search keywords to trigger their own Internet paid search advertisements, that is a simple and commonplace prohibition on a "use" of the trademark that the courts specifically and repeatedly have held is within the scope of the Lanham Act.

[REDACTED]

31. Two of the Bidding Agreements prohibit a rival of 1-800 Contacts from purchasing or using any of 1-800 Contacts' trademarks, variations on 1-800 Contacts' trademarks, or 1-800 Contacts' URLs, as listed in an exhibit to the agreement, as triggering keywords in any internet search advertising campaign. Matheson Decl. Tab 14, {

} *Id.* { }. To the extent the agreement at issue prohibits the parties from using each other's trademarks as Internet search keywords to trigger their own Internet paid search advertisements, that is a simple and commonplace prohibition on a "use" of the trademark that the courts specifically and repeatedly have held is within the scope of the Lanham Act. *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 130 (2d Cir. 2009) (holding a search engine's sale of a trademark as a keyword to trigger Internet search advertisements must be covered by the Lanham Act otherwise "operators of search engines would be free to use [others'] trademarks in ways designed to deceive and cause consumer confusion," which "is surely neither within the intention nor the letter of the Lanham Act"); *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1145 (9th Cir. 2011). Thus, such a use is prohibited by federal trademark law if, for example, it is "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, . . . or as to the origin,

~~membership or approval of goods and services." *Id.*, 562 F.3d at 130.~~

implement negative keywords.

Response by 1-800 Contacts: 1-800 Contacts disputes the statement contained in paragraph 33 in part because the Settlement Agreements cannot reasonably be referred to as "Bidding Agreements" given their terms, and because the statement is incomplete. The evidence at trial will show that the Settlement Agreements contain the referenced provisions in large part because Google had advised 1-800 Contacts (and, presumably, other trademark holders) that

}; Tab 11, {

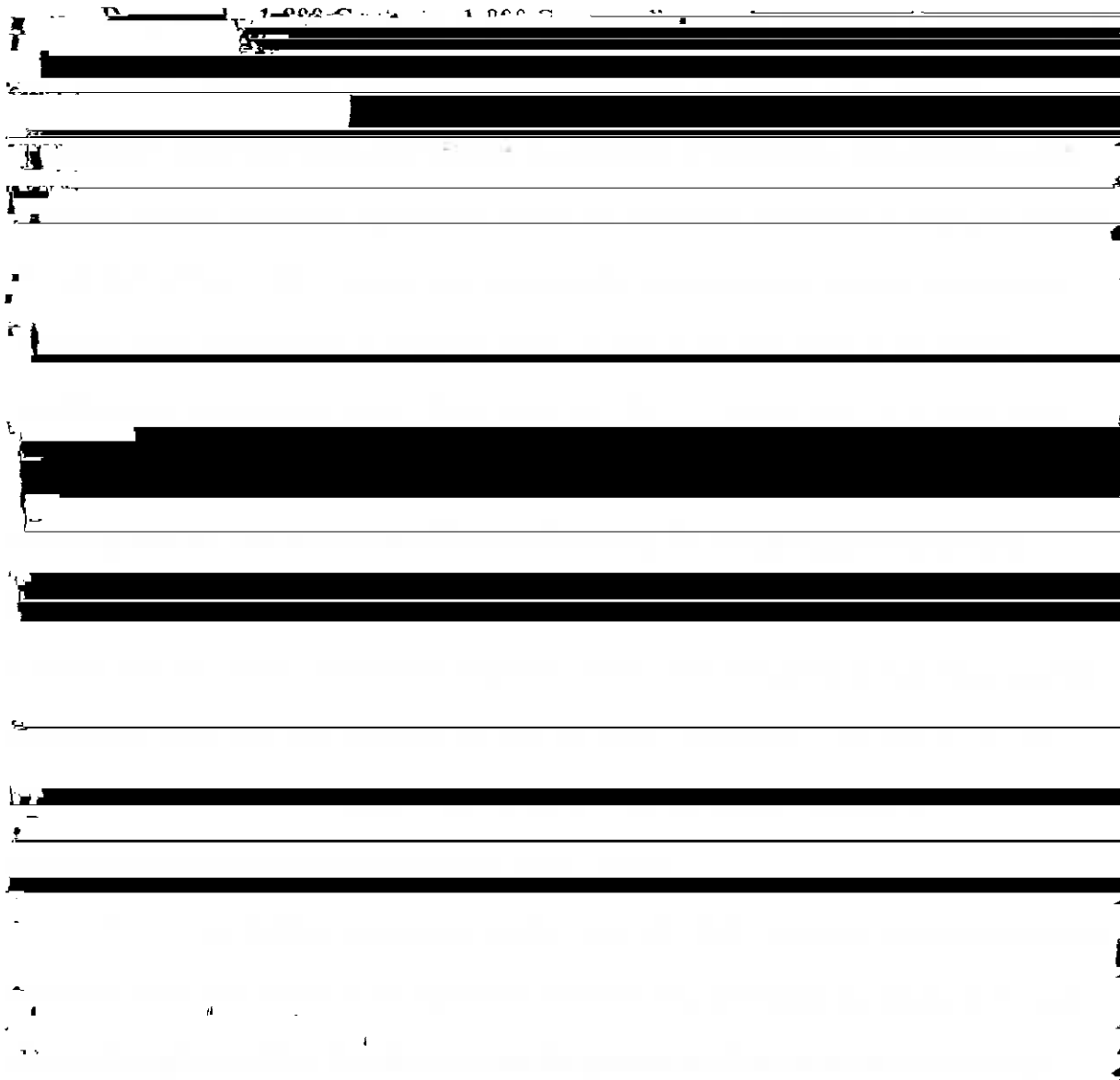
}; Tab 12, {

}; Tab 13, {

}; Tab 15, {

}; Tab 16, {

};



links triggered by those keywords. The list includes 1-800 Contacts' trademarks, variations on 1-800 Contacts' trademarks, and 1-800 Contacts' URLs. These Bidding Agreements were reached between 1-800 Contacts and { }.

Matheson Decl. Tab 7, {

}; Tab 8, { }.

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 35 in part because the Settlement Agreements cannot reasonably be referred to as "Bidding Agreements" given their terms, and because the statement is incomplete. The evidence at trial will show that the Settlement Agreements contain the referenced provisions in large part because Google had advised 1-800 Contacts (and, presumably, other trademark holders) that negative

keywords could be employed as "negative tools" in order to "control third-party listings"

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. One Bidding Agreement required a rival of 1-800 Contacts to agree to entry of a stipulated permanent injunction. Matheson Decl. Tab 5, {

} The injunction requires the rival, for the purpose of

~~preventing the rival's internet advertising from appearing in response to a search for 1-800~~

[REDACTED]

Contacts and { } *Id.* {

}; Tab 6, CX0316 at

-004 (Order of Permanent Injunction, Exhibit A) (listing trademark terms and variations).

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 37 in

[REDACTED]

(morning session). *See also id.*, ex. EE (11/15/2016 Dep. Tr. of Josh Aston at 35:3-44:7)

(afternoon session) (testifying that Google employees had proposed or instructed that 1-800

Contacts (and Mr. Aston's subsequent employer) inform other companies to "add these specific

[REDACTED]

};

Response by 1-800 Contacts: 1-800 Contacts disputes the statements in paragraph 38 in part because the Settlement Agreements cannot reasonably be referred to as "Did dis-

[REDACTED]

(morning session). *See also id.*, ex. EE (11/15/2016 Dep. Tr. of Josh Aston at 35:3-44:7)

(afternoon session) (testifying that Google employees had accessed subject's e-mail on 11/15/2016)

[REDACTED]

Contacts (and Mr. Aston's subsequent employer) inform other companies to "add those specific trademarked terms into their negatives for their Ad Word Campaigns"). *See also id.*, ex. FF

(explanation of the utility of negative keywords provided by Google) [REDACTED]

occurred. As a consequence, Respondent bears no burden under the Federal Rules or the Commission's Rules to come forward at this time with contrary evidence. Out of an abundance of caution, however, Respondent responds as follows.

Paragraph 31 of the Complaint alleges, for example, that the Settlement Agreements

[REDACTED]

} *Id.* at 8. Thus, the impact of such a restraint, if any, is marginal. *Id.* at 3.

The Complaint further alleges injury from “[p]reventing search engine companies from

[REDACTED]

indicia of navigational queries).⁵ After all, a “consumer entering a navigational query would expect the most prominent link presented to her to be for her desired website,” not for a

[REDACTED]

and is an enforceable promise.”); see also *Orion Bancorp, Inc. v. Orion Residential Fin., LLC*, 2008 WL 816794, at *3 (M.D. Fla. 2008) (enjoining use of trademarks in internet keyword advertising); *MasterCard Int'l Inc. v. Trehan*, 629 F. Supp. 2d 824, 833 (N.D. Ill. 2009) (same); *Glob. Tel-Link Corp.* at *1 (same).

5. In addition, the settlement of trademark disputes is found in *Edible*

[REDACTED]

situation); {

} (Ex. X to Perry Decl.); {

} (Tab 6 to Matheson Decl.); *Edible*

Arrangements LLC v. Provide Commerce, Inc. 2016 WL 4074121 (D. Conn. 2016); *Glob. Tel*

[REDACTED]

7. The settlements did not involve monopoly rights or the division of

[REDACTED]

monopoly profits. *See, e.g., Clorox Co.*, 117 F.3d at 56 (“A trademark, unlike other intellectual

[REDACTED]

The deadline for completing expert discovery is March 20, 2017. Scheduling Order, issued September 7, 2016, at 2-3.

/s/ Gregory P. Stone
Gregory P. Stone

Dated: November 16, 2016

Gregory P. Stone

[REDACTED]

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UNITED STATES OF AMERICA

BEFORE

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584705

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~~Tammie McSwain~~

In the Matter of

1-800 CONTACTS, INC.,
a corporation

Docket No. 9372

MEMORANDUM OF LAW OF RESPONDENT 1-800 CONTACTS, INC. IN

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[Additional counsel are listed at the end of the brief]

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the same litigation and pre-litigation activity alleged throughout their Complaint. *See* Compl. at 9 (Nos. 2-5).¹

The Complaint's allegations thus plainly include petitioning activity protected by the

[REDACTED]

¹ Such relief would be a prior restraint in violation of the First Amendment. *See* *Singer, Dues*

II RESPONDENT'S SECOND AND THIRD ALTERNATIVE DEFENSIVE MOTIONS

A. The *Noerr-Pennington* Doctrine Protects Litigation and Pre-Litigation Activity

Because “[t]he right of access to the courts is ... but one aspect of the right to petition,” the *Noerr-Pennington* doctrine provides antitrust immunity based on the filing of a lawsuit. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). So long as the litigation is not a “sham,” it is immunized under *Noerr-Pennington*. See *Prof'l Real Estate Inv'rs v. Columbia Pictures*, 508 U.S. 49, 60 (1993). For litigation to qualify as “sham,” an antitrust plaintiff must prove *both* that (1) the litigation was “objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits” and (2) that the lawsuit was brought for a subjectively anticompetitive purpose. *Id.*

~~The *Noerr-Pennington* doctrine ...~~

policy.” Hovenkamp, et al., IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law § 11.3 (2d. ed., 2015 Supp.).

B. The Complaint Challenges Plainly Protected Conduct

Complaint Counsel do not dispute that *Noerr-Pennington* protects the filing of non-

[REDACTED]

competition:

[REDACTED]

- Paragraph 27 alleges that Respondent undertook all of these actions “without regard to whether the advertisements were likely to cause consumer confusion.”

[REDACTED]

infringed 1-800 Contacts’ trademarks.”

Tying these allegations together, Paragraph 31 charges that “Respondent’s conduct, as alleged herein, had the purpose, capacity, tendency, and likely effect of restraining competition unreasonably and injuring consumers and others” in several ways.

All of these allegations target protected petitioning activity. Respondent’s lawsuits fall squarely within *Noerr-Pennington*. Its cease-and-desist letters and threats to sue are incidental to litigation and fully protected. And its efforts to enforce settlement agreements are equally protected under *Noerr-Pennington*, because a threat to sue based on a settling party’s continued

...and that the Trademark Office's...
[REDACTED]

challenged.⁴

Given these holdings, the trademark infringement claims that Respondent asserted in its lawsuits and pre-litigation communications cannot be considered "show" Complaints.

[REDACTED]

[REDACTED]

[REDACTED]

Pharms., Inc., (2013) (No. 12-416), 2013 WL 267027; *see also id.* at 25 (acknowledging that a patent holder’s “good-faith effort to enforce its patent through litigation cannot subject it to liability under the antitrust laws, even though the purpose of such litigation is to forestall competition”).

Actavis reaffirmed that settlement agreements are subject to antitrust scrutiny only in

limited situations. As the Court explained, “[W]hen a patent holder enters into a settlement

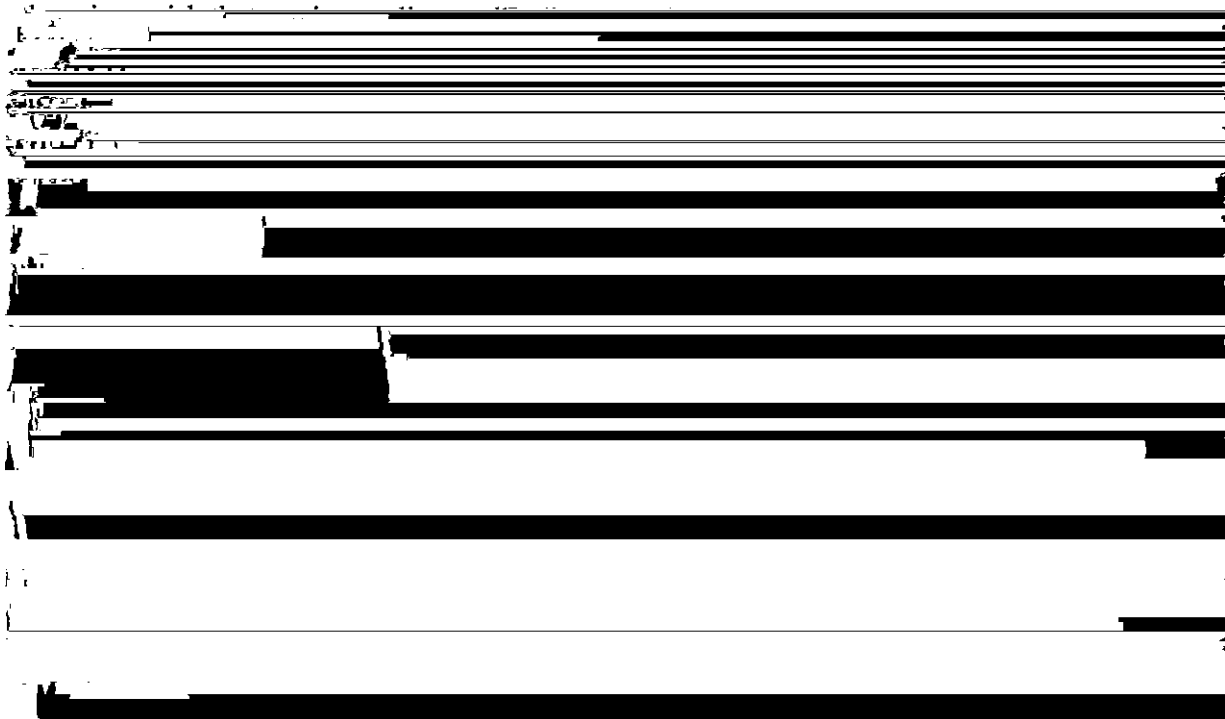
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

outcomes.⁷ The resolution of trademark disputes is to be encouraged.⁸ Unlike reverse payments,



III. CONCLUSION

For the foregoing reasons, Complaint Counsel’s Motion for Partial Summary Decision should be denied.

⁷ E.g., *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2d Cir. 2009) (finding “use in commerce” in analogous situation); {

} (Tab 6 to Matheson Decl.).

E.g., *Clorox Co. v. Sterling Winthrop, Inc.*, 117 F.3d 50, 55 (2d Cir. 1997) (trademark settlements are “favored under the law”); *Lebewohl v. Heart Attack Grill LLC*, 890 F. Supp. 2d 278, 301-03 (S.D.N.Y. 2012) (approving a concurrent non-use settlement agreement with territorial restrictions in the absence of current confusion and encouraging litigants to “work together to try to resolve their differences cooperatively”).

⁹ E.g., *Clorox Co.*, 117 F.3d at 56 (“A trademark, unlike other intellectual property rights, does not confer a legal monopoly on any good or idea; it confers rights to a name only.”)

DATED: November 16, 2016

Respectfully submitted,

/s/ Gregory P. Stone

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[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2016, I filed the foregoing document using the FTC's E-Filing System, which will send notification of such filing to:

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

The Honorable D. Michael Chappell

Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
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I also certify that I served via electronic mail a copy of the foregoing document on:

CERTIFICATE FOR ELECTRONIC FILING

Thomas H. Brock, *tbrock@ftc.gov*
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Notice of Electronic Service

I hereby certify that on November 16, 2016, I filed an electronic copy of the foregoing Memorandum of Law of Respondent 1-800 Contacts, Inc. In Opposition to Complaint Counsel's Motion for Partial Summary Decision.

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