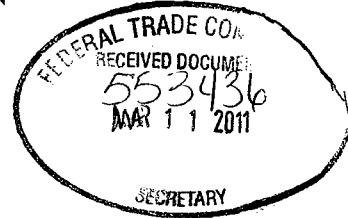


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**UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION**



_____)
In the Matter of)
)
POM WONDERFUL LLC and)
ROLL INTERNATIONAL CORP.,)
companies, and)
)
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)
_____)

Docket No. 9344

PUBLIC DOCUMENT

**COMPLAINT COUNSEL'S OPPOSITION TO
RESPONDENT POM WONDERFUL LLC'S MOTION
TO COMPEL FURTHER RESPONSES TO
FIRST SET OF INTERROGATORIES TO COMPLAINT COUNSEL**

Pursuant to Commission Rules 3.35 and 3.38, Complaint Counsel respectfully submits its opposition to *Respondent POM Wonderful LLC's Motion and Memorandum to Compel Further Responses to First Set of Interrogatories to Complaint Counsel*, filed March 4, 2011 ("POM's Motion to Compel"). Respondent POM Wonderful, LLC ("POM") seeks further responses to Interrogatory Nos. 1, 2, and 11 of POM's First Set of Interrogatories, dated November 15, 2010. Because Complaint Counsel already has supplemented its responses, and has indicated that it will provide additional supplementation in a reasonable time after the relevant facts are discovered, POM's Motion to Compel should be denied as moot as to Interrogatories 1 and 2, and premature as to Interrogatory 11.

I. Complaint Counsel Has Supplemented Its Responses to Interrogatory Nos. 1 and 2.

POM's Interrogatory Nos. 1 and 2 requested information on Complaint Counsel's contentions regarding Respondents' express and implied misrepresentations. As promised in

earlier communications with Respondents' counsel, today Complaint Counsel has submitted supplemental responses to these Interrogatories. The supplemental responses set forth 37 express claims that Complaint Counsel contends violate the Federal Trade Commission Act ("FTC Act"), and specifically directs POM, by Bates number of the documents, to well over 100 advertisements that Complaint Counsel contends make violative express and implied claims.

Although Complaint Counsel has endeavored to set forth a sufficiently exhaustive and representative list of POM's representations and advertisements that it contends violated Section 5 of the FTC Act, it should be noted that Respondents disseminated thousands of advertisements in various media during the period challenged in the Complaint. Many of the advertisements contain similar or identical claims to those identified by Complaint Counsel in the Complaint and supplemental Interrogatory responses. It is unduly burdensome, and not required, that Complaint Counsel identify every misrepresentation in every advertisement disseminated by Respondents. Complaint Counsel has made a good faith effort in its supplemental responses to identify specifically the types of claims that it is challenging and the sources of such claims, and thus has provided more than ample notice to Respondents of the conduct that is being challenged as a violation of the FTC Act. Because Complaint Counsel has sufficiently supplemented its Responses to Interrogatory Nos. 1 and 2 as requested by POM, POM's Motion to Compel as to these Interrogatories should be denied as moot.

II. Complaint Counsel Will Supplement Its Response to Interrogatory 11 As Soon As It Is Reasonably Able to Determine All Information Necessary to Respond.

POM's Interrogatory No. 11 seeks information regarding whether Complaint Counsel will contend that [REDACTED]

[REDACTED]

[REDACTED]

As set forth in its most recent supplemental responses of March 11, 2011, Complaint Counsel is still determining whether it will make this contention and fully intends to supplement as appropriate and as required by the Commission Rules.

POM's Interrogatory No. 11 specifically seeks Complaint Counsel's contentions regarding the conduct of "Respondents, either collectively or individually." It appears from documents and other evidence produced in this case that Individual Respondent Stewart Resnick, and perhaps Individual Respondent Lynda Resnick, [REDACTED]

[REDACTED]

[REDACTED] must be explored during their depositions before Complaint Counsel can appropriately answer this request. These depositions have been scheduled, at Respondents' request, after the close of other fact discovery, but have not yet taken place.

Furthermore, the issue of whether, to use POM's own terms, Respondents [REDACTED] [REDACTED] is one that may require further inquiry. Although Complaint Counsel has objected to POM's terms as undefined, vague and ambiguous, Complaint Counsel has noted in its response that inquiry of experts may be required to fully provide a response. Because Respondents' expert reports will not be produced until March 18, 2011, it is not known whether any of their experts may, for example, [REDACTED]

Complaint Counsel notes that if, after the depositions of the Resnicks and the disclosure of Respondents' expert reports and opinions, it determines that there is sufficient information to fully and truthfully answer, Complaint Counsel will amend its response accordingly before the close of expert discovery. Complaint Counsel has stated numerous times that it will supplement this Interrogatory Response, and has, in the past, supplemented in good faith its responses to Initial Disclosures, Document Requests, and Interrogatories. Given the rather serious nature of the contention that POM seeks to discover, Complaint Counsel believes it is prudent to obtain as much information as possible in order to fairly and accurately provide an answer. Therefore, POM's Motion to Compel as to Interrogatory No. 11 should be denied as premature.

III. Conclusion

For the reasons set forth above, POM's Motion to Compel as to Interrogatory Nos. 1 and 2 should be denied as moot, and POM's Motion to Compel as to Interrogatory No. 11 should be denied as premature.

Dated: March 11, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 11, 2011, I caused the filing and serving of the public version of *Complaint Counsel's Opposition to Respondent POM Wonderful LLC's Motion to Compel Further Responses to First Set of Interrogatories to Complaint Counsel* upon the following as set forth below:

One electronic copy via the Federal Trade Commission E-Filing System to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580

One paper copy via hand delivery and one electronic copy via email to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

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Date: March 11, 2011

/s/ Serena Viswanathan
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Complaint Counsel