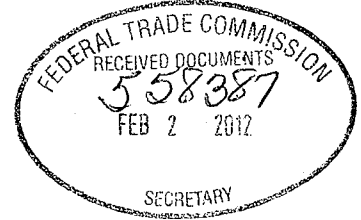


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of)
)
GRACO INC.,)
—a corporation, and)
)
ILLINOIS TOOL WORKS INC.,)
a corporation, and)
)
ITW FINISHING LLC,)
a limited liability company,)
Respondents.)

DOCKET NO. 9350

**ORDER DENYING WITHOUT PREJUDICE COMPLETE AUTOMATION,
INC.'S MOTION TO QUASH AND/OR LIMIT SUBPOENA *DUCES TECUM***

I.

On January 18, 2012, third party Complete Automation, Inc. (“Complete”) filed a Motion to Quash and/or Limit Subpoena *Duces Tecum* (“Motion”). On January 30, 2012, Respondent Graco Inc. (“Graco”) filed an Opposition to the Motion. For the reasons set forth below, Complete’s Motion is DENIED WITHOUT PREJUDICE.

II.

Complete states that the Subpoena *Duces Tecum* served on it by Graco on January 9, 2012 (“Subpoena”) is overly broad and unduly burdensome; that the documents and information demanded contain privileged, confidential, proprietary, and trade secret information; and that the short time for response make compliance impossible. As part of its motion, Complete includes a “Certificate of Conference” which recites that counsel for Complete left one voice mail message for Graco’s counsel at approximately 4:00 p.m. on January 17, 2012 “in an attempt to resolve any disputes concerning the Subpoena” and that counsel for Complete sent one email message to Graco’s counsel attaching a draft of the instant Motion. The Motion was filed the next day, January 18, 2012.

Respondent Graco, among other arguments, asserts that the Motion should be denied because Complete failed to confer with opposing counsel prior to filing the Motion, as required by Commission Rule 3.22(g), and because the Motion was not filed within the deadlines set in Commission Rule 3.34(c).

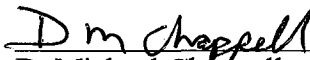
III.

Rule 3.22 of the Commission's Rules of Practice requires that each motion to quash shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. 16 C.F.R. § 3.22(g). Since Complete failed to confer with or negotiate with Respondent Graco before Complete filed its Motion, the efforts undertaken by Complete do not equate to a good faith effort to resolve the dispute. Accordingly, Complete has failed to comply with Rule 3.22(g).

Rule 3.34 (c) of the Commission's Rules of Practice requires that any motions to quash or limit subpoenas shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. 16 C.F.R. § 3.34(c). Complete represents that the Subpoena was served on it on January 9, 2012. Respondent provides an Affidavit of Service that shows that the Subpoena was served on January 5, 2012. The discrepancy in the date of service is not explained in the pleadings.

Complete shall fully comply with Rule 3.22(g). If necessary and appropriate, following compliance with Rule 3.22(g), Complete may re-file its motion to limit or quash the Subpoena, including an explanation regarding the discrepancy in the service date, no later than February 9, 2012. Accordingly, the Motion is DENIED WITHOUT PREJUDICE.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 2, 2012