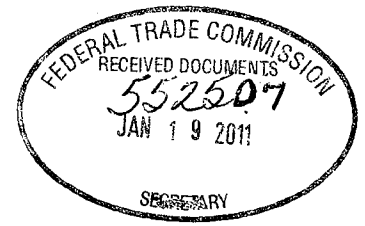


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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



In the Matter of)
)
)
LABORATORY CORPORATION)
OF AMERICA)
)
and)
)
LABORATORY CORPORATION)
OF AMERICA HOLDINGS,)
Respondents.)

DOCKET NO. 9345

ORDER DENYING RESPONDENTS' MOTION TO SET HEARING LOCATION

I.

On December 16, 2010, Respondents filed a Motion to Set Hearing Location ("Motion"). Pursuant to Commission Rule 3.22(d), responses to motions are due 10 days after service of motions, unless longer or shorter time is designated by the Administrative Law Judge. 16 C.F.R. § 3.22(d). Complaint Counsel failed to respond to Respondents' Motion until January 4, 2011, which date exceeds the 10-day deadline provided for responding to motions under Commission Rule of Practice 3.22(d). 16 C.F.R. § 3.22(d). Moreover, Complaint Counsel did not seek an order extending the time to submit its response. Therefore, arguments made by Complaint Counsel in its untimely opposition have not been considered.¹

On January 5, 2011, Respondents submitted an Unopposed Motion for Leave to File a Reply in Support of their December 16, 2010 Motion to Set Hearing Location ("Motion for Leave"). By Order dated January 7, 2011, the Unopposed Motion for Leave was granted. Although Respondents attached their proposed Reply In Support of Motion to Set Hearing Location ("Reply") as Exhibit B to their Motion for Leave, the Reply had not been submitted to or docketed by the Office of the Secretary as a separate filing. For that reason, the Order Granting Respondents' Motion for Leave to File a Reply directed Respondents to file the Reply itself with the Office of the Secretary within 3 business

¹ On January 18, 2011, Complaint Counsel filed a Corrected Opposition to Respondents' Motion to Set Hearing Location ("Corrected Opposition"). Since Complaint Counsel's original opposition is rejected as untimely, Complaint Counsel's Corrected Opposition is also not considered.

days. Respondents did not file the Reply as required by that Order. Accordingly, arguments advanced by Respondents in their Reply have not been considered.

Commission Rule 3.22(d) provides in part: “Within 10 days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion.” 16 C.F.R. § 3.22(d). Although Complaint Counsel may be deemed to have consented to the requested relief through its failure to file a timely reply, other considerations are dispositive. For the reasons set forth below, Respondents’ motion is DENIED.

II.

Respondents seek an order setting the location of the hearing in whole or in part in Santa Ana, California, or another reasonably convenient location in Southern California. According to Respondents, 41 of the 46 non-party witnesses identified by the Federal Trade Commission (“FTC”) are in California, and most of the parties’ witnesses are also in California. Respondents further assert that all material events giving rise to this matter occurred in Southern California. In addition, Respondents argue that any inconvenience to the Commission in holding the hearing in Southern California would be reduced by the fact that the agency has an office located in Los Angeles and that the Commission argued in a different case that the Central District of California was “convenient for the FTC, which has a Los Angeles office and litigates frequently [t]here.” Motion at 7 (citing *FTC v. Watson Pharm., Inc.*, 611 F. Supp. 2d 1081 (C.D. Cal. 2009), *FTC’s Opposition to Motion to Transfer Venue*, 2009 WL 1471634 (Mar. 16, 2009)). However, Respondents also state that Complaint Counsel has not agreed to the request to change the hearing location.

Respondents represent that they anticipate that certain parts of the hearing, such as opening statements, closing arguments, expert testimony, and testimony from a few witnesses located “East-of-the-Mississippi,” would be held in Washington, D.C. Respondents further state that, should this motion be granted, Respondents will secure courtroom space in Santa Ana, California, or another reasonably convenient location in Southern California.

III.

Pursuant to the governing Commission Rule, Rule 3.41(b)(1), “[h]earings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place. . . .” 16 C.F.R. § 3.41(b)(1). In addition, “[t]he Administrative Law Judge may order hearings at more than one place. . . .” 16 C.F.R. § 3.41(b)(1). Citing this rule, Respondents ask that the hearings be held in either Southern California or in both Washington, D.C., and Southern California.

Respondents rely upon the decision made by Judge Roberts of the United States District Court for the District of Columbia in which he transferred the Commission's federal civil complaint for injunctive relief against these Respondents from his court to the United States District Court for the Central District of California. Motion at 2 (citing *FTC v. Laboratory Corp. of Am.*, Civil Action No. 10-2053) (D.D.C. Dec. 3, 2010). However, as explained below, the standards for transferring a federal civil case from one district to another are not controlling in this matter.

Where the Federal Rules of Civil Procedure are similar to the Commission's Rules of Practice, those rules and case law interpreting them may be useful, though not controlling, in adjudicating a dispute. *In re L.G. Balfour Co.*, No. 8435, 61 F.T.C. 1491, 1492, 1962 FTC LEXIS 367, *4 (Oct. 5, 1962); *In re Gemtronics, Inc.*, 2010 FTC LEXIS 40, *10 (April 27, 2010). In this dispute, the federal statute controlling change of venue is not similar to the Commission's Rule on hearing location. Indeed, the federal statute sets forth: "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The Commission's headquarters, its Administrative Law Judges, and its usual hearing room are located only in Washington, D.C., and thus Washington, D.C. is the only location in which a Part III complaint "might have been brought."²

Under the Commission's Rules, however, the Administrative Law Judge, "may order hearings at more than one place," and thus has discretion to hold hearings in a location other than Washington, D.C. Indeed, in *In re North Texas Specialty Physicians*, where all counsel were in a location other than Washington, D.C.,³ all fact witnesses were located in or near Fort Worth, Texas, all parties agreed that it was more practicable to hold the hearing in Fort Worth, Texas, and where the Administrative Law Judge's obligations in other cases then pending in Part III adjudication permitted such a change in hearing location, the hearing, with the exception of closing arguments, was held in Fort Worth, Texas. *In re North Texas Specialty Physicians*, Docket No. 9312, available at <http://ftc.gov/os/adjpro/d9312/031016aljschedulingorder.pdf> (Administrative Law Judge D. Michael Chappell presiding).

The Commission Rule requires that the hearing "shall be held at one place," insofar as practicable. An overriding consideration in exercising the discretion granted to

² Some of the factors that district courts consider in determining whether to grant a motion to transfer venue also simply have no bearing on the question of where to hold a Part III administrative hearing. Those factors include: "(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, and (7) the relative means of the parties." *D.H. Blair & Co., v. Gottdiener*, 462 F.3d 95, 106-07 (2nd Cir. 2006) (internal quotation marks and alteration omitted). While a district court considers the locus of operative facts, it will almost always be the case that the material events giving rise to the matters brought by the Federal Trade Commission will occur in locations other than the District of Columbia.

³ FTC attorneys prosecuting that case were predominantly from the FTC's New York Office.

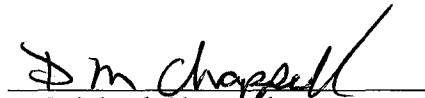
the Administrative Law Judge under the Commission Rule is whether setting the hearing in more than one place, away from the location set by the Commission in the Complaint, will allow the hearing "to proceed with all reasonable expedition." 16 C.F.R.

§ 3.41(b)(1). Thus, administrative efficiency must be considered. Changing the hearing location would require the undersigned to travel to Southern California for the duration of the testimony to be presented by witnesses located there. While that factor alone does not preclude a change in hearing location, it gives rise to a substantial consideration, namely, the impact of the Administrative Law Judge's absence from other cases on the Administrative Law Judge's Washington, D.C. docket.

Trial in this matter has been set by the Commission to begin on May 2, 2011. A change in the location of this hearing scheduled to begin May 2, 2011 would require the Administrative Law Judge to spend significant time away from Washington, D.C. in the weeks immediately preceding the commencement of hearings in two other cases pending before this Administrative Law Judge, during which time pretrial motions and other matters will require the attention of the Administrative Law Judge. Thus, to hold the hearings in part or in whole in Southern California is not practicable and not in the interest of administrative efficiency.

For the above stated reasons, Respondents' motion is DENIED.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: January 19, 2011