

ORIGINAL

PUBLIC

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



In the Matter of )

ECM BioFilms, Inc., )  
a corporation, also d/b/a )  
Envioplastics International, )  
Respondent. )

DOCKET NO. 9358

ORDER REGARDING FTC RULE 3.45(e)

The parties are hereby ORDERED to comply with Federal Trade Commission ("FTC") Rule 3.45(e), which provides, in part:

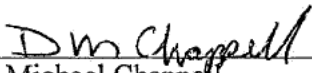
If a party includes specific information that . . . is subject to confidentiality protections pursuant to a protective order in any document filed in a proceeding under this part, the party shall file 2 versions of the document. A complete version shall be marked . . . 'Subject to Protective Order,' . . . on every page and shall be filed with the Secretary and served by the party on the other parties in accordance with the rules in this part. **Submitters of . . . confidential material should mark any such material in the complete versions of their submissions in a conspicuous matter, such as with highlighting or bracketing. . . .** An expurgated version of the document, marked 'Public Record' on every page and omitting the . . . confidential information and attachment that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise . . . . The expurgated version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the *in camera* [or confidential] version.

16 C.F.R. § 3.45(e) (emphasis added). A party that submits a pleading that is labeled as "confidential," but that does not mark the confidential information in their submission "in a conspicuous matter, such as with highlighting or bracketing," is not in compliance with FTC Rule 3.45(e).

FTC Rule 4.2(g) provides: "The Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules." 16 C.F.R. § 4.2(g). The parties in this

case have previously been directed to the requirements of FTC Rule 3.45(e). (January 14, 2014 Order On Complaint Counsel's Motion To Place Discovery Motions On The Public Record). Nevertheless, the parties have failed to comply with FTC Rule 3.45(e) in numerous pleadings filed after the January 14, 2014 Order. Accordingly, the Office of Administrative Law Judges has instructed the Office of the Secretary to reject all documents filed by the parties in this case that fail to mark confidential material in the complete versions of their submissions in a conspicuous matter, such as with highlighting or bracketing.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: March 14, 2014