

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

In the Matter of

TRAFFIC JAM EVENTS, LLC, a limited liability
company, and

DAVID J. JEANSONNE II, individually and as
an officer of TRAFFIC JAM EVENTS, LLC.

Docket No.: 9395

**PLATINUM PLUS PRINTING, LLC'S RESPONSE TO COMPLAINT
COUNSEL'S MOTION TO CERTIFY**

This Court should deny Complaint Counsel's Motion to Certify to the Commission a Request Seeking Court Enforcement of a Subpoena *Duces Tecum* Issued to Platinum Plus Printing, LLC ("Motion to Certify") because the subpoena is overbroad and directed to a non-party.

I. ARGUMENT

This Court should deny Complaint Counsel's Motion to Certify because the subpoena is overbroad, seeks information which can more appropriately be obtained from parties to the action, and seeks irrelevant information, especially considering Platinum Plus Printing, LLC ("PPP") is not a party to this action. Under the rules, "[p]arties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). Additionally, discovery that is otherwise permissible shall be limited by the Administrative Law Judge if the discovery sought "is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." 16 C.F.R. § 3.31(c)(2)(i). And, the Administrative Law Judge has broad power to limit or shape the scope of discovery. *See* 16 C.F.R. § 3.31.

A. Complaint Counsel's Subpoena is Overbroad

Complaint Counsel's subpoena to PPP seeks information which is irrelevant to the claims and defenses at issue in the case, and which can be obtained from Respondent.

RFP No. 1: Complaint Counsel's first request seeks information on PPP's corporate structure. Widor Decl., Ex. A, at RFP No. 1. As PPP is not a party to this case, the corporate structure of PPP has no relevancy to the issues in the case. To the extent Complaint Counsel relies on *In re Basic Research, LLC* to support the relevancy of PPP's corporate structure, that case is inapplicable to this request. See Motion to Certify, at 5. The requests at issue in *In re Basic Research, LLC* were for information related to specific products, not requests intended to determine corporate ownership and governance of the non-parties. See *In re Basic Research, LLC*, Docket No. 9318, slip op. at 2 (Aug. 18, 2004), available at <https://www.ftc.gov/sites/default/files/documents/cases/2004/08/040818order.pdf> (noting the requests at issue were for "documents relating to the challenged products and their ingredients (specifications 1-2), substantiation of the challenged products (specifications 3-4), promotional materials of the challenged products (specifications 5-6), correspondence relating to the challenged products (specifications 7-8), financial arrangements between Respondents and non-parties (specification 9), and revenues and expenditures related to the challenged products (specifications 10)"). Thus, *In re Basic Research, LLC* only supports that documents related to liability in the possession of third parties may be relevant and obtainable by a valid subpoena. The case does not support the proposition that the corporate structure of a non-party is relevant to liability or remedy, and Complaint Counsel has not demonstrated how PPP's relationship with Respondents is relevant here. The self-explanatory nature of Complaint Counsel's first request does not make the documents relevant.

RFP Nos. 2–4, 9: Complaint Counsel’s second, third, fourth, and ninth requests all seek information which is obtainable from a source which is more convenient, less burdensome, or less expensive—Respondents—who are parties to this action. The requests seek: (2) agreements between PPP and Respondents; (3) payments between PPP and Respondents; (4) information on products and services Respondents obtained from PPP; and (9) communications related to request four. Widor Decl., Ex. A, at RFP Nos. 2–4, 9. All this information is available to Complaint Counsel from Respondents, and this Court has just ordered Respondent Traffic Jam Events to provide such documents to Complaint Counsel. *See* Order Granting Complaint counsel’s Motion to Compel Production of Documents and Answers to Interrogatories, at 4–5 (Dec. 16, 2018.) (“invoices; work orders; documents sufficient to show the relationship between Respondent TJE and Platinum Plus Printing, including any agreements . . . email, text messages, and any other communications to, from, or copying David J. Jeanson II, Justin Brophy, Chad Bullock, Jim Whelan, William Lilley, and Mariela Everst relating to Respondents’ Advertising”). Furthermore, Complaint Counsel has made no showing that payments between PPP and Respondents have any relevancy to the issues in the action, and Complaint Counsel’s third request is independently disallowed on that ground.

RFP No. 5: Complaint Counsel’s fifth request seeks information that is also not relevant to the case against Respondents, and any relevant information is also in the possession of Respondents and should be obtained from Respondents. The request seeks documents relating to PPP’s creation of advertising and promotional materials for Traffic Jam Events. Widor Decl., Ex. A, at RFP Nos. 5. To the extent the request seeks information related to what was contained in the advertising and promotional materials at issue in this case, the advertisement and promotional material is best obtained from Respondent Traffic Jam Events, who has just been ordered to

produce such information. *See* Order Granting Complaint Counsel’s Motion to Compel Production of Documents and Answers to Interrogatories, at 4–5 (Dec. 16, 2018.) (“a copy of each unique Advertisement and Promotional Material (“Advertising”); . . . all documents relating to the FTC or compliance with consumer protection laws”). All other information sought is related to PPP’s internal processes, which have no bearing on liability because PPP is not a party to this action.

RFP Nos. 6 & 7: Complaint Counsel’s sixth and seventh requests also seek information which is more easily obtainable from Respondents. The requests seek dissemination schedules, information on the individuals to whom advertising and promotional materials were sent, and documents relating to the individuals who were sent advertising and promotional materials. *Widor Decl., Ex. A*, at RFP Nos. 6–7. Again, Respondent Traffic Jam Events has just been ordered to provide documents covering the same information, and seeking the same information from PPP is unreasonably duplicative. *See* Order Granting Complaint Counsel’s Motion to Compel Production of Documents and Answers to Interrogatories, at 4 (Dec. 16, 2018.) (“data files showing mailing information relating to Respondents’ Advertising; sales logs and any other materials tracking leads or consumer responses to Respondents’ Advertising through a customer relationship management database or otherwise”).

RFP No. 8: Complaint Counsel’s eighth request is overbroad. It seeks all communications relating to Traffic Jam Events or to clients or customers of Traffic Jam Events. *Widor Decl., Ex. A*, at RFP No. 8. All communications that occurred between PPP and Traffic Jam Events is covered in the documents Respondent Traffic Jam Events was just ordered to produce. *See* Order Granting Complaint Counsel’s Motion to Compel Production of Documents and Answers to Interrogatories, at 5 (Dec. 16, 2018) (“email, text messages, and any other communications to, from, or copying David J. Jeanson II, Justin Brophy, Chad Bullock, Jim Whelan, William Lilley, and Mariela

Everst relating to Respondents' Advertising"). Thus, all communications between PPP and Traffic Jam Events is duplicative and such documents are more easily obtainable from Respondent Traffic Jam Events.

As to clients or customers of Traffic Jam Events, Complaint Counsel claims in the motion that third-party printers have reported dealing directly with PPP and not with Respondents. Motion to Certify, at 6. First, such communications are unlikely to be relevant to the claims against Respondents if Respondents were not involved in the communications, especially if, as Complaint Counsel claims, the third parties did not deal with Respondents. *See* Motion to Certify, at 6 (“[T]hird-party printers have reported to Complaint Counsel that they dealt directly with PPP and not Respondents.”). Complaint Counsel has not explained how communications between PPP and third-party printers, when such third-party printers “did not deal with Respondents,” are relevant to the claims against Respondents. Second, even if such communications are relevant, Complaint Counsel’s request should be narrowed to only those specific third parties who have not communicated with Respondents, and only to such communications that relate to Respondents. As written, the request is for “[a]ll communications relating to . . . any clients or customers of Traffic Jam Events,” which includes any communications between PPP and third parties who PPP works with who also happen to be clients or customers of Respondents, even if PPP’s relationship with such third parties is unrelated to Respondents relationship with the third party. As PPP is not a party to this action, its communications with third parties that “did not deal with Respondents” are irrelevant.

RFP No. 10: Complaint Counsel’s tenth request seeks irrelevant information. It seeks communications of PPP related to the Federal Trade Commission. Widor Decl., Ex. A, at RFP No. 10. The only relationship between the request and this action is that it is an FTC adjudicative

action; the request is not tailored to locate documents which may contain evidence related to Respondents on the issues in this case. PPP is not a party to this action, and its communications that relate to the Federal Trade Commission are irrelevant.

RFP No. 11: PPP does not contest the relevancy of Complaint Counsel's eleventh request, which seeks documents related to any complaints related to Traffic Jam Events or its advertising and promotional materials. Widor Decl., Ex. A, at RFP No. 11. However, PPP does not possess any documents responsive to this request, making certification unnecessary.

RFP No. 12: Complaint Counsel's twelfth request seeks information about the individuals at PPP who had responsibilities related to Traffic Jam Events. Specifically, Complaint Counsel is requesting

Documents sufficient to identify the Person or Persons with any responsibilities for or on behalf of the Company relating to (i) Traffic Jam Events, (ii) any clients or customers of Traffic Jam Events, including but not limited to any automotive dealerships, or (iii) the Company's Advertisements or Promotional Materials, including a description of the functions performed by each Person and the Person's full name, job title, company, and current employment status, and, if the Person is a company or other entity, its name and address.

Widor Decl., Ex. A, at RFP No. 12. Phrased as a document request, this request is really an interrogatory, and interrogatories cannot be directed to non-parties. *See* 16 C.F.R. § 3.35. While the request purports to request documents, the substance is that of an interrogatory seeking information on people who work for the party, as the final portion of the request demonstrates by requesting a range of employment information. As this is not a valid document request, it should be stricken.

B. Additional Arguments

Complaint Counsel raises two additional arguments meriting response that are not already addressed above. First, Complaint Counsel asserts PPP waived its objection that documents sought

by the subpoena are more conveniently obtainable from Respondents. *See* Motion to Certify, at 6. Second, Complaint Counsel relies upon the *Fair* case for the proposition that convenience of the third-party arguments should be rejected if the parties to the case refuse to produce documents. *See id.*

1. Waiver

PPP did not waive its convenience objection. Complaint Counsel cites no authority for the proposition that PPP waived its convenience objection by not raising it in its initial response to the subpoena, and nothing in Rule 3.34 supports that objections are waived if not asserted in the initial response. *See* 16 C.F.R. § 3.34. When the issue of PPP’s compliance with Complaint Counsel’s subpoena first came before this Court, on Complaint Counsel’s motion to compel, PPP timely raised its objection that the subpoena sought information that is best obtainable from Respondents, citing the applicable Rule. *See* Platinum Plus Printing, LLC’s Response to Complaint Counsel’s Motion to Compel, at 1, 4 (Nov. 17, 2020); *see also In re: 1-800 Contacts, Inc.*, Docket No. 9372, slip op. at 1–2 (Jan. 17, 2017), available at <https://www.ftc.gov/system/files/documents/cases/170117orderdenytmtncompel.pdf> (explaining that non-party did not waive its objections by not filing a motion to quash). PPP’s objection that Complaint Counsel’s subpoena seeks information that is best obtained from Respondents is timely and should be adjudicated on the merits.

2. Fair v. Commc’ns Unlimited Inc.

Complaint Counsel’s reliance on *Fair v. Commc’ns Unlimited Inc.*, No. 4:17 CV 2391 RWS, 2019 WL 227982, at *2 (E.D. Mo. Jan. 16, 2019) for the proposition that PPP’s convenience argument should be rejected because Respondents have refused to produce documents is incorrect. As that court explained, “when information or documents are held by both a non-party and a party,

one should seek that information first from the party.” *Id.* That is not what has happened here, as Complaint Counsel subpoenaed PPP on the same day it served discovery requests on Respondents, not after attempting to obtain the documents from Respondents. *See* Order on Complaint Counsel’s Motion to Compel, at 3 (Oct. 28, 2020) (noting Complaint Counsel served discovery requests on Respondents on September 10, 2020); Widor Decl., Ex. A, (showing Complaint Counsel’s subpoena to PPP dated September 10, 2020). While the court in *Fair* did reject the non-parties’ convenience argument, it did so because the information was first sought from the defendant three times and was not produced, and only after the defendant failed to produce the information was it sought from the non-party. While Complaint Counsel states that Respondents have represented that they do not intend to respond to discovery, this Court just ordered Respondents to comply—an order issued *after* Complaint Counsel filed the present motion—and it is premature to assume Respondents will not comply. *See* Order Granting Complaint Counsel’s Motion to Compel Production of Documents and Answers to Interrogatories, at 4–5 (Dec. 16, 2018). Thus, PPP’s convenience objections should not be rejected; Respondents have been ordered to produce documents which have also been requested from PPP, and Complaint Counsel did not seek such documents from Respondents first.

CONCLUSION

This Court should deny Complaint Counsel’s Motion to Certify because the subpoena is overbroad, seeks duplicative information best obtainable from Respondents, and seeks irrelevant information considering PPP is not a party to this action. If the Court grants Complaint Counsel’s motion, PPP requests that the Court modify and limit the subpoena to the extent the Court finds PPP’s objections and arguments herein meritorious.

December 21, 2020

Respectfully submitted,

s/ Lisa M. Lamm Bachman

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, I caused the foregoing documents to be served via electronic mail to:

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Dated: December 21, 2020

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