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

In the Matter of)	
)	
Traffic Jam Events, LLC,)	
a limited liability company,)	Docket No. 9395
)	
and)	
)	
David J. Jeansonne II, individually and as an)	
officer of Traffic Jam Events, LLC,)	
)	
Respondents.)	

**ORDER GRANTING MOTION FOR CERTIFICATION TO THE COMMISSION
OF REQUEST FOR COURT ENFORCEMENT OF NONPARTY SUBPOENA**

I.

On July 29, 2021, Federal Trade Commission (“FTC”) Complaint Counsel filed a Motion to Certify to the Commission a Request Seeking Court Enforcement of a Subpoena *ad Testificandum* (“Motion”). The Motion relates to a July 20, 2021 subpoena *ad testificandum* issued by Complaint Counsel to obtain deposition testimony from Justin Brophy (“Brophy”), a nonparty (“Subpoena”). Traffic Jam Events, LLC (“TJE”) and David J. Jeansonne II (“Jeansonne”) (collectively, “Respondents”) filed an opposition to the Motion on August 3, 2021 (“Opposition”). Pursuant to FTC Rule 3.22(d), the deadline for a response from Brophy was August 9, 2021.¹ No response from Brophy has been filed.

The Motion is GRANTED, as explained below.

II.

The FTC’s Complaint against Respondents alleges three counts of violating the FTC Act. Count I alleges deceptive advertising regarding COVID-19 government stimulus benefits. Complaint ¶¶ 15-16; *see also* ¶ 5. Count II alleges that Respondents deceptively advertised that consumers had won a specific prize that could be collected by visiting a particular auto

¹ Rule 3.22(d) allows 10 days from service to respond to a motion. 16 C.F.R. § 3.22(d). The certificate of service attached to the Motion states the Motion was served by electronic delivery on July 29, 2021.

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dealership, when consumers had not won the specific prize. Complaint ¶¶ 17-18; *see also* ¶ 12. Count III alleges that Respondents violated the FTC Act by failing to make certain disclosures required under the Truth in Lending Act (“TILA”) and Regulation Z, 12 C.F.R. § 226.24(d), in Respondents’ advertisements promoting closed-end credit. Complaint ¶¶ 14, 20-23.

Respondents’ Answer admits Complaint Counsel’s allegations that Respondents “have advertised, marketed, promoted, or offered for sale or lease, and sold or leased motor vehicles for or on behalf of auto dealerships nationwide” and that Respondents “create advertising, offer direct mail marketing services, and staff tent sales events to automotive dealerships.” Complaint ¶ 3, Answer ¶ 3. Respondents deny that they disseminated any deceptive advertising, or any advertising failing to make required federal disclosures. Answer ¶¶ 5, 12, 14, 15, 17, 21.

III.

A.

“Parties 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). The FTC Rules also require that discovery be limited when the Administrative Law Judge determines that:

- (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

16 C.F.R. § 3.31(c)(2).

The Subpoena to Brophy was issued pursuant to Rule 3.34(a), which states in pertinent part: “Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena” 16 C.F.R. § 3.34(a).

Rule 3.38(c) states that “in instances where a nonparty fails to comply with a subpoena or order, the [Administrative Law Judge] shall certify to the Commission a request that court enforcement of the subpoena or order be sought.” 16 C.F.R. § 3.38(c); *see also In re Axon Enter., Inc.*, 2020 WL 5543022, at *3, *5 (Sept. 4, 2020) (certifying request for court enforcement where nonparty recipient failed and refused to comply with the subpoena).

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B.

Brophy is a former employee of TJE. Brophy was identified as a person with relevant knowledge in Respondents' initial and supplemental disclosures, and listed as a potential witness on Respondents' preliminary and supplemental preliminary witness lists. Declaration of Thomas J. Widor ("Widor Decl.") ¶¶ 3-7; Motion Exhibits A-D. In addition, Respondent Jeansonne's deposition testimony indicates that Brophy has relevant knowledge of TJE's business operations, including as to the design and distribution of Respondents' advertisements and Respondents' relationships and dealings with auto dealers during this process. Motion Exhibit I.

On July 20, 2021, Complaint Counsel issued the Subpoena to Brophy. Widor Decl. ¶ 25; Motion Exhibit M. The Subpoena was served on July 22, 2021 on an individual residing at the last known address provided by Respondents, which is also associated with Brophy in property records. Widor Decl. ¶ 26; Motion Exhibit N.² The Subpoena required Brophy to appear for a remote deposition on July 27, 2021 at 10 a.m. Eastern Standard Time. Widor Decl. ¶ 25; Motion Exhibit M.

In advance of the deposition, Complaint Counsel's paralegal called Brophy to confirm his participation, leaving a voicemail, and also sought Brophy's confirmation by email as to receipt of the Subpoena. Brophy did not respond. Widor Decl. ¶¶ 28-29; Motion Exhibit P.

Brophy failed to appear for the deposition, which was held on July 27, 2021, and did not respond to telephone calls and emails from Complaint Counsel regarding his failure to appear. Widor Decl. ¶¶ 31-32. Complaint Counsel convened the video deposition, noted Brophy's failure to comply with the Subpoena, and, after reserving Complaint Counsel's right to notice the deposition for a future date, concluded the deposition. Widor Decl. ¶ 33.

IV.**A.**

In their Opposition, Respondents contend that Complaint Counsel's issuance of the Subpoena and scheduling of the deposition were untimely under the First Revised Scheduling Order, issued May 7, 2021. The First Revised Scheduling Order set a deadline of June 11, 2021 for the issuance of subpoenas and a deadline of July 16, 2021 for the close of fact discovery. Complaint Counsel issued the Subpoena on July 20, 2021 for a deposition to be conducted on July 27, 2021. Respondents argue that the Motion should therefore be denied. Respondents' argument is without merit, as explained below.

On June 11, 2020, Complaint Counsel moved for an extension of the discovery deadline, in anticipation that Complaint Counsel's then-pending motion for sanctions against Respondents might culminate in production of additional discovery then owed by Respondents. Respondents did not oppose Complaint Counsel's motion. The motion was granted by an order issued on June 15, 2021 directing that "Complaint Counsel shall have ten days to examine any discovery

² In addition, on July 21, 2021, Complaint Counsel's paralegal sent a copy of the Subpoena to the email address provided for Brophy. Widor Decl. ¶ 27; Exhibit O.

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information or materials Respondents provide after June 11, 2021 and to issue any additional discovery requests based on such information or materials.” Order Granting Motion to Extend Discovery Deadlines at 1. As noted in the Order on Complaint Counsel’s Motion for Sanctions, issued June 29, 2021, Complaint Counsel specifically argued that Respondents were in breach of their duty to timely supplement their Supplemental Initial Disclosures to provide contact information for TJE’s now-former employees. Respondents did not provide a telephone number for Brophy until Jeansonne’s deposition on June 22, 2021, and did not provide a last-known address until July 14, 2021. Accordingly, Complaint Counsel’s issuance of the Subpoena on July 20 and convening of the deposition on July 27, 2021 were not untimely.

B.

Complaint Counsel has demonstrated that the information sought through the Subpoena is relevant. As shown above, Brophy is a former employee with knowledge of TJE’s business and the advertising and promotional material that is at issue in this case. Moreover, Brophy has been preliminarily designated as a witness for Respondents. The foregoing is sufficient to establish that the Subpoena seeks relevant information within the meaning of Rule 3.31(c).

The record further shows that Brophy failed to appear for the scheduled deposition, despite Complaint Counsel’s reasonable efforts to procure his attendance. In addition, Brophy has not responded to the Motion and therefore offers no excuse or justification for failing to comply with the Subpoena.

V.

For all the foregoing reasons, the Motion is GRANTED. It is hereby ORDERED that Complaint Counsel’s request for court enforcement of the Subpoena issued to Brophy be and hereby is certified to the Commission, with the recommendation that district court enforcement be sought.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 10, 2021