PUBLIC

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

In the Matter of	)	
HomeAdvisor, Inc., a corporation, d/b/a Angi Leads, d/b/a HomeAdvisor Powered By Angi,	)	Docket No. 9407
Respondent.	)	

ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL DOCUMENTS RESPONSIVE TO REQUEST 14

I.

On August 4, 2022, Federal Trade Commission ("FTC") Complaint Counsel filed a motion to compel Respondent HomeAdvisor, Inc. ("Respondent" or "HomeAdvisor") to produce documents responsive to Complaint Counsel's Request for Production of Documents ("Motion"). Respondent filed an opposition to the Motion on August 11, 2022 ("Opposition"). For the reasons set forth below, the Motion is GRANTED.

II.

On June 8, 2022, Complaint Counsel served Respondent with Complaint Counsel's Second Set of Requests for Production of Documents ("Requests"), containing three requests numbered 14-16. Request 14 seeks production of all recordings of HomeAdvisor's sales calls from a specified six-month period, May through October 2019, while Request 15 seeks additional documents related to those recordings, and Request 16 asks for any quality assurance documents relating to call recordings ("Quality Assurance Recordings"). Complaint Counsel seeks an order requiring Respondent to produce documents responsive to Request 14 within five days.

Complaint Counsel states that during the investigation prior to this litigation, the Commission issued a Civil Investigative Demand ("the CID") in July 2019, that requested, among other things "[a] representative sample . . . between You and service providers, including telephone recordings . . . " and that Respondent produced 1,710 call recordings in response to the CID. Complaint Counsel asserts that when Complaint Counsel

introduced the content of a selected sample of those recordings in support of its April 7, 2022 motion for summary decision, which was denied on August 2, 2022, Respondent asserted that the selected recordings were not representative.

Complaint Counsel states that Respondent informed Complaint Counsel that Respondent would produce approximately 5,000-6,000 sales calls from the specified time period for which it had quality assurance documents (*i.e.*, documents responsive to Complaint Counsel's Document Request 16, Quality Assurance Recordings). Complaint Counsel states that it proposed to accept those recordings as sufficient in response to Request 14 if Respondent made certain stipulations and representations regarding them, so that the Quality Assurance Recordings could be treated as representative.[1]

Respondent states that: in response to the CID, it produced 1,710 recordings of sales calls with prospective service provider customers; it has produced thousands more audio recordings subject to its quality assurance review of sales calls from the May through October 2019 period[2]; and has offered to produce sales recordings from a later time period that are easier for Respondent to retrieve and produce.[3]

III.

Pursuant to Commission Rule 3.31(c)(1): "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). Discovery shall be limited if the Administrative Law Judge determines that it is "unreasonably cumulative or duplicative," or the "burden and expense of the proposed discovery . . . outweigh its likely benefit." 16 C.F.R. § 3.31(c)(2). "Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied." *In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at *2 (Jan. 9, 2009).

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[1] Complaint Counsel stated that it will accept the Quality Assurance Recordings as sufficient production in response to Request 14 if Respondent: (1) "represents that the Quality Assurance Recordings consist of all extant recorded calls from its internal Quality Assurance process from the period of May 1, 2019 through October 31, 2019 for which quality assurance forms exist"; (2) "represents that no retention or deletion policy or procedures have resulted in any particular category of recorded call being omitted from the Quality Assurance Recordings"; and (3) "stipulates that the Quality Assurance Recordings are representative of all sales calls from the period of May 1, 2019 through October 31, 2019." MacDonald Declaration, Exh. G at 2.

[2] Respondent states that Quality Assurance Recordings are stored separately from other sales call audio files, making them far easier to retrieve.

[3] Respondent states that sales calls from the specified period have been archived and are retrievable only via a "legacy" system that HomeAdvisor no longer operates in its ordinary course of business, and that sales calls from a more recent period are less burdensome to retrieve and produce. Complaint Counsel argues the sales calls from a more recent period would be after Respondent knew it was the subject of an FTC investigation. Respondent will not be allowed to substitute sales calls from a more recent period for the sales calls from the requested period.

If a party fails to comply with any discovery obligation under the rules, Rule 3.38 authorizes the opposing party to seek an order compelling such compliance. "Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that . . . [response] be made." 16 C.F.R. § 3.38(a).

This case involves three counts alleging that HomeAdvisor misrepresented its products in its advertising and sales calls to service providers. *See* Complaint at 14-15. The first element of a deception claim is that the challenged representation was made to consumers. *In re POM Wonderful, LLC*, 155 F.T.C. 1, 6 (2013). In its statement of material facts in opposition to Complaint Counsel's motion for summary decision, Respondent stated that all sales of HomeAdvisor's memberships require a telephone conversation between the prospective member and a HomeAdvisor sales agent. (Respondent's Statement of Material Facts at page 185, attached to Respondent's Opposition to Complaint Counsel's Motion for Summary Decision, filed June 6, 2022). Thus, the contents of sales calls are clearly relevant to understanding what claims HomeAdvisor may have made to service providers. Respondent does not dispute that the requested recordings are relevant, but instead asserts that the Request is unduly burdensome and seeks material that is cumulative of sales calls Respondent has already produced.

To support its claim of undue burden, Respondent submitted a declaration from a Senior Manager of Enterprise Infrastructure at HomeAdvisor's parent company, Angi, Inc. ("Angi"). ("Tracy Declaration"). According to the Tracy Declaration: the audio recording database that retains these calls is no longer in use; the calls have been moved into archival storage; personnel have already spent approximately 80 hours trying to retrieve responsive files; and Tracy anticipates it will take approximately 160 hours for Angi to complete its review for responsive material. Tracy Declaration ¶¶ 2, 3, 5, 6. This explanation does not satisfy Respondent's heavy burden of showing why discovery should be denied.

Respondent's argument that sales calls from May through October 2019 are cumulative of sales calls Respondent has already produced also fails. The parties dispute whether the call recordings Respondent has already produced are a representative sample. If the 1,710 calls Respondent has already produced are not a representative sample, then the calls from May through October 2019 would not be cumulative. If the Quality Assurance Recordings are not a representative sample, then the calls from May through October 2019 would not be cumulative. Complaint Counsel will be permitted to obtain the requested additional selections of sales calls.

IV.

For the above stated reasons, the Motion is GRANTED, and it is hereby ORDERED Respondent shall produce material responsive to Complaint Counsel's Request for Production Request 14 within 14 days. Nothwithstanding the foregoing, Respondent may accept the stipulations and conditions regarding the Quality Assurance Recordings offered by Complaint Counsel, as set forth in footnote 1 of this Order, as an alternative to

producing the documents directed by this Order; provided Respondent's acceptance of those conditions takes place in advance of the production deadline under this Order.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: August 16, 2022