



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

March 31, 2000

**VIA FACSIMILE AND EXPRESS MAIL**

William E. Shell, M.D.  
c/o Gerald M. Shaw, Esquire  
1111 Bayside Drive  
Suite 270  
Corona Del Mar, California 92625-1755

Re: Petition to Limit Subpoena *Duces Tecum* Issued to  
William E. Shell, M.D. (Docket No. C-3749)

Dear Mr. Shaw:

This letter advises you of the Federal Trade Commission's ruling on the above-referenced Petition to Limit ("Petition") you submitted on behalf of your client, William E. Shell, M.D. ("Petitioner"). The decision was made by Commissioner Sheila F. Anthony, acting as the Commission's delegate. See 16 C.F.R. § 2.7(d)(4). The Petition is denied for the reasons stated below.

Petitioner may request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.<sup>1</sup> The filing of a request for review by the full Commission does not stay or otherwise affect the new return date, April 14, 2000, unless the Commission rules otherwise. See 16 C.F.R. § 2.7(f).

**I. BACKGROUND**

Petitioner advertises, markets, and sells various products over the Internet through a web site called Targeted Medical Foods (targetedmedicalfoods.com). Petitioner represents that these products, such as Sentra-AM, Viralex, Vascular, and Lister B, aid the body's production of neurotransmitters and thereby prevent or mitigate specific diseases, including Chronic Fatigue Syndrome, fibromyalgia, erectile dysfunction, arteriosclerosis, high blood pressure, cold sores,

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<sup>1</sup> This letter is being delivered by facsimile and by express mail. The facsimile is being provided only as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you receive the express mail copy of this letter.

colds, and sore throats. The Commission is investigating whether any of Petitioner's claims and practices are deceptive and, therefore, constitute violations of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52, as amended.

On December 20, 1999, pursuant to the Commission's September 7, 1999, omnibus resolution authorizing investigations of Internet Advertisers, Sellers, and Promoters, the Commission issued a subpoena *duces tecum* to the Petitioner. The Subpoena requests various documents, including sales figures, product labels, and advertising materials. The two specifications at the heart of this Petition call for (1) documents constituting the basis of evidence relied upon to substantiate Petitioner's claims regarding the products advertised on the Targeted Medical Foods web site, and (2) documentary materials that may limit or call into question those product claims.

Petitioner asks that these two specifications, numbered 1 and 2 in the Subpoena, be stricken or modified on the grounds that they are unduly burdensome. Specifically, Petitioner argues that the two specifications would require the downloading and printing of 45,000 pages of materials.

## II. ANALYSIS

The issue at the heart of this investigation is whether Petitioner's claims about the products at issue are adequately substantiated. The two specifications Petitioner seeks to have stricken or modified are those seeking to elicit evidence on this central issue.

After reciting some general legal authorities and summarizing the two Subpoena specifications at issue, Petitioner's brief offers only *one sentence* in support of his burden argument: "the production of documents responsive to the First and Second Requests of the Subpoena Duces Tecum requires downloading and printing of approximately 45,000 pages of materials and is therefore unduly burdensome as it hinders and disrupts the normal operations of Targeted Medical Foods." Memorandum of Points and Authorities in Support of Petition to Limit Subpoena Duces Tecum Issued to William E. Shell, M.D. at 3. This bald conclusory statement is simply insufficient to show that the specifications should be stricken or limited.

Rule 2.7(d)(1) provides, in relevant part, that petitions "shall set forth all assertions of privilege or other factual and legal objections to the subpoena ... , *including all appropriate arguments, affidavits and other supporting documentation.*" 16 C.F.R. § 2.7(d)(1) (emphasis added). The instant Petition fails to meet this basic requirement.

The burden of showing that a particular request for production within an administrative subpoena *duces tecum* is unreasonably burdensome, or requires an unreasonably burdensome amount of effort and expense, rests with the subpoenaed party. *See FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977) (citing *U.S. v. Powell*, 379 U.S. 48, 58 (1964)). The petitioner has not

Gerald M. Shaw, Esq.  
Page 3

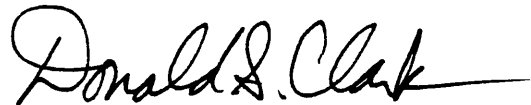
met this burden. For example, Petitioner provides no file lists, examples of files, file summaries, man-hour cost projections or business analysis affidavits of any sort to support his claim that downloading the files relating to specifications one and two in the Subpoena will “unduly disrupt or seriously hinder normal operations” of his business. Instead, Petitioner merely offers a single conclusory statement with no supporting evidence. Reviewing courts have found such unsupported or vague assertions of excessive burden unconvincing and inadequate to support challenges to FTC compulsory process requests.<sup>2</sup>

All compulsory process specifications require recipients to expend some effort and incur some expense. Compulsory process would be rendered useless if it could be avoided based upon nothing more than bald assertions that compliance would require the expenditure of time and resources.

### III. CONCLUSION

For the foregoing reasons, the Petition is denied, and, pursuant to Rule 2.7(e), 16 C.F.R. § 2.7(e), Petitioner is directed to comply with the Subpoena on or before Friday, April 14, 2000.

By direction of the Commission.



Donald S. Clark  
Secretary

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<sup>2</sup> See, e.g., FTC v. Standard American, Inc., 306 F.2d 231, 235 (3<sup>rd</sup> Cir. 1962)(asserting that a corporation subpoenaed for documents by the FTC should have “met their burden of a showing of the unreasonableness of the Commission’s demand,” by making a record that would convince (the District Court) of the measure of their grievance rather than ask (it) to be assumed from the corporation’s mere statement that it would be deprived of “thousands of current records in daily business use” without a “single shred of evidence.”)