



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

January 14, 2010

**VIA FACSIMILE AND EXPRESS MAIL**

Mark Benning  
c/o Reid M. Figel, Esquire  
Kellogg, Huber, Hansen, Todd,  
Evans & Figel, P.L.L.C.  
1615 M. St., Suite 400  
Washington, DC 20036

Swish Marketing, Inc.  
Michael A. Thurman, Esquire  
Loeb & Loeb, LLP  
10100 Santa Monica Blvd.  
Suite 2200  
Los Angeles, CA 90067-4120

Re: *Petitions to Quash Civil Investigative Demand Served on Mark Benning,  
File No. 072-3241*

Dear Messrs. Figel and Thurman:

On May 15, 2009, a Civil Investigative Demand ("CID") was issued to Mark Benning as part of the Commission's investigation of the marketing activities of Swish Marketing, Inc. ("Swish"). On May 21, 2009, Mark Benning filed a petition to quash that CID; on May 22, 2009, Swish filed a petition to quash or limit the CID served on Mark Benning.<sup>1</sup> On August 19, 2009, the Commission filed a suit seeking a permanent injunction and other equitable relief against, *inter alia*, Mark Benning and Swish. *Fed. Trade Comm'n v. Swish Marketing, Inc., et al.*, Docket No. C-09-03814-RS (N.D. Cal., San Jose Div. Aug. 19, 2009). The Commission understands that staff has terminated its investigation, and intends to seek any additional information it might require regarding this matter as part of discovery in the pending action. This letter advises you of the disposition of the foregoing petitions to limit or quash the CID served on Mark Benning.<sup>2</sup>

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<sup>1</sup> In light of our disposition of this matter, the Commission does not reach the issue of whether Swish has standing to challenge the CID served on Mark Benning. Swish's Petition describes Mr. Benning as "a former officer and director, and current shareholder, of Swish." Swish Petition at 3.

<sup>2</sup> This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission's delegate. *See* 16 C.F.R. § 2.7(d)(4). Petitioner has the right to 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. This letter decision is being delivered by facsimile and express mail. The facsimile copy is being provided as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you received the original by express mail.

In light of the foregoing, **IT IS ORDERED THAT** the CID issued to Mark Benning be, and it hereby is, **WITHDRAWN**.

**IT IS FURTHER ORDERED THAT** the petitions filed by Mark Benning and Swish to quash or limit the CID served on Mark Benning be, and they hereby are, **DISMISSED** because they are moot.

**By Direction of the Commission.**

Donald S. Clark  
Secretary