

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

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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 ON COMPLAINT COUNSEL’S MOTION TO DETERMINE
SUFFICIENCY OF RESPONSES TO REQUESTS FOR ADMISSION**

I.

On July 26, 2021, Federal Trade Commission (“FTC” or “Commission”) Complaint Counsel filed a Motion to Determine the Sufficiency of Respondents’ Responses to Requests for Admission (“Motion”). Respondents Traffic Jam Events, LLC (“TJE”) and its president, David J. Jeansonne II (“Jeansonne”) filed an opposition to the Motion on July 30, 2021 (“Opposition”).

Complaint Counsel’s request that all the pending requests for admission be deemed admitted, is DENIED. As explained below, the Motion is GRANTED in part and Respondents will be ordered to submit amended responses.

II.

The Motion, Opposition, and the declarations and exhibits submitted therewith, demonstrate the following. Complaint Counsel served two sets of requests for admissions pursuant to FTC Rule 3.32: The first set, containing requests 1-32, was served June 11, 2021 (the “First Set”) and the second set, containing requests 33-61, was served June 25, 2021 (the “Second Set”).

Respondents served responses to the First Set on June 21, 2021. In a June 28, 2021 letter to Respondents’ counsel, Complaint Counsel raised a number of issues regarding the sufficiency of Respondents’ responses, and pursuant to a July 5, 2021 meet and confer between counsel, Respondents agreed to amend their responses. Declaration of Michael E. Tankersley (“Tankersley Decl.”) ¶¶ 7-8; Motion Exhibit D. Respondents served responses to the Second Set

on July 6, 2021. Tankersley Decl. ¶ 5; Motion Exhibit B. Respondents provided amended responses to the First Set on July 8, 2021. Tankersley Decl. ¶¶ 3-4; Motion Exhibit A.

On July 16, 2021, Complaint Counsel wrote a letter to Respondents' counsel concerning Respondents' responses to the Second Set and Respondents' amended answers to the First Set. Complaint Counsel contended that certain responses to the Second Set were deficient, including for reasons that counsel had previously discussed with respect to Respondents' original responses to the First Set. Motion Exhibit E. Complaint Counsel further asserted that the amended responses to the First Set did not cure the deficiencies in the original responses. Complaint Counsel requested revised responses to both sets of requests and also invited Respondents' counsel to call to discuss the matter. *Id.* Respondents did not respond. Tankersley Decl. ¶ 8.

This Motion followed.

III.

Pursuant to FTC Rule 3.32(a), any party may serve on any other party:

a written request for admission of the truth of any matters relevant to the pending proceeding set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

16 C.F.R. § 3.32(a).

The matter is admitted unless the party responds, within 10 days, with “a sworn written answer a sworn written answer or objection addressed to the matter.” 16 C.F.R. § 3.32(b). The reasons for any objection must be set forth, and “[t]he answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.” 16 C.F.R. § 3.32(b). Furthermore, “[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.” 16 C.F.R. § 3.32(b). An improper objection or evasive response may be treated as an admission. *In re Bristol-Myers Co.*, 1976 FTC LEXIS 28, at *2-3 (Dec. 9, 1976); *In re Sterling Drug Inc.*, 1976 FTC LEXIS 272, at *7-12 (June 16, 1976).

In *Sterling Drug*, the Administrative Law Judge articulated some general principles for determining the sufficiency of responses to requests for admission, which are applicable to the instant Motion: (1) The function of requests for admissions is to narrow the issues for trial and “eliminate the necessity of putting on formal proof of uncontroverted facts.” (2) Each request for admission should be stated clearly and simply, to facilitate a clear response. “Thus, statements containing multiple propositions, ambiguous statements susceptible of diverse interpretations,” for example, “are improper and objectionable.” (3) Answers to requests “must be clear, specific, direct and straightforward. Evasive or equivocal answers are improper.” While an admission or denial may be qualified, the requested party “may not qualify its admission or denial in such a

way as to recast the request and admit or deny the recast request.” In all cases, “the answer must fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the request, he must specify so much of it as is true and qualify or deny the remainder.” (4) “Ambiguous requests may be objected to on that ground or be answered by stating that he is unable to admit or deny because of an ambiguity in the request, briefly explaining his difficulty.” (5) Where the requested party disputes a proposition or is uncertain of its truth, the party “may answer with a denial or a statement that he is unable honestly to admit or deny, briefly explaining the reasons.” (6) “[W]ith respect to any matter not within the knowledge of the requested party, he must make reasonable inquiry in order to ascertain the facts. When the information is reasonably available to the party, he cannot refuse to admit or deny on the ground of lack of personal knowledge.” *Sterling Drug*, 1976 FTC LEXIS 272, at *2-4,

IV.

As a preliminary matter, Respondents argue that the Motion should be denied because Complaint Counsel and Respondents’ counsel did not conduct a separate meet and confer with respect to Respondents’ amended responses to the First Set or Respondents’ responses to the Second Set. Respondents note that Additional Provision 4 of the Scheduling Order issued in this case requires such a conference with respect to every motion, including a motion to determine the sufficiency of responses to requests for admission.

The record belies Respondents’ contention that they received no notice that any of the responses were deficient. Respondents acknowledge receipt of Complaint Counsel’s July 16, 2021 letter, referenced above, which outlined in detail the alleged deficiencies in Respondents’ responses, invited Respondents to discuss the matter, and requested further responses to the requests for admission. Some of the alleged deficiencies in the amended responses to the First Set and responses to the Second Set mirrored those addressed at counsel’s July 5, 2021 meet and confer regarding Respondents’ original responses to the First Set. Respondents did not respond to the July 16 letter. Based on the foregoing, the Motion will not be denied on the basis of Additional Provision 4.

The requests for admission at issue in the Motion are addressed below.

A. Requests 1-4 and 33-36

In summary, these requests seek admissions related to Platinum Plus Printing (“PPP”), a nonparty that worked with Respondents in connection with the advertisements and promotions at issue in this case. Respondent Jeansonne is also a manager of PPP. *See generally* Commission Order Directing General Counsel to Enforce Nonparty Subpoena (June 9, 2021). Respondents’ objections on relevance grounds are overruled.

In addition, the fact that PPP is not a party to this action does not relieve Respondents of the duty to answer these requests. Lack of personal knowledge is not a proper objection where, as here, Respondent Jeansonne, as a manager of PPP, could respond through reasonable inquiry. *See* Rule 3.32(b) (“An answering party may not give lack of information or knowledge as a

reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny.”).

Requests 1-2, 33-35: These requests ask basic information about PPP. Respondents objected and refused to answer. Respondents’ objections are overruled. Respondents shall respond to requests 1 and 2 and 33 through 35.

Requests 3-4: Respondents’ objections are overruled. Whether Jeansonne had authority to control the acts and practices of TJE and PPP with respect to advertisements for TJE does not request an improper legal conclusion. Moreover, Respondents’ response, notwithstanding their objections, that Jeansonne had authority over TJE “as testified to in his deposition” is improper. *See Sterling Drug*, 1976 FTC LEXIS 272, at *3 (“The requesting party may not be required to search the record” for information contained in “pleadings and other papers filed in the case.”). *Cf. DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 680-81 (D. Kan. 2004 (holding that the plaintiff’s answer to an interrogatory referencing the plaintiff’s complaint and initial disclosures was improper under Federal Rule of Civil Procedure 33(d)). Respondents shall provide amended responses to requests 3 and 4.

Request 36: Respondents’ objections are overruled. In addition, Respondents’ response to the request is deficient. The request asked Respondents to admit that TJE has “created and disseminated” certain specified print advertisements. Respondents denied the request but paired the denial with the qualification that advertisements are “disseminated” by auto dealerships. This response, which did not address the issue of creation of the advertisements, is evasive and ambiguous. Respondents shall provide an amended response to request 36.

B. Requests 11, 15-16, 18-19, 27-28, 53-59, and 61

Requests 11, 15-16, 18-19, 27-28, 53-59, and 61, in summary, ask Respondents to admit that certain advertisements were sent through the United States mail, to certain states at certain times. *See, e.g.*, Request 15 (“The Florida Stimulus Mailer was sent to residents in Florida in March 2020.”); Request 53 (“Attachment 2 is a copy of an advertisement generated by Traffic Jam Events LLC that promoted an automotive sales event in Houston, Texas from June 16, 2020, to June 20, 2020, for or on behalf of South Houston Nissan.”).

Respondents admitted the requests as to TJE, but denied them as to the individual respondent, TJE’s president, Jeansonne. Respondents argue that it is proper for Jeansonne to deny these requests if he did not personally undertake the act of mailing the advertisements. However, the requests ask Respondents to admit that the advertisements were mailed, and/or to identify a particular advertisement. As noted above, the requested party “may not qualify its admission or denial in such a way as to recast the request and admit or deny the recast request.” *Sterling Drug*, 1976 FTC LEXIS 272, at *3.

Respondents shall provide amended responses to requests 11, 15-16, 18-19, 27-28, 53-59, and 61.

C. Request 39

Request 39 asks Respondents to admit TJE “did not review advertisements that [TJE] created and disseminated that describe monthly payment amounts, down payments or an APR for compliance with 16 C.F.R. § 226.24.” Respondents’ objections as to the relevance of the request are overruled, given that Counts II and III of the Complaint allege Respondents’ violation of various lending disclosure requirements. Respondents’ objection that the request fails to properly identify which advertisements are the subject of the request is overruled. The request is properly understood as a request to admit that TJE did not conduct any compliance reviews, for any of their advertisements. Finally, Respondents’ denial, on the ground that the request implies that Respondents had a “legal duty” to review advertisements for compliance with lending regulations, is unresponsive. The request is directed at a question of fact, not law.

Respondents shall provide an amended response to request 39.

D. Requests 43-44

These requests ask Respondents to admit or deny the relationship between certain numbers appearing on Respondents’ prize mailers. Respondents objected and did not answer these requests on the grounds that each request was “confusing and appears to contain an error preventing Respondents from understanding what is being requested.” While these two requests are not models of clarity, they are sufficiently clear to enable Respondents to respond. Respondents’ allusions to an unidentified error is non-responsive.

Respondents’ objections are overruled. Respondents shall provide amended responses to requests 43 and 44.

E. Requests 45 and 49

These requests ask Respondents to admit that “recipients” of certain mailers promoting a particular event and containing a certain number “were not entitled to claim” a cash prize at the event. Respondents’ objections are without merit and are overruled. Respondents’ response, notwithstanding the objections, was to deny these requests, stating that “*a recipient* was entitled to claim” the prize (emphasis added). This response is ambiguous. The substance of the request is to admit that not all recipients of a mass mailing with identical prize award numbers could claim a prize. Respondents’ response could be interpreted to admit that fact, notwithstanding the denial, or it could be interpreted to mean that one recipient at each advertised event would win a prize.

Respondents shall provide an amended response to requests 45 and 49.

F. Request 50

Request 50 asked Respondents to admit that a specified image reflects “the Great Seal of the United States.” Respondents objected, including on the ground of lack of personal knowledge, but agreed “to stipulate to what [the image] is.”

The image is relevant because the image is similar to an image appearing in Respondents' advertisements. *See* Complaint ¶ 9 B. As noted above, lack of personal knowledge is not a basis for refusing to answer a request for admission when the necessary information can be obtained with reasonable inquiry. In this case, a look at the back of a dollar bill or a quick internet search would likely enable Respondents to respond to the request. If Respondents are willing to "stipulate" to what the image is, it is unclear why Respondents cannot admit the requested fact.

Respondents shall provide an amended answer to request 50.

V.

For all the foregoing reasons, Complaint Counsel's Motion is GRANTED IN PART, and it is hereby ORDERED that Respondents shall provide further amended responses to Complaint Counsel's First Set of Requests for Admission and amended responses to Complaint Counsel's Second Set of Requests for Admission, no later than August 18, 2021. Respondents' responses shall comply fully with applicable law and this Order. Failure to fully comply will result in treating the requests as admitted.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 11, 2021