

**X200041**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina Khan, Chair**  
                                  **Noah Joshua Phillips**  
                                  **Rohit Chopra**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**

**In the Matter of**

**TRAFFIC JAM EVENTS, LLC, a limited liability company, and**

**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.**

**DOCKET NO. 9395**

**COMPLAINT COUNSEL’S EXPEDITED MOTION TO CONTINUE EVIDENTIARY HEARING AND PREHEARING DEADLINES**

Complaint Counsel moves for a continuance of the date of the evidentiary hearing in this action, from September 14 to November 16, 2021, and corresponding adjustment of the deadlines for prehearing submissions. The hearing and prehearing proceedings may be rendered moot by the Commission’s resolution of Complaint Counsel’s pending Motion for Summary Decision and no party will be prejudiced by postponing the September 14 hearing.

*Complaint Counsel requests that the Commission give expedited consideration to this motion because of the approaching hearing date and attendant deadlines for pretrial submissions from August 30 to September 8, 2021.* Complaint Counsel has requested that Respondents join in this request or offer alternate dates, but Respondents’ counsel has not assented or proposed dates, and has indicated that Respondents may seek other relief. Complaint Counsel requests that the Commission direct Respondents to file their opposition or other response by 12:00 pm EDT on August 23, 2021.

## **BACKGROUND**

The FTC's Complaint against Traffic Jam Events, LLC and its president, David J. Jeanson II (collectively, "Respondents") alleges three counts arising from deceptive advertising to promote auto dealership offers. This matter was withdrawn from adjudication on December 28, 2020, to consider a proposed consent agreement. It returned to adjudication on May 3, 2021, and the Commission designated September 14, 2021 as the date for the evidentiary hearing. The Administrative Law Judge entered a schedule that includes deadlines for prehearing submissions on August 30 and a prehearing conference on September 13, 2021. *See First Revised Scheduling Order* (May 7, 2021). Discovery has concluded with the exception of pending efforts to enforce third party subpoenas.<sup>1</sup>

Complaint Counsel has filed a dispositive motion for summary decision. *See Complaint Counsel's Motion for Summary Decision with Supporting Memorandum and Proposed Order* (Aug. 14, 2021). By Rule, Respondents have 14 days to oppose; Complaint Counsel has 5 business days to reply; and the Commission has 45 days from the date of the last answer or reply to the motion to consider the motion, although the Commission may extend the time. 16 C.F.R. §§ 3.22(a), (d), 3.24(a) (1).<sup>2</sup>

## **LEGAL STANDARD**

Rules 3.21(c)(1) and 3.41(b) provide the Commission may "upon a showing of good cause" postpone a hearing date. 16 C.F.R. §§ 3.21(c)(1), 3.41(b). The Rules provide that the consideration of a motion by the Commission does not automatically stay proceedings before the

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<sup>1</sup> *See Administrative Law Judge's Order Granting Motion for Certification to the Commission of Request for Court Enforcement of Nonparty Subpoena* (Aug. 12, 2021); *Order Directing General Counsel to Enforce Nonparty Subpoena* (June 9, 2021).

<sup>2</sup> Absent any extensions, the reply brief on the motion will be due September 7 and the 45 days for the Commission to act would expire on Friday, October 22, 2021.

Administrative Law Judge, but the Commission may order a stay. 16 C.F.R. § 3.22(b). A stay is warranted where it will avoid a waste of resources. *Phoebe Putney Health System*, Docket No. 9348, 152 F.T.C. 1035, 1036 (July 15, 2011). As the Commission has observed, “the public interest is not served if litigants and third parties bear expenditures that later prove unnecessary.” *In the Matter of Rag-Stiftung*, Docket No. 9384, 2020 WL 91294, at \*2 (F.T.C., Jan. 2, 2020). Consequently, a continuation or stay is justified where additional time could obviate the need for an administrative hearing without unduly delaying the Commission proceeding. *In the Matter of Thomas Jefferson Univ.*, Docket No. 9392, 2020 WL 7237952, at \*2 (F.T.C., Nov. 6, 2020); *accord In the Matter of Sanford Health*, Docket No. 9376, 2017 WL 5623692, at \*1 (F.T.C., Nov. 3, 2017).

### **ARGUMENT**

The motion for summary decision currently pending before the Commission could obviate the need for the evidentiary hearing, or narrow the scope of the hearing and pretrial submissions. *See* 16 C.F.R. § 3.24(a)(5) (decision on summary decision may specify facts deemed established); *In the Matter of Benco Dental Supply Co.*, Docket No. 9379, 2018 WL 6338486, at \*1 (F.T.C., Nov. 26, 2018) (specifying facts for established for further proceedings). Consequently, Commission should continue the administrative hearing in this proceeding – currently scheduled to begin on September 14, 2021 – and postpone the prehearing conference and associated prehearing submissions. Complaint Counsel requests that the Commission establish November 16, 2021, as the new hearing date and extend the prehearing submission deadlines by the same 63 days.<sup>3</sup>

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<sup>3</sup> The current, First Revised Scheduling Order (May 7, 2021), provides for prehearing filings or events beginning fifteen days before the hearing date. A 63-day extension of these dates would extend these dates to November 1 (objections to witness lists and exhibits); November 2

Continuation of the hearing date is necessary to prevent unnecessary burdens and expense for the parties and nonparty witnesses. The First Revised Scheduling Order requires the parties to spend significant resources to meet certain deadlines in the weeks leading up to this September 14 hearing. For instance, the parties must prepare and file pretrial briefs; exchange and file proposed stipulations of law, facts, and authenticity; and exchange objections to final proposed witness lists, exhibit lists, and designated testimony between August 30 and September 8. If the Commission grants Complaint Counsel's motion for summary decision, the parties will have wasted resources preparing these prehearing submissions and making arrangements for witnesses. Furthermore, if the Commission's ruling on the pending motion does not dispose of the entire complaint but resolves some of the issues presented, those rulings will affect the scope of the evidentiary hearing that should be the focus of the parties' respective pretrial briefs, proposed stipulations, and selection of witnesses and exhibits for trial. Finally, the September 14 hearing date also imposes burdens on third-party witnesses whose testimony may not be necessary, depending the Commission's resolution of the pending motion for summary decision.

The Commission should act on this motion on an expedited basis and shorten the default period for Respondents to file their response, if any. The first of a series of detailed pretrial submissions is due in just 12 days, on August 30. *See* [First Revised Scheduling Order](#) at 3. A prompt decision on the hearing date is also necessary to avoid wasteful efforts to arrange for subpoenas and the appearance of witnesses at a September 14 trial. Complaint Counsel has been soliciting Respondents' position on a continuance since Monday, August 16, and the

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(Complaint Counsel's prehearing brief); November 9 (exchange of proposed stipulations); November 10 (Respondents' pretrial brief) and November 15 (final prehearing conference).

Commission should direct Respondents to articulate their position promptly so the Commission may act on the motion.

**CONCLUSION**

The Commission should continue the date for the evidentiary hearing in this action to November 16, 2021, and order that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 63 days.<sup>4</sup>

Respectfully submitted,

August 18, 2021

by: */s/ Michael Tankersley*  
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<sup>4</sup> Alternatively, the Commission could continue the hearing to a date measured from the date of the Commission's issuance of a decision on the pending motion for summary decision. If the Commission sets a contingent hearing date, we urge that it allow 21 days from the issuance of the Commission's decision to the hearing date to allow time for preparation of the pretrial submissions currently scheduled for August 30 to September 8, 2021.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2021, I caused the foregoing Expedited Motion to Continue Evidentiary Hearing and Prehearing Deadlines to be served via the FTC's E-filing system and electronic mail to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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August 18, 2021

by: /s/Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection

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**DOCKET NO. 9395**

**[PROPOSED]  
ORDER REQUIRING EXPEDITED RESPONSE**

On August 18, 2021, Complaint Counsel filed a motion to continue the evidentiary hearing currently scheduled for September 14, 2021, and pretrial deadlines. Respondents are hereby **ORDERED** to file their response to this motion, if any, no later than 12:00 p.m. EDT on August 23, 2021.

By the Commission.

April J. Tabor  
Secretary

SEAL:  
ISSUED:

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**[PROPOSED]  
ORDER GRANTING MOTION TO CONTINUE**

On August 18, 2021, Complaint Counsel moved to continue by 63 days the evidentiary hearing in this proceeding, currently scheduled to begin on September 14, 2021, and to postpone prehearing deadlines by corresponding 63-day periods. Rules 3.21(c)(1) and 3.41(b) provide the Commission may “upon a showing of good cause” postpone a hearing date. 16 C.F.R. §§ 3.21(c)(1), 3.41(b). Complaint Counsel requested expedited consideration of the motion.

A motion for summary decision against Respondents on all counts is currently pending before the Commission. The Commission’s resolution of this motion could obviate the need for the hearing or narrow its scope. Because there is good cause to continue the evidentiary hearing while the Commission considers the pending motion for summary decision,

**IT IS HEREBY ORDERED** that the Expedited Motion to Continue Evidentiary Hearing and Prehearing Deadlines is **GRANTED**; and

**IT IS FURTHER ORDERED** that the evidentiary hearing in this proceeding shall commence on November 16, 2021, and that, unless modified by the Chief Administrative Law Judge, related pre-hearing deadlines in the First Revised Scheduling Order, beginning with August 30, 2021, shall be extended by 63 days.

By the Commission.

April J. Tabor  
Secretary

SEAL:  
ISSUED: