

**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,)	Docket No. 9407
d/b/a HomeAdvisor Powered By Angi,)	
)	
Respondent.)	
_____)	

**ORDER ON NONPARTY TRIARES’ EMERGENCY PETITION TO STAY
DEPOSITION AND TO QUASH OR LIMIT SUBPOENA *AD TESTIFICANDUM***

I.

On September 15, 2022, nonparty Triares Inc. (“Triares”) filed a motion titled, “Emergency Petition to Stay Deposition and to Quash or Limit Subpoena *Ad Testificandum*” (“Motion”). Federal Trade Commission (“FTC”) Complaint Counsel filed a response opposing the Motion on September 15, 2022 (“Opposition”).

For the reasons set forth below, the Motion is DENIED.

II.

The Complaint in this matter alleges that Respondent HomeAdvisor, Inc. (“HomeAdvisor” or “Respondent”) violated the provisions of the FTC Act by making false, misleading, or unsubstantiated representations to home service providers about the quality, characteristics, and source of information HomeAdvisor collected about potential customers (“leads”) that HomeAdvisor sold to the providers. Complaint ¶¶ 61-69. The Complaint further alleges that the consumer leads are obtained directly by HomeAdvisor primarily through its own website, and also indirectly, through consumer information obtained through affiliates of HomeAdvisor (“affiliates”). Complaint ¶¶ 10-16.

Triares acknowledges that it obtained and sold consumer information to Respondent HomeAdvisor, which HomeAdvisor subsequently sold as leads to home service providers. *See* Motion at 1-2. On June 28, 2022, Complaint Counsel issued a subpoena *duces tecum* (“Document Subpoena”) and a subpoena *ad testificandum* (“Deposition Subpoena”) to Triares for information relating to the characteristics of leads it gathered and sold to HomeAdvisor. Triares was served with both subpoenas on or about July 7, 2022. Motion at 1. For the next several weeks, Triares and Complaint Counsel engaged in negotiations regarding the scheduling

and need for the deposition and the scope of both subpoenas. Triares' Motion is addressed solely to the Deposition Subpoena.

III.

Pursuant to Rule 3.31(c)(1) of the Commission's Rules of Practice, unless otherwise limited by order of the Administrative Law Judge, 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). Pursuant to Rule 3.33(c)(1), a party may name as the deponent an organization, which shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf. The person(s) so designated shall testify as to matters known or reasonably available to the organization. 16 C.F.R. § 3.33(c)(1).

Discovery shall be limited if the Administrative Law Judge determines that: (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit. 16 C.F.R. § 3.31(c)(2). In addition, the Administrative Law Judge may deny discovery or make any other order that justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding. 16 C.F.R. § 3.31(d).

Under Rule 3.34, discovery from a nonparty is to be obtained through service of a subpoena. According to Rule 3.34(c), a nonparty may seek to quash or limit a subpoena by filing such motion "within the earlier of 10 days after service thereof or the time for compliance therewith." 16 C.F.R. § 3.34(c).

A nonparty seeking to quash a subpoena has the burden of demonstrating why discovery should be denied. *In re Polypore Int'l, Inc.*, 2008 WL 4947490, at *6 (Nov. 14, 2008) (denying motion to quash subpoena *ad testificandum*); *FTC v. Dresser Indus., Inc.*, 1977 U.S. Dist. LEXIS 16178 at *12 (D.D.C.) "Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding." *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009) (quoting *In re Kaiser Alum. & Chem. Corp.*, 1976 FTC LEXIS 68, at *19-20 (Nov. 12, 1976)); *In re Kaiser Alum. & Chem. Corp.*, 1976 FTC LEXIS 68 at *19-20 (Nov. 12, 1976).

In its Motion, Triares seeks to quash or limit the deposition.¹ First, Triares argues that the information Complaint Counsel seeks to elicit from Triares is "not relevant or material to the

¹ Triares' so-called "emergency petition" to stay the deposition, which was most recently scheduled for September 1, 2022, is denied. Triares did not file its Motion until September 15, and it appears that the deposition did not take place on September 1.

alleged misrepresentations made by Respondent.”² Motion at 7. Specifically, Triares asserts that the Complaint does not make any allegations against it, nor “allege that Triares made any of the alleged misrepresentations that are the subject of the Complaint, or that Triares has ever communicated with any of Respondent’s Service Providers.” Motion at 2. Triares further asserts that “Triares does not communicate or have any relationship with Respondent’s Service Providers, and it does not offer or have any involvement in the products or services Respondent offers to Service Providers.” Motion at 10. Second, Triares asserts that the Deposition Subpoena seeks testimony concerning “highly confidential, proprietary, and competitively sensitive business information and trade secrets” by asking for information regarding websites and other “consumer-facing interfaces” or “avenues” used by Triares to generate leads provided to Respondent, as well as the URLs (uniform resource locators) associated with such websites. Motion at 7. Finally, Triares asserts that sitting for a deposition is unduly burdensome. Based on the foregoing, Triares requests that the deposition be quashed, or in the alternative, that (1) the deposition be limited to exclude testimony concerning its “highly confidential and competitively sensitive business and trade secret information” or (2) “permit Triares to respond to written questions submitted by FTC Counsel.” Motion at 7, 13.

Complaint Counsel argues that the Motion should be denied as untimely because Triares did not file its motion to quash or limit the July 7, 2022 subpoenas within 10 days of service, as required under Rule 3.34(c), but instead filed two months later on September 15, 2022. Triares asserts that Complaint Counsel agreed during negotiations that Triares could delay filing a motion to quash pending Complaint Counsel’s review of Triares’ document production and completion of negotiations as to the need for a deposition. Complaint Counsel disputes that there was any such agreement. Regardless of whether the Commission’s Rules of Practice permit parties to extend a rule deadline by agreement, as opposed to seeking leave of court (*see* Rule 4.3(b))³, the proper procedure would have been for Triares to file a motion to extend the deadline. Triares’ failure to file its Motion to quash within the 10-day deadline, or to seek an extension of the deadline, would be grounds for denying the Motion; however, in consideration of the good faith efforts of the parties to negotiate a resolution to their dispute, in the exercise of discretion, the merits of the Motion will be addressed.

Complaint Counsel argues that the testimony sought from Triares is directly relevant to Complaint Counsel’s claims that HomeAdvisor made false or misleading claims about leads received from affiliates such as Triares. Moreover, according to Complaint Counsel, “Triares is the sole party in possession of the truth regarding how it gathered leads.” Opposition at 5. In addition, Complaint Counsel argues that the Protective Order issued in this case on March 14,

² Triares also asserts that a “higher standard of relevance” must be met when “extremely sensitive documents are subpoenaed,” particularly for a nonparty. Motion at 8. Triares cites several federal court cases applying the Federal Rules of Civil Procedure. However, the Federal Rules of Civil Procedure do not control Commission proceedings. *See In re L.G. Balfour Co.*, No. 8435, 61 F.T.C. 1491, 1492, 1962 FTC LEXIS 367, *3-4 (Oct. 5, 1962). Moreover, as shown *infra*, the evidence sought is clearly relevant and Triares has failed to establish an undue burden in complying with the Deposition Subpoena.

³ Rule 4.3(b)(2) provides that, except in circumstances not here presented, “[f]or good cause shown, the Administrative Law Judge may, in any proceeding before him or her . . . extend any time limit prescribed by the rules in this chapter . . .” 16 C.F.R § 4.3(b)(2).

2022, is adequate to protect Triares' confidential information because it bars disclosure of such information to the public or to HomeAdvisor.

IV.

Contrary to Triares' argument, it is readily apparent that Triares possesses information relevant to the allegations of the Complaint. The Complaint alleges that HomeAdvisor made false or misleading statements about the leads it sells, including leads purchased from third-party affiliates; and Triares acknowledges that it obtained and sold leads to HomeAdvisor, which HomeAdvisor subsequently sold as leads to home service providers.

Triares' assertion that it is burdensome to provide the requested deposition is based solely on its own conclusory statement to this effect. This is insufficient to establish an undue burden on Triares and therefore does not excuse Triares from providing relevant information. *See In re Flowers Industries, Inc.*, 1982 FTC LEXIS 96, *15-16 (Mar. 19, 1982) (“[T]he question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest.”). Moreover, Triares has failed to explain how limiting the deposition to written questions would be materially less burdensome.

Finally, Triares' confidentiality concerns also fail to justify quashing or limiting the Deposition Subpoena. First, the information Triares seeks to protect – its website URLs and consumer-facing interfaces – appear to be public. Moreover, the Protective Order in this case sufficiently protects Triares' confidentiality interests in discovery material it produces in this case, including by deposition. Protective Order ¶¶ 1, 7-8 (providing that material designated as confidential, including a recording or transcript of oral testimony, may be disclosed only to Respondents' outside counsel, who may only use the confidential material “for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever . . .”).

V.

As set forth above, the Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 26, 2022