

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

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 September 3, 2021, Federal Trade Commission (“FTC” or “Commission”) Complaint Counsel filed a Motion to Determine the Sufficiency of Respondents’ Responses to Requests for Admission pursuant to FTC Rules 3.32 and 3.38. (“Motion”). Respondents Traffic Jam Events, LLC and its president, David J. Jeansonne II (“Respondents”) have not filed any response to the Motion.¹

For the reasons set forth below, the Motion is GRANTED in part and DENIED in part.

II.

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

¹ FTC Rule 3.38 governs motions to compel, including motions to determine the sufficiency of responses to admissions, and requires that a response be filed within five days after service of a motion. 16 C.F.R. § 3.38(a). Rule 3.22, which is the general motions rule, allows 10 days for a response. Because Complaint Counsel also filed its motion pursuant to Rule 3.32, which governs requests for admission, and seeks to have the requests be deemed admitted, in an abundance of caution, Respondents have been allowed the more permissive response timeframe provided by Rule 3.22. 16 C.F.R. § 3.22(d).

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). Pursuant to Rule 3.32(b), “[t]he matter is admitted unless, within 10 days after service of the request, or within such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated.” 16 C.F.R. § 3.32(b). In addition, pursuant to Rule 3.38(b), if a party or an officer or agent of a party fails to comply with any discovery obligation imposed by these rules, upon motion by the aggrieved party, the Administrative Law Judge may take such action in regard thereto as is just, including but not limited to ordering that the matter be admitted or that the admission, testimony, documents, or other evidence would have been adverse to the party. 16 C.F.R. § 3.38(b)(2).

A. First and Second Sets of Requests for Admission

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”). Complaint Counsel filed a motion to determine the sufficiency of Respondents’ responses to the First Set and Second Set on July 26, 2021, which Respondents opposed on July 30, 2021.

By Order issued August 11, 2021, Complaint Counsel’s first motion, which requested that all the pending requests for admission be deemed admitted, was denied and Respondents were ordered to 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 (“August 11 Order”). The August 11 Order also notified Respondents that failure to fully comply with the August 11 Order would result in treating the requests as admitted.

Complaint Counsel has not received further amended responses to Complaint Counsel’s First Set of Requests for Admission or amended responses to Complaint Counsel’s Second Set of Requests for Admission. Declaration of Michael E. Tankersley (“Tankersley Decl.”) ¶ 3. Therefore, Respondents failed to comply with the August 11 Order.

Accordingly, Complaint Counsel’s request that this Court determine that Respondents’ responses to Complaint Counsel’s First Set and Second Set are deficient and order that the statements therein be admitted is GRANTED.

It is hereby ORDERED that the following requests are deemed admitted: 1-4, 11, 15-16, 18-19, 27-28, 33-36, 39, 43-45, 49-50, 53-59, and 61.

B. Fourth Set of Requests for Admission

Complaint Counsel served a fourth set of requests for admission, containing requests 70-125 (the “Fourth Set”).² The Motion does not attach the Fourth Set and the date it was served cannot be determined from the Motion or declaration. On August 3, 2021, Respondents served objections and responses to the Fourth Set.

FTC Rule 3.38(a) provides that, “[u]nless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that . . . an answer to any requests for admissions . . . be served” 16 C.F.R. § 3.38(a). Accordingly, the objections to the Fourth Set Respondents served on Complaint Counsel on August 3, 2021 and attached to the Motion are evaluated.

Respondents objected to 26 requests as untimely under the First Revised Scheduling Order, asserting that the requests were not directed at establishing authenticity or admissibility of any exhibit. Motion Exhibit A. The First Revised Scheduling Order, issued on May 7, 2021, set June 25, 2021 as the deadline “for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits,” and July 16, 2021 as the deadline for the close of fact discovery other than “discovery for purposes of authenticity and admissibility of exhibits.” Motion Exhibit A.

Complaint Counsel does not deny that the Fourth Set was issued outside the discovery deadlines in the First Revised Scheduling Order, but contends that the Fourth Set is nevertheless permissible under the exception permitting discovery for the purpose of authenticity and admissibility of exhibits. Motion at 4 n.1. Complaint Counsel asserts that the 26 requests to which Respondents objected identify advertisements for an automotive dealership and ask that Respondents either admit that Respondent Traffic Jam Events, LLC generated the advertisements (Requests 74, 75), or admit that the advertisements were sent to residents in the same state as the automotive sales event promoted in the advertisement. (Requests 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124). Motion at 3. Complaint Counsel argues that “admissibility encompasses the relevance of the exhibits to issues in the underlying proceeding, including establishing that the advertisements were sent” to residents in the identified states. Motion at 5.

The First Revised Scheduling Order did not impose a deadline for requests for admission that are specifically “for purposes of authenticity and admissibility of exhibits.” The “authenticity and admissibility” phrase was derived from the definition in the FTC Rules of the close of discovery as “the close of discovery except for depositions and other discovery permitted under § 3.24(a)(4), and discovery for purposes of authenticity and admissibility of exhibits.” 16 C.F.R. § 3.31A(a). To be “admissible” at trial, an exhibit must be “relevant, material, and reliable.” 16 C.F.R. § 3.43(b). To allow requests for admission that seek to determine relevance of the exhibits at issue under the guise of determining “admissibility” after the close of discovery contravenes the FTC’s Rules of Practice and the Scheduling Order issued

² The Motion makes no mention of a Third Set of Requests for Admission.

in this case. Requests for admission that seek to establish relevance are beyond the reasonable scope of requests for purposes of authenticity and admissibility of exhibits. *See In re Frito-Lay, Inc.*, 1964 FTC LEXIS 182 * (July 13, 1964) (The Commission, in distinguishing between requests for admission of “truthfulness” and requests for the admission of authenticity of documents, described authenticity as relating to the genuineness of a document.).

Of the disputed requests, Requests 74 and 75 ask Respondents to admit that Respondent Traffic Jam Events, LLC generated the advertisements. These requests go to authentication and are permitted after the close of discovery. Accordingly, Respondents’ objections are not justified. Respondents shall provide responsive answers to Requests 74 and 75 by September 24, 2021.

The remaining requests do not go to the authenticity of the exhibits. Accordingly, Respondents’ objections are justified. Therefore, Complaint Counsel’s request that they be admitted is DENIED. Respondents are not required to provide any further answer to Requests 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, and 124.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 20, 2021