

PUBLIC

X200041

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

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 MOTION AND MEMORANDUM FOR LEAVE TO FILE
REPLY TO PLATINUM PLUS PRINTING, LLC'S RESPONSE TO COMPLAINT
COUNSEL'S MOTION TO COMPEL**

Pursuant to Commission Rules 3.22(d), Complaint Counsel hereby requests leave to file the attached Reply (Exh. A). A Reply is warranted to draw the Court's attention controlling authority that could not have been raised in our original motion before Respondent made the arguments which it did not raise in the meet and confer and which Complaint Counsel did not and could not otherwise anticipate at the time we filed our motion.

Specifically, Respondent now argues that the motion should be denied because Complaint Counsel does not even have the authority to file this motion before the Court. As set forth in the attached brief, however, Rule 3.38 vests the Court with discretion to issue orders compelling disclosure or discovery and to grant appropriate relief, even as to non-parties. And, even if the Court decides that Complaint Counsel's requested relief is beyond its authority to grant, the Rules mandate certification of Complaint Counsel's motion: Rule 3.22(a) specifies that, "[t]he Administrative Law Judge *shall* certify to the Commission forthwith any other motion upon which he or she has no authority to rule." Rule 3.22(a) (emphasis added).

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Respectfully submitted,

November 18, 2020

By: /s/Thomas J. Widor
Thomas J. Widor
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Mailstop CC-10232
Washington, DC 20506

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2020, I caused the foregoing document to be served via the FTC's E-filing system and electronic mail to:

April Tabor
Acting 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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November 18, 2020

By: /s/ Thomas J. Widor
Thomas J. Widor
Federal Trade Commission
Bureau of Consumer Protection

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

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

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION AND
MEMORANDUM FOR LEAVE TO FILE REPLY TO PLATINUM PLUS PRINTING,
LLC'S RESPONSE TO COMPLAINT COUNSEL'S MOTION TO COMPEL**

Upon consideration of Complaint Counsel's Motion and Memorandum for Leave to File
Reply to Platinum Plus Printing, LLC's Response to Complaint Counsel's Motion to Compel:

IT IS HEREBY ORDERED that Complaint Counsel's Motion is GRANTED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT A

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

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 REPLY TO PLATINUM PLUS PRINTING, LLC'S
RESPONSE TO COMPLAINT COUNSEL'S MOTION TO COMPEL**

Complaint Counsel files this Reply to draw the Court's attention to controlling authority that could not have been raised earlier:

1. The Rules of Practice recognize that a party may file a motion for an order compelling disclosure or discovery against a non-party, and, indeed, the Court has ruled on such motions. *See, e.g., In re 1-800 Contacts, Inc.*, Dkt. 9372 at 2 (F.T.C. Jan. 17, 2017). Rule 3.38(a) authorizes parties to file motions with the Court, "including" a non-exhaustive list of items for which a party may seek an order. The term "including" simply introduces examples and does not exclude other motions, such as motions to compel against non-parties.¹ Even if Complaint Counsel *could* bring a motion to certify, nothing in this Rule requires Complaint Counsel to file such a motion instead of a motion to compel.

¹ Rule 3.37(a) also recognizes that a non-party may be compelled to produce documents: "A person not a party to the action may be compelled to produce documents. . . as provided in § 3.34."

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2. If the Court determines that it does not have authority to decide Complaint Counsel's motion, it should certify the motion to the Commission pursuant to Rules 3.38(c) and 3.22(a). Rule 3.22(a) mandates certification of motions on which the Court has no authority to rule: "[t]he Administrative Law Judge *shall* certify to the Commission forthwith any other motion upon which he or she has no authority to rule." Rule 3.22(a) (emphasis added); *see also* Rule 3.38(c) ("If in the Administrative Law Judge's opinion such relief would not be sufficient, or in instances where a nonparty fails to comply with a subpoena or order, he or she shall certify to the Commission a request that court enforcement of the subpoena or order be sought.").

For these reasons, Complaint Counsel respectfully requests that the Court reject PPP's argument that Complaint Counsel's motion to compel should be denied as unauthorized and grant such relief as the Court deems appropriate within its authority or, in the alternative, certify Complaint Counsel's motion to compel to the Commission.

Respectfully submitted,

November 18, 2020

By: /s/ Thomas J. Widor

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