
Antitrust Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

The FTC was able to compel production of additional documents and witness testimony descriptions in its case against a company that allegedly schemed to deceive consumers with mailers about obtaining federal COVID-19 stimulus benefits.

Traffic Jam Events, LLC was compelled to provide additional documents in response to the FTC’s discovery request in a case involving an alleged scheme to deceive consumers with mailers directing them how to obtain federal COVID-19 stimulus benefits, which instead lured them to a used car sale. Traffic Jam Events took the position that the FTC is not entitled to information regarding all of its potentially deceptive activities, but is instead limited solely to information related to the specific three advertisement examples detailed in the Complaint. The Administrative Law Judge (ALJ) found that Traffic Jam Events must produce additional documents and advertisements, as the documents listed in the complaint were examples, not a comprehensive list. The ALJ also compelled Traffic Jam Events to provide additional detail regarding witness testimony summaries; at a minimum, the topics each witness is expected to testify on should be provided (In The Matter of Traffic Jam Events, LLC, FTC Docket No. 9395).

In August 2020, the FTC filed an administrative complaint to stop an alleged scheme by Traffic Jam Events LLC to deceive consumers with mailers supposedly directing them how to obtain federal COVID-19 stimulus benefits, which instead lured them to a used car sale. The FTC’s complaint alleged that beginning in March 2020, Traffic Jam Events began sending a series of mailers labeled "IMPORTANT COVID-19 STIMULUS DOCUMENTS" and directed consumers to "relief headquarters" to "claim these stimulus incentives." The mailers led consumers to believe they could obtain stimulus relief temporarily in person, making multiple references both to the coronavirus pandemic and to a supposed economic stimulus program. In another mailing, Traffic Jam Events included a supposed check issued by the "Stimulus Relief Program" with the memo field stating "COVID-19 AUTO STIMULUS" with a space to endorse the check on the back. Finally, the marketing company sent advertising and promotional materials claiming that the recipients had won prizes to lure individuals and families to auto sales events. The FTC alleged three counts of violating the FTC Act, including deceptive advertising and failure to make required disclosures under the Truth in Lending Act and Regulation Z.

The FTC filed a motion seeking to compel further discovery, after Traffic Jam Events failed to fully comply with discovery requests. Traffic Jam Events limited its discovery responses to the three advertising examples cited in the complaint, which the FTC argued was incomplete because it was clear that the complaint makes clear that the advertisements cited in the complaint are not exclusive and are merely examples. Traffic Jam Events took the position that the FTC is not entitled to information regarding all of its potentially deceptive activities, but is instead limited solely to information related to the advertisement examples detailed in the complaint.

The ALJ found that Traffic Jam Events read the complaint too narrowly. The complaint alleged that the deceptive advertisements "included" certain documents. Therefore, the argument that the complaint reaches only the three advertisements specifically referenced in the complaint is without merit. Discovery of advertising beyond the three examples cited in the complaint is also relevant to the issue of remedy. If it prevails, the FTC intends to seek a broad "fencing-in" injunction that reaches beyond Traffic Jam Events’ advertising for automobile sales events to include any advertising for any product or service. Such relief requires consideration of, among other
things, the seriousness and deliberateness of the violation and whether the respondent has a history of prior violations.

The ALJ also granted the FTC’s motion to compel regarding witness testimony summaries, over Traffic Jam Events’ argument that they have no way of knowing what a witness will say; at a minimum, the topics each witness is expected to testify on should be provided.

Finally, Traffic Jam Events claimed that some of the discovery requests were overbroad and vague, or would cause it an undue burden to produce. The ALJ ordered the parties to confer and negotiate on those remaining disputes. If an agreement is not reached, the FTC may file a motion to compel.

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Companies: Traffic Jam Events, LLC