

**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

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

Complaint Counsel's Motion to Compel Platinum Plus Printing, LLC to Produce Materials Responsive to a Subpoena *Duces Tecum* ("Motion to Compel") should be denied because the motion requests relief that is not authorized by law, is premature, and the subpoena is improper because the requested information can be obtained from Respondents.

**I. ARGUMENT**

**a. The Federal Trade Commission's Rules of Practice for Adjudicative Proceedings do not Authorize a Motion to Compel Against a Non-Party to the Action.**

The Rule under which Complaint Counsel brings the Motion to Compel, Federal Trade Commission Rule of Practice 16 C.F.R. § 3.38, does not authorize motions to compel against non-parties. The subpoena was issued pursuant to Rule 3.34(b). Widor Decl., Ex. A. However, Rule 3.38 only authorizes motions to compel disclosure or discover related to "initial disclosures required by § 3.31(b), a request for admission under § 3.32, a deposition under § 3.33, an interrogatory under § 3.35, or a production of documents or things or access for inspection or other purposes under § 3.37." 16 C.F.R. § 3.38(a). "A motion to compel compliance with a subpoena under § 3.34 is not included in this list of items for which a party may apply by motion for an order

compelling discovery.”<sup>1</sup> *In the Matter of Axon Enter., Inc. A Corp., & Safariland, LLC, A P'ship, Respondents.*, No. 9389, 2020 WL 5543022, at \*3 (MSNET Sept. 4, 2020). Moreover, Rule 3.38(b) applies only [i]f a party or an officer or agent of a party fails to comply with any discovery obligation imposed by these rules.” 16 C.F.R. § 3.38(b). As a non-party to this action, Platinum Plus Printing has no discovery obligations imposed by the rules, which is a prerequisite for issuance of the orders authorized by 16 C.F.R. § 3.38(b).

While Complaint Counsel asserts in his brief that a motion to compel is authorized against third parties under Rule 3.38, he cites no authority for the proposition, and the plain language of the Rule demonstrates the opposite; motions to compel are not authorized against non-parties, such as Platinum Plus Printing. Complaint Counsel’s motion should be denied on this ground alone.

**b. Granting Complaint Counsel’s Motion to Compel is Premature.**

Additionally, Complaint Counsel’s Motion to Compel is premature. Both sides would benefit from a meaningful meet and confer, and there is ample time before discovery closes to allow for a meaningful meet and confer. Contrary to Complaint Counsel’s claims, Platinum Plus Printing’s counsel has been cooperative and has made good faith efforts to discuss and resolve their dispute. When Complaint Counsel requested a meet and confer on October 19, 2020, a meet and confer was arranged and occurred within a week of the request, on Monday, October 26, 2020.

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<sup>1</sup> While Rule 3.38(c) does reference the authority of an Administrative Law Judge to certify a request for court enforcement of a subpoena, Complaint Counsel has neither requested such relief here, nor demonstrated why court enforcement of the subpoena is necessary. *Cf. In the Matter of Axon Enter., Inc. A Corp., & Safariland, LLC, A P'ship, Respondents.*, No. 9389, 2020 WL 5543022, at \*1–3 (MSNET Sept. 4, 2020); *In the Matter of Polypore Int'l, Inc., Respondent.*, No. 9327, 2009 WL 725985, at \*2 (MSNET Jan. 28, 2009) (noting that Administrative Law Judges of the Federal Trade Commission lack authority to compel non-parties, granting certification of enforcement of the subpoena based upon complaint counsel’s request). In *Axon* and *Polypore*, the parties brought a motion for certification of enforcement, not a motion to compel. Here, Complaint Counsel has not brought a motion to certify, and his Motion to Compel is not authorized by law.

Bachman Decl., at ¶3; *see also* Widor Decl., Ex. C. Following that discussion, counsel for Platinum Plus Printing had difficulties reaching her client representative to discuss Complaint Counsel's proposed production schedule because the client representative had limited cell phone and WiFi service *as a result of a hurricane*. Bachman Decl., at ¶4; *see also* Widor Decl., Ex. C. The following week, November 2–6, Platinum Plus Printing's counsel was in arbitration hearing. Bachman Decl., at ¶5; *see also* Widor Decl., Ex. C. When Complaint Counsel reached out the evening of Thursday, November 5, 2020, to discuss the proposed production schedule and threaten to file a motion to compel, Platinum Plus Printing's counsel informed Complaint Counsel that she had been in an arbitration hearing all week, and requested a short extension until Monday, November 9, 2020. Bachman Decl., at ¶5; *see also* Widor Decl., Ex. C. Rather than allow an extension of one business day, especially in light of the underlying circumstances, Complaint Counsel rejected any extension and filed the Motion to Compel on November 6, 2020. *See* Bachman Decl., at ¶5; *see also* Widor Decl., Ex. C.

Meeting and conferring is a valuable tool for resolving discovery issues without court intervention. While Platinum Plus Printing's counsel and Complaint Counsel have had one discussion, its primary purpose was to determine what Complaint Counsel was seeking and to understand the scope of the requested discovery, so Platinum Plus Printing could respond accordingly. After that discussion, Platinum Plus Printing's client representative experienced cell phone and Wi-Fi connectivity issues, as a result of a hurricane, and the following week Platinum Plus Printing's counsel was in an arbitration hearing. Importantly, the close of fact discovery in this matter is not until February 19, 2021.

In light of the ample time remaining for discovery in this matter, and the reasonable reasons provided by Platinum Plus Printing’s counsel for the short delay in responding, Complaint Counsel’s Motion to Compel should be denied so that a meaningful meet and confer can occur.

**c. Complaint Counsel’s Subpoena is Improper**

Complaint Counsel’s subpoena is improper because it seeks discovery that is obtainable from the parties in the action. Rule 3.31(c)(2) allows discovery sought from a third party to be limited if it “is obtainable from some other source that is more convenient, less burdensome, or less expensive.” 16 C.F.R. § 3.31(c)(2)(i). Complaint Counsel’s subpoena seeks documents that are also in the possession of the Respondent, and therefore can be more conveniently obtained by Complaint Counsel from Respondents than from Platinum Plus Printing. For example, the subpoena seeks documents showing agreements and payments between Respondents and Platinum Plus Printing, documents that would be also be in the possession of Respondents. *See* Widor Decl., Ex. A, Req. for Prod. 2–3. Similarly, the subpoena also requests advertisement and promotional material printed for Respondents and dissemination schedules, which would also be in the possession of Respondents. *See* Widor Decl., Ex. A, Req. for Prod. 4–6. Complaint Counsel should be required to seek discovery of materials that are in the possession of Respondents from Respondents, and not from non-party’s to the action, as obtaining discovery materials from the parties is the most efficient, least burdensome, and least expensive means. Accordingly, Complaint Counsel’s Motion to Compel should be denied.

**CONCLUSION**

The Court should deny Complaint Counsel’s Motion to Compel. As a non-party, Platinum Plus Printing cannot be the subject of a motion to compel under the Federal Trade Commission’s Rules for Adjudicative Proceedings. Additionally, Platinum Plus Printing’s counsel and Complaint

Counsel have not had an adequate opportunity to meet and confer and attempt to resolve their disagreements, and there is ample time before the close of discovery to allow for a proper meet and confer, before involving the Court. Finally, the subpoena seeks materials that are also in the possession of the Respondents, and Complaint Counsel's Motion to Compel should be denied because he can more conveniently obtain those materials from Respondents than from Platinum Plus Printing.

November 16, 2020

Respectfully submitted,

/s/ Lisa M. Lamm Bachman

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Docket No.: 9395

**DECLARATION OF LISA M. LAMM BACHMAN**

1. I am a partner with the law firm of Foley & Mansfield, PLLP, representing Platinum Plus Printing, LLC (“Platinum Plus Printing”). I submit this declaration in support of Platinum Plus Printing’s Response to Complaint Counsel’s Motion to Compel Platinum Plus Printing, LLC to Produce Materials Responsive to a Subpoena *Duces Tecum*.
2. I responded to Complaint Counsel’s subpoena to Platinum Plus Printing on October 13, 2020, by emailing my response to Eleni Broadwell, as indicated on the subpoena. *See* Widor Decl., Exs. A, B.
3. On October 19, 2020, Complaint Counsel reached out to me by email to discuss the status of Platinum Plus Printing’s response to the subpoena, and to discuss my availability for a meet and confer. My schedule was full with client meetings and depositions, and I was unavailable to meet at Complaint Counsel’s first proposed time. Complaint Counsel and I were able to meet and confer on Monday, October 26, 2020, one week after he first requested to meet and confer.
4. After the October 26, 2020, meet and confer with Complaint Counsel, I had difficulty reaching my client to discuss the subpoena. Due to a recent hurricane, my client

representative was experiencing limited cell phone and Wi-Fi service. I informed Complaint Counsel of those difficulties on October 30, 2020.

5. On November 5, 2020, after 6:00 p.m., Complaint Counsel informed me that he intended to file a motion to compel if Platinum Plus Printing did not respond to portions of the subpoena by 4:00 p.m. the next day. I informed Complaint Counsel that I had been in an arbitration hearing all week, and I requested a short extension to the following Monday, November 9, 2020. Complaint Counsel would not agree to any extensions, and filed the Motion to Compel on November 6, 2020.

I declare under the penalty of perjury that the foregoing is true and correct.

November 16, 2020

/s/ Lisa M. Lamm Bachman

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2020, I caused the foregoing documents to be served via electronic mail to:

Thomas J. Widor  
Attorney, Division of Financial Practices Bureau of Consumer  
Protection Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail Stop: CC-10232  
Washington, DC 20580  
Phone: (202) 326-3039  
Fax: (202) 326-3768  
[twidor@ftc.gov](mailto:twidor@ftc.gov)

Dated: November 17, 2020

/s/ Lisa M. Lamm Bachman  
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