

**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

**MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL OF FTC BY
RESPONDENTS, TRAFFIC JAM EVENTS, LLC AND DAVID J. JEANSONNE, II**

Traffic Jam Events, LLC (“Traffic Jam”) and David J. Jeansonne II (collectively, “Respondents”), hereby respectfully offer the following Memorandum in Opposition to the Motion to Sanction (“Motion”) filed by Complainant. The filing by Complainant was evidently done strategically to portray Respondents negatively, and omits numerous key facts which call into question several of the representations made in the Motion as well as pertinent omissions of fact in the Affidavit of Thomas Widor. The Motion should be denied.

First, it should be noted that Complainant filed its Motion after receiving an email on the morning of June 8 stating as follows:

In speaking with David [Individual Respondent], the third party data provider can be made available. Prior to that, what protocol do you propose concerning data collection to (i) preserve attorney-client privilege and any other applicable privileges; and (ii) exclude irrelevant materials. Can you please provide details so that we can agree to a process. Thanks,

(Exhibit 1). This email was sent to counsel at 8:44 am central time, and followed at least two weeks of good faith negotiations between Complaint Counsel, Respondents and Respondents’ Counsel concerning an agreement to respond to all outstanding requests by allowing of rthe

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inspection of Respondents' electronically stored information ("ESI"), which is the only responsive information in Respondents possession.¹ Contrary to the assertion made in the Motion, Respondents have not been disregarding any Court orders and have been diligently working to provide Complaint Counsel with electronic access to **all responsive document to satisfy every discovery request**. Respondents were without counsel for much of this time period and the departure of all of its employees available to assist in responding to discovery has caused obvious difficulties. Complaint Counsel was kept aware of all of these developments, yet omitted them in his Affidavit.

As this Court is aware, Respondents have been without counsel and had been negotiating with Complaint Counsel for a settlement. While those settlement negotiations have apparently broken down based upon Complaint Counsel's attempt to broaden the relief asked for in the Complaint, Respondents business has crumbled, and all employees of the Company Respondent have left. Counsel for Complainant was alerted of this fact during a discovery/settlement conference on May 25, 2021. At that time, Respondents advised Complaint Counsel that (i) Traffic Jam's employees had resigned; (ii) that Individual Respondent was not knowledgeable about how data was stored but committed to finding out answers to questions asked by Complaint Counsel and would provide **full access** to Respondents ESI to search for responsive documents; and (iii) that Respondents were ready, willing and available for depositions. During this call, counsel for Respondents stated that despite the limitations imposed by the above, Mr. Jeansonne would work diligently to provide any and all information reasonably sought by Complaint Counsel.

¹ Not coincidentally, the motion was also filed after Respondents had requested the depositions of the FTC Commissioners who spoke to Respondents about the Proposed Consent Order and made factual representations during these calls. These representations – which went well beyond the relief sought by the FTC in its Complaint – are relevant to the issues that this Court may consider at trial. This issue is summarized in the June 8 email from undersigned counsel to Complaint Counsel. (*Exhibit 2*).

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To the May 25th call, Complaint Counsel offered the following response on May 26:

David and Etienne,

Attached is the proposed consent order with your suggested language. I'm also attaching a redline comparison to the last version.

If we receive a signed agreement today, we can send it up to the Bureau for its review and signature and prepare a joint motion to withdraw from the adjudicative proceeding under Rule 3.25.

Otherwise, we would like to set up a call to discuss the logistics and scheduling of the inspection as well as depositions and interrogatory responses.

Tom

(Exhibit 3). Clearly, from the emphasized portion of the response, Complaint Counsel intended to complete the outstanding discovery by inspecting all ESI of Respondents, taking depositions and supplementing interrogatory responses. Nothing else was mentioned.

On May 28, Complaint Counsel terminated further settlement discussions after being requested to provide authority for its position that the Complaint and the FTC Act allowed for a permanent ban of Respondents from essentially all advertising in the automobile sales arena. Tellingly, at this juncture, Complaint Counsel noted that he was awaiting information on how to access the ESI. *(Exhibit 4)*. That very afternoon, Individual Respondent emailed Complaint Counsel to advise that he had spoken with the former Traffic Jam employee, had identified how ESI was stored, and had ruled out the presence of a physical data server with responsive information. *(Exhibit 5)*. Complaint Counsel responded later that afternoon on May 28 requesting “more specific information about how to access the email, such as credentials to access online or any other process. We also would need more information about what is maintained on the server. If it is easier, we can set up a call with our team, Justin, and anyone else who would have relevant information.” *(Exhibit 5)*.

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On June 1, Individual Respondent advised Complaint Counsel of the identity of the third-party data hosting company, and affirmed that he was working on information as to how to obtain access to the ESI for Complaint Counsel. (*Exhibit 6 at p. 2*). On June 3, Complaint Counsel sent a request for an update on the status of ESI, and also requested further supplementation of additional interrogatory responses given by Respondents. (*Exhibit 6*). It should be noted that one of these Interrogatories asks for a description of the relationship between Respondent Traffic Jam and Individual Respondent, a fact which has been plainly apparent from the outset of this action given the factual assertions made in the Complaint. On May 27, Individual Respondent – not possessing a legal degree and attempting to provide responsive answers -- had “supplemented” the answers to interrogatories as outlined by Complaint Counsel. (*Exhibit 7*).

On June 4, Individual Respondent, on his behalf and on behalf of Traffic Jam, updated Complaint Counsel on the ongoing discovery production as follows:

As you know, I was traveling this week and out of the office. Just wanted to let you know that I am working on the below, and you will have contact information for the people below Monday. I am a little confused by all your jargon about the interrogatories but I will get with Etienne this afternoon and do my best to supplement. Aren't these all the kinds of questions you will ask me at a deposition though? Perhaps we move that up? Regardless of where I am I can/will make myself available.

(*Exhibit 8*). As noted in the communication, far from dodging any questions or avoiding discovery, Respondent actually offered to make himself available for a sworn deposition *earlier* than what had been proposed by Complaint Counsel.

As of this time, there was not motion pending nor had Complaint Counsel advised that a motion would be forthcoming. On the Tuesday following the June 3rd update, undersigned counsel confirmed the identity of the company storing the ESI and simply asked for an agreed protocol to (i) protect privileged communications and (ii) eliminate irrelevant material, before any ESI was accessed. Coincidentally, it was not until after receipt of this email that Complaint Counsel

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decided to prepare and file the instant Motion. When Respondents' Counsel noted this deficiency, Complaint Counsel's only response was that they would "withdraw the motion" if Respondents comply with the Court's orders. (*Exhibit 9*). This begs the question however, because Complaint Counsel is the one who agreed to obtain the ESI in satisfaction of the document requests, and Complaint Counsel has seemingly refused to advise or cooperate on a protocol to protect privileged materials, a standard part of any electronic discovery, and eliminate completely irrelevant material.

The above timeline clearly demonstrates that the purpose of the Motion was not to obtain necessary and needed discovery; rather, Complaint Counsel is simply trying to paint Respondents as acting in "bad faith" when the exact opposite is true. Whether this is borne of frustration from its inability to support the proposed relief in the Consent Order or retaliation for Respondents requesting the depositions of the FTC Commissioners is not known. But, it was not until Complaint Counsel was asked to outline an agreed protocol to protect privileged ESI and exclude irrelevant material that they decided to file the Motion, which occurred the same day Respondents clarified the factual basis for the depositions of the FTC Commissioners. Respondents had already agreed and had taken significant steps to make this ESI accessible, and are committed to providing all stored ESI for the time period in question *provided that standard protocols are established to allow for the protection of privilege*. Notably, Complaint Counsel's factual summary omits the details of the communications as summarized below.

With respect to the Meet and Confer Statement provided by Complaint Counsel, Respondents dispute that Complaint Counsel was acting in good faith. At no time prior to the filing of this Motion (which was not sent to Respondents or its counsel until June 9), did Complaint Counsel advise that they intended to file said Motion. The first notice given to Respondents and

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their counsel was in a June 8 email that was sent *after* the request for an agreed protocol prior to accessing the ESI.

Contrary to the assertions in the Motion, Respondents have, in fact, been diligently working in good faith to satisfy the discovery orders of this Court. Respondents have no employees and Traffic Jam is now being run individually by Mr. Jeansonne. Mr. Jeansonne has offered to allow Complaint Counsel to review and inspect any and all documents or ESI that can be made available, and has gone to great lengths to facilitate Complaint's Counsel's request to allow its data vendor remote access to the ESI. From the timeline above, it appears that Complaint Counsel is less interested in the production of actual documents and is using the motion for sanctions as a scar tactic. Respondents urge this Court to deny the Motion and award Respondents their fees and costs in opposing the Motion.

Complaint Counsel seems to also complain about "last known" contact information for Traffic Jam's ex-employees but apparently already has this information as Complaint Counsel recently served a subpoena for documents on ex-employee William Lilley. This could be due to the fact that the thousands of pages of information that Complaint Counsel *already has in their possession* provides both contact information and cellphones for the witnesses that Complaint Counsel wishes to depose.

With respect to the proposed relief, there is no authority for many of the "adverse" inferences that Complaint Counsel seeks. Ironically, and based on the status of settlement, many of the proposed inferences are facts that neither Respondent not Individual Respondent plan to contest. In any event, the following requested "inferences" are not inferences that can be fairly drawn from any discovery propounded to Respondents and therefore would not be an appropriate sanction:

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- Proposed inferences 5, 6 and 7 call for information that is outside of Respondents control, namely what “recipients” of mailers may have thought or inferred, or what a recipient complained about. These are facts that Complaint Counsel must prove at trial.
- Similarly, proposed inferences 10, 11 and 12 ask for information that is not within the control of Respondents. It is up to Complaint Counsel to establish the recipients’ thoughts or beliefs and Respondents have provided information concerning recipients and Complaint Counsel has sent over 20 subpoenas to dealers and other involved parties.
- The proposed inferences 14 and 15 are not based on the discovery sought, as Respondents have provided a response to discovery on this point and simply because they may not maintain documents concerning compliance does not mean they take no steps. This was not an area Complaint Counsel identified for supplementation (see Exhibit and is something that will be addressed in the depositions of Respondents.
- With respect to proposed inference 13, Complaint Counsel has zero evidence to support this factual inference and is attempting to avoid an ugly truth to the Complaint – the FTC has no evidence that any consumer has ever complained about Respondents and have produced ZERO in their discovery. Other than the COVID mailer referenced in the Complaint, the Complaint identifies ZERO consumers who were allegedly harmed, and despite subpoenas in excess of 20 being sent out, hundreds of thousands of pages of documents received and the passage of several months, Complaint Counsel cannot provide this Court with a single “consumer” who has complained about the challenged mailers.

CONCLUSION

For all of the foregoing reasons, the Motion should be denied in its entirety. Complaint Counsel should be ordered to complete the inspection and retention of ESI with an agreed protocol to preserve privilege and eliminate irrelevant materials.

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June 14, 2021

Respectfully submitted,

/s/ L. Etienne Balart

L. ETIENNE BALART (La. #24951)
TAYLOR K. WIMBERLY (La. #38942)

Jones Walker LLP

201 St. Charles Avenue – 48th Floor

New Orleans, LA 70170

Telephone: (504) 582-8584

Facsimile: (504) 589-8584

Email: ebalart@joneswalker.com

twimberly@joneswalker.com

***Counsel for Respondents, Traffic Jam Events,
LLC and David J. Jeansonne II***

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2021, 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

Thomas J. Widor
Sanya Shahrabi
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Mailstop CC-10232
Washington, DC 20506
twidor@ftc.gov
sshahrabi@ftc.gov

Complainant Counsel

June 14, 2021

/s/ L. Etienne Balart
L. ETIENNE BALART

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 12:17 PM
To: Brickman, Jennifer
Subject: FW: [EXTERNAL] Re: Emails

Importance: High

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Balart, Etienne
Sent: Tuesday, June 8, 2021 3:33 PM
To: 'Widor, Thomas' <twidor@ftc.gov>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails
Importance: High

Tom,

I apologize for missing your email about filing with the Court, but I just want to go on record that Respondents have offered, and after clarification from you, specified that the data provider (Mindset) has all of the company's ESI. Before granting access to the ESI, we need an agreed protocol to keep and maintain privileges and eliminate irrelevant information. If and when you file on this issue, our position will be the same, and it certainly seems that we could avoid the time and expense of putting this before the Court with an agreement as to a proposed protocol.

As for anything else outstanding, please advise what you are waiting on.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Tuesday, June 8, 2021 3:25 PM
To: Balart, Etienne <ebalart@joneswalker.com>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails

Etienne,

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Respondents can come into compliance by producing the responsive material required by the Court's order (and as we have identified in numerous calls and emails). The Court order does not say anything about inspection and copying. While we were open to using that as a way to resolve one of the discovery issues, we have unsuccessfully tried to engage in good faith negotiations since last fall and still to today do not even have basic information about these systems. We've made no progress and simply have been strung along. Respondents lack any credibility that they will comply with their discovery obligations and make this email or other ESI available without the Court's involvement. As I indicated in my email last week, we are filing with the Court today.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, June 8, 2021 9:44 AM
To: 'David Jeansonne' <david@trafficjamevents.com>; Widor, Thomas <twidor@ftc.gov>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails

Tom,

In speaking with David, the third party data provider can be made available. Prior to that, what protocol do you propose concerning data collection to (i) preserve attorney-client privilege and any other applicable privileges; and (ii) exclude irrelevant materials. Can you please provide details so that we can agree to a process. Thanks,

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: David Jeansonne <david@trafficjamevents.com>
Sent: Friday, June 4, 2021 4:24 PM
To: Widor, Thomas <twidor@ftc.gov>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Balart, Etienne <ebalart@joneswalker.com>
Subject: [EXTERNAL] Re: Emails

As you know, I was traveling this week and out of the office. Just wanted to let you know that I am working on the below, and you will have contact information for the people below Monday. I am a little confused by all your jargon about the interrogatories but I will get with Etienne this afternoon and do my best to supplement. Aren't these all the kinds of questions you will ask me at a deposition though? Perhaps we move that up? Regardless of where I am I can/will make myself available.

David Jeansonne
President
Traffic Jam Events™
a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.trafficjamevents.com)
e: david@trafficjamevents.com
w: [trafficjamevents.com](https://www.trafficjamevents.com)
m: [504-628-3339](tel:504-628-3339)
p: [800-922-8109 ext. 201](tel:800-922-8109)

"We Only Live Once.....But If Done Right, Once Is Enough!!"

On Jun 3, 2021, at 7:30 PM, Widor, Thomas <twidor@ftc.gov> wrote:

David and Etienne,

We are still waiting for information on the ESI and identification of responsive material at your offices to allow us to inspect and copy responsive materials.

We also have not received a response to our notices to depose Mariela Everst, Jim Whelan, Chad Bullock, and Justin Brophy (or a supplemental initial disclosure listing their contact information and whether their depositions should be arranged through Walker Jones).

Additionally, the interrogatory responses you sent via email last Thursday, May 27, do not comply with Rule 3.35, and each response is extremely incomplete and lacking adequate detail or does not even respond to the request. Rule 3.35 requires that "[e]ach interrogatory shall be answered separately and fully in writing under oath. . . and signed by the person making them. . . ." There is no detail provided in response to Interrogatory No. 1. In addition to lacking details about the relationship with Platinum Plus Printing, the response to Interrogatory 2 fails to identify any officers, managers, employees or agents of Traffic Jam Events who also are associated with Platinum Plus Printing. The response to Interrogatory No. 3 similarly provides no detail about the role of third parties or agents. The response to Interrogatory No. 4 is inadequate as the prior list was limited to 2019 to the present. The response to Interrogatory Nos. 5 and 6 also provide no detail about the method of selection, including the identity of the software or where this information is stored, or the identity of the prize winners.

Finally, Respondents have not complied with the Court's order granting Respondents' motion for leave to withdraw as counsel. The order required Respondents to comply with Rule 4.1 within 10 days by entering an appearance.

We've been repeatedly trying to resolve these issues and have made no progress over the past month. By Monday, June 7, please (i) identify with specificity to the Requests for Production what responsive material is located at your offices and how to access the ESI, (ii) supplement or amend the initial disclosures with contact information or confirm that you continue to be the contact and that we can arrange their depositions through you, (iii) provide full responses under oath to the interrogatories, and (iv) comply with the Court's Dec. 21 order requiring an appearance under Rule 4.1. At this point, if we cannot get this by Monday, June 7, we will file a motion with the court as we previously discussed.

Tom W.

From: David Jeansonne <david@trafficjamevents.com>

Sent: Tuesday, June 1, 2021 2:35 PM

To: Widor, Thomas <twidor@ftc.gov>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Etienne Balart <ebalart@joneswalker.com>

Subject: Emails

Tom,

I found out that the third party is Mindset, I am looking into how I get access to retrace emails.

David Jeansonne

President

Traffic Jam Events™

a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.google.com/maps/place/2232+Idaho+Ave,+Kenner,+LA+70062)

e: david@trafficjamevents.com

w: [trafficjamevents.com](https://www.trafficjamevents.com)

m: [504-628-3339](tel:504-628-3339)

p: [800-922-8109 ext. 201](tel:800-922-8109)

"We Only Live Once.....But If Done Right, Once Is Enough!!"

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 12:17 PM
To: Brickman, Jennifer
Subject: FW: Paragraph 9 language

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Balart, Etienne
Sent: Tuesday, June 8, 2021 8:42 AM
To: 'Widor, Thomas' <twidor@ftc.gov>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: RE: Paragraph 9 language

Tom,

Could you provide a little further clarity on this. I spoke with David yesterday and he relayed to me that he had several conversation with several Commissioners, all arranged by your office. In each of these conversations, factual representations were made concerning the case and status. I am trying to figure out how, when the FTC wants, it can arrange for the participation of the Commissioners, but would not agree to make them available without the need to go through a subpoena process. Please also allow this as a formal request for contact information for each of the Commissioners so that, if necessary, we can move forward with that.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Monday, June 7, 2021 10:43 AM
To: Balart, Etienne <ebalart@joneswalker.com>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

As Complaint Counsel, we do not represent any of the individual Commissioners and do not have the authority to make them available. And, as we have previously said, there is no legal or factual basis that would justify deposing any of the Commissioners and will oppose any such request.

Tom

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From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Friday, June 4, 2021 4:18 PM
To: Widor, Thomas <twidor@ftc.gov>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: RE: Paragraph 9 language

Tom,

It appears that I need to clarify. My original email pointed to factual issues and developments *after* issuance of the Complaint, which we would intend to depose the Commissioners on. Your limitations apparently apply to the deliberative process leading up to the issuance of the Complaint (although I disagree that there is blanket immunity for this period of time). With that clarification, please provide either some available dates for the Commissioners or the legal basis for declaring that our request is for no other purpose than to harass.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Friday, June 4, 2021 3:05 PM
To: Balart, Etienne <ebalart@joneswalker.com>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

I'm not quite clear what you are specifically asking about below, but it is well established that the Commission's reason or reasons for issuing a complaint and the information considered or evaluated prior to its issuance are protected under the deliberative process privilege, not relevant to whether Respondents violated the FTC Act or TILA, the proposed relief, or any of Respondents' valid defenses, and generally outside the scope of discovery. See Rule 3.31; *In re LabMD, Inc.*, 2014 FTC LEXIS 45, at *7 (Mar. 10, 2014). And, if you look at the Notice of Contemplated Relief issued with the Complaint, nothing has changed in this case.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Friday, June 4, 2021 9:33 AM
To: Widor, Thomas <twidor@ftc.gov>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: RE: Paragraph 9 language

Tom,

When you get a second, can you advise as to counsel's position on the below in light of the relevancy of the knowledge of the Commissioners to this case?

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192

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ebalart@joneswalker.com**From:** Balart, Etienne**Sent:** Friday, May 28, 2021 11:50 AM**To:** 'Widor, Thomas' <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>**Cc:** Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>**Subject:** RE: Paragraph 9 language

Tom,

Thanks for the response. I need to verify a couple of things. First, please confirm, in writing, that the FTC will not approve an order that contains the following prohibition:

Respondents ~~must~~ shall not make ~~any representation,~~ nor assist others in making, any unfair or deceptive representation expressly or by implication concerning:

Second, FTC counsel does not wish to discuss with the office of the ALJ. This is important because, as I see it, there is no reason to have a trial when David/Traffic Jam will agree to an Order that goes to the full limits of the ALJ's power. Whatever the Commission wants to vote on past that, I guess it is free to do so, and David/ Traffic Jam can preserve their right to appeal this. We plan on alerting the ALJ to the fact that Respondents do not plan on contesting his entry of an Order as below:

IT IS ORDERED that Respondents, in connection with the advertising, marketing, promoting, offering for sale or lease, or sale or lease of motor vehicles ~~must shall~~ not make ~~any representation,~~ nor assist others in making, any unfair or deceptive representation expressly or by implication concerning:

- A. Financial assistance or relief from the government;
- B. Any prize, sweepstakes, lottery, or giveaway; and
- C. Any affiliation, association with, endorsement, sponsorship, or approval by the government.

I will enroll at the appropriate time. I will get with David on last knowns for the witnesses, and look forward to a date for the investigator. As for the Commissioners depositions, we disagree that it has "no purpose" other than to harass given the procedural oddities of this case from the beginning, and the Commission's seeming disregard of its own procedures and statutory mandate. Finally, if the Commission is, as it appears, taking a position that advertisement of any valid, legal financial assistance or relief from government or any valid prize, sweepstake, lottery or giveaway is *per se* false or deceptive, then Respondents are entitled to develop the administrative record on this point. Further, since the Complaint that the Commission voted out did not contain any factual allegations that all prize mailings are *per se* false and misleading, or even that all such activity by Respondents was (see Count II titled *Deceptive Representations Regarding Prize Winnings*), Respondents are also, as a matter of due process and simple evidence, entitled to understand what caused the Commission to change its mind. I trust the above provides you some insight into the multiple ways the depositions of the Commission does, indeed, have relevance, and is not being done to harass. If you still disagree, please explain, in detail, the grounds for your position.

As soon as I hear from David I will get you the information (or have him send it) on the ESI. Enjoy the Memorial Day weekend.

Etienne

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L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Friday, May 28, 2021 11:26 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

At this point, any further discussion of a settlement is not going to be productive unless Respondents are ready to sign the proposed order like they indicated.

We'll provide a depo date for our investigator. As David knows, we have been attempting to reschedule the depositions of Jim Whelan, Mariela Everst, Justin Brophy, and Chad Bullock since the matter returned to adjudication the first week of May. We need their contact information supplemented or amended in the initial disclosures or for you to confirm that you continue to be the contact and that we can arrange their depositions through you. We also are still waiting for information on how to access the ESI, which we have been seeking since at least last November.

The request for Commissioner depositions is without merit and would serve no purpose other than to harass so we won't agree.

Lastly, if you are now acting as litigation counsel, we expect that you will re-enter your appearance.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Thursday, May 27, 2021 11:09 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: RE: Paragraph 9 language

Tom,

Perhaps I am missing the finer points of these opinions, but the Supreme Court case actually proves the point discussed yesterday. The original FTC order in the *Colgate* case was ambiguous – it was held to apply to *any* simulation, not just false or deceptive simulations. After losing at the court of appeal, the FTC modified the order as below:

Both respondents were ordered to cease and desist from:

"Unfairly or deceptively advertising any . . . product by presenting a test, experiment or demonstration that (1) is represented to the public as actual proof of a claim made for the product which is material to inducing its sale, and (2) is not in fact a genuine test, experiment or demonstration being conducted as represented, and does not in fact constitute actual proof of the claim, because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

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Colgate-Palmolive, 380 U.S. at 382 (emphasis added). Chief Justice Warren had this to say about the original Order – banning all mock-ups:

We find it inconceivable that the Commission could have successfully sought certiorari from this judgment [the first court of appeal decision]. Had it done so, it would have been forced to argue either that every use of mock-ups in commercials is a deceptive practice, an apparently unintended theory, or that this Court should reinstate the Commission's decision on a theory of its own, something the Court said it would not do in *Securities & Exchange Comm'n v. Chenery Corp.*, 332 U. S. 194, 332 U. S. 196.

With due deference to Vizzini, I disagree with the Chief Justice that it is inconceivable, as the FTC has since routinely exceeded its jurisdiction, *see, e.g. AMG Capital Mgt., LLC v. FTC*, 593 U.S. ____ (2021). However, I do agree with him (the Chief Justice) that the FTC does not have the power under the FTC Act to order one to cease or desist anything other than false or deceptive practices (at least under s. 45). Indeed, the whole of the FTC Order contested in the *Colgate* case was a cease and desist directed at unfair or deceptive advertising, not all advertising in general (that's what the Chief Justice said would have been inconceivable for the FTC to argue). The Order the FTC has proposed here (in section I) is completely untethered to these standards. As I explained yesterday, if tomorrow Congress were to pass a law providing for a \$2500 tax refund for purchase of a new vehicle, Respondents would be barred from being involved in any way with the advertising of this 100% legal option, and from doing any true and honest advertising concerning same: to wit, "Respondents, in connection with the advertising, marketing, promoting, offering for sale or lease, or sale or lease of motor vehicles **must not make any representation**, or assist others in making any representation expressly or by implication concerning: A. Financial assistance or relief from the government." This makes no sense.

In line with the *Colgate* case then, and the authority in Section 45, the Order should read as below:

IT IS ORDERED that Respondents, in connection with the advertising, marketing, promoting, offering for sale or lease, or sale or lease of motor vehicles ~~must shall~~ not make ~~any representation~~, nor assist others in making, any unfair or deceptive representation expressly or by implication concerning:

- A. Financial assistance or relief from the government;
- B. Any prize, sweepstakes, lottery, or giveaway; and
- C. Any affiliation, association with, endorsement, sponsorship, or approval by the government.

The other cases you cite for a broad "ring fence" authority do not seem to support your interpretation here, unless I am missing something. Here is the language of the ALJ's ruling in *Removatron*:

Based on these findings and holdings, he entered an order, which in pertinent part required the petitioners: (1) to cease and desist from advertising their machine as a method of permanent hair removal unless they first possessed two well-controlled scientific studies supporting those claims; (2) to include in future advertising claiming that their product will remove hair, a disclaimer that the machine can only remove hair temporarily; (3) to send each purchaser a copy of the order; and (4) to provide future purchasers with a copy of the order.

The scope of #1 was because the ALJ found as a matter of fact that the machine did not (and could not) permanently remove hair, therefore any such representation was *per se* deceptive. The Commission then voted (in an evenly divided vote) to "cease their permanency claims until they possessed one well-controlled scientific study supporting that claim." Again, this representation was established, factually, as *per se* deceptive. Although much more complex, the *American Home Products Corp.* case involved an order that dealt specifically with representations that were *per se* misleading based on the facts, and the orders prevented the respondents from engaging any acts involving making misleading representations. Finally, the Listerine case, *Warner-Lambert Co.*, the ALJ made the following factual finding: "It concluded that petitioner had made the challenged representations that Listerine will ameliorate, prevent,

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and cure colds and sore throats, and that these representations were false.” *Warner-Lambert*, 562 F.2d at 753. Thus, the order in that case was necessarily tethered to an “unfair or deceptive” act or practice, i.e. making a false advertisement.

It seems like this a purely legal issue that dictates an amendment of the Order, and something the FTC Commission has to follow. Are my edits as above acceptable? If not, is this something that we should consult with the ALJ on to fashion the appropriate remedy, even if the Commission chooses to go “above and beyond” its statutory authority? Additionally, if we cannot make movement on this topic, I am going to need to schedule the depositions of (i) the FTC investigator; and (ii) each Commissioner member who spoke to David regarding the proposed Order. I would like to schedule those depositions in June, as time is ticking. Please get me some dates in the next week so I can notice them.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Thursday, May 27, 2021 8:03 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

As we discussed, here are some Supreme Court and Court of Appeals decisions concerning the Commission’s authority to order fencing-in relief. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1964); *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489 (1st Cir. 1989); *American Home Products Corp. v. FTC*, 695 F.2d 681 (3d Cir. 1982); *Warner-Lambert Co. v. FTC*, 562 F.2d 749 (D.C. Cir. 1977).

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 4:59 PM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom,

I can jump on the call at 4:30. As far as answers to my questions, can you confirm the below:

1. 16 CFR 2.32 states that all agreements must contain certain enumerated requirements, including that “any order issued pursuant to the agreement will become final upon service.” I see this language in the Order (VIII), but not in the Agreement. Should we place language to this effect in the Agreement?

FTC position: We do not think it is necessary to place language to this effect in the Agreement.

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2. 16 CFR 2.32 also states that all agreements shall provide that “[t]he order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record.” Should we conform Para. 7 in the Agreement to this same verbiage?

FTC position: We do not think it is necessary to recite the precise language to this effect in Para. 7 of the Agreement.

3. Finally, under 16 CFR §2.33, Compliance procedure, “[t]he Commission may in its discretion require that a proposed agreement containing an order to **cease and desist** be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in §4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.” (my emphasis).

I do not see anywhere in the Order the words “cease and desist” which is consistent with the FTC’s investigative jurisdiction under section 45 (my apologies in advance if I am missing some additional jurisdictional grounds supporting the action). Also, as this is discretionary, I assume that the Commission is OK with waiving the requirement that Respondents submit the initial report? Regardless, it would seem to me that to conform the Consent Order to the Complaint (which only alleges false or misleading actions in Counts 1 and 2) to the jurisdiction of the FTC is something that the Commission has to do? Put differently, Doesn’t the Consent Order have to order the Respondents to “cease and desist” the “false or misleading acts or practices” as set forth in the Complaint – especially given that the Order is construed under the Complaint? Apologies if I am rambling here.

FTC position: The FTC is waiving this requirement in its discretion, and there is no need to place cease and desist language in the Order.

Etienne

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From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 3:47 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

We’ve had a chance to run up your questions. As to all three, the proposed agreement (and order which is incorporated) conforms with Rule 2.32 and Section 45 and is consistent with past Commission orders. Let us know where you all are on the proposed order and if we need the call or can expect a signed order.

Tom

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From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 3:46 PM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom –

I leave it up to you guys as to priority, but if you want to get the answers to those questions it may be more productive to do none call. Not sure what your timing is, but just let us know. Happy to hop on the 4:30 call if you need to do that before hearing back.

Etienne

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From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 1:51 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

4:30 CST works for us. We can use the same dial-in: (877) 336-1839, Access Code: 9012655. We're looking into your questions.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 11:59 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: Paragraph 9 language
Importance: High

I can do a call at 4:30 pm (CST) this afternoon.

I have gone through the revised version of the Agreement and Consent Order, and also gone through the FTC's Consent Order Procedures (apologies for backtracking as I am still getting up to speed), and have a few questions, which we would appreciate written responses to:

1. 16 CFR 2.32 states that all agreements must contain certain enumerated requirements, including that "any order issued pursuant to the agreement will become final upon service." I see this language in the Order (VIII), but not in the Agreement. Should we place language to this effect in the Agreement?
2. 16 CFR 2.32 also states that all agreements shall provide that "[t]he order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record." Should we conform Para. 7 in the Agreement to this same verbiage?

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3. Finally, under 16 CFR §2.33, Compliance procedure, “[t]he Commission may in its discretion require that a proposed agreement containing an order to **cease and desist** be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in §4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.” (my emphasis).

I do not see anywhere in the Order the words “cease and desist” which is consistent with the FTC’s investigative jurisdiction under section 45 (my apologies in advance if I am missing some additional jurisdictional grounds supporting the action). Also, as this is discretionary, I assume that the Commission is OK with waiving the requirement that Respondents submit the initial report? Regardless, it would seem to me that to conform the Consent Order to the Complaint (which only alleges false or misleading actions in Counts 1 and 2) to the jurisdiction of the FTC is something that the Commission has to do? Put differently, Doesn’t the Consent Order have to order the Respondents to “cease and desist” the “false or misleading acts or practices” as set forth in the Complaint – especially given that the Order is construed under the Complaint? Apologies if I am rambling here.

Etienne

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ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 8:45 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Sure, we are pretty open today except 12-1 CST. Is there a good time for you both that we can hold for a call this afternoon?

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 9:40 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom – thanks for this, and I assume we are not speaking at 9:30. I need this morning to review the entire order and confirm some things with David. Do you want to schedule a call either later this afternoon or first thing tomorrow am to see if there is anything else outstanding?

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D: 504.582.8584 | M: 504.756.2192

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ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 7:29 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

David and Etienne,

Attached is the proposed consent order with your suggested language. I'm also attaching a redline comparison to the last version.

If we receive a signed agreement today, we can send it up to the Bureau for its review and signature and prepare a joint motion to withdraw from the adjudicative proceeding under Rule 3.25.

Otherwise, we would like to set up a call to discuss the logistics and scheduling of the inspection as well as depositions and interrogatory responses.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, May 25, 2021 10:39 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Would this be acceptable for clarity:

Each Respondent agrees to comply with the terms of the proposed Decision and Order, and Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

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Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Tuesday, May 25, 2021 9:35 AM
To: David Jeansonne <david@trafficjamevents.com>; Balart, Etienne <ebalart@joneswalker.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] Paragraph 9 language

Each Respondent agrees to comply with the terms of the proposed Decision and Order ~~from the date that Respondent signs this Consent Agreement~~. Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

Thomas J. Widor
Attorney, Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Stop: CC-10232

PUBLIC

Washington, DC 20580
Phone: (202) 326-3039
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twidor@ftc.gov

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 11:10 AM
To: Brickman, Jennifer
Subject: FW: Paragraph 9 language
Attachments: 2021-05-26 FTC Consent Order.pdf; 2021-05-26 FTC Consent Order - Redline.docx
Categories: Printed

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ebalart@joneswalker.com

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To: Balart, Etienne <ebalart@joneswalker.com>; David Jeanson <david@trafficjamevents.com>
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Subject: [EXTERNAL] RE: Paragraph 9 language

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To: Widor, Thomas <twidor@ftc.gov>; David Jeanson <david@trafficjamevents.com>
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Subject: RE: Paragraph 9 language

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Each Respondent agrees to comply with the terms of the proposed Decision and Order, and Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

L. Etienne Balart | Partner
Jones Walker LLP

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ebalart@joneswalker.com

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Sent: Tuesday, May 25, 2021 9:35 AM
To: David Jeansonne <david@trafficjamevents.com>; Balart, Etienne <ebalart@joneswalker.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] Paragraph 9 language

Each Respondent agrees to comply with the terms of the proposed Decision and Order ~~from the date that Respondent signs this Consent Agreement~~. Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

Thomas J. Widor
Attorney, Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission
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Washington, DC 20580
Phone: (202) 326-3039
Fax: (202) 326-3768
twidor@ftc.gov

**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.

FILE NO. X200041

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has issued an administrative Complaint challenging certain acts and practices of Traffic Jam Events, LLC, a limited liability company, and David J. Jeansonne II, individually and as an officer of Traffic Jam Events, LLC (collectively, “Respondents”). The Commission’s Bureau of Consumer Protection (“BCP”) and Respondents, individually or through its duly authorized officer, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

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X200041

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

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman
Noah Joshua Phillips
Rohit Chopra
Christine S. Wilson**

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.

DECISION AND ORDER

DOCKET NO. C-9395

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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.

FILE NO. X200041

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CONSENT ORDER**

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[REDACTED]

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X200041

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

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman
Noah Joshua Phillips
Rohit Chopra
Christine S. Wilson**

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.**

DECISION AND ORDER

DOCKET NO. C-9395

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Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 11:38 AM
To: Brickman, Jennifer
Subject: FW: Paragraph 9 language

Categories: Printed

L. Etienne Balart | Partner
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D: 504.582.8584 | M: 504.756.2192
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From: Widor, Thomas <twidor@ftc.gov>
Sent: Friday, May 28, 2021 11:26 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

At this point, any further discussion of a settlement is not going to be productive unless Respondents are ready to sign the proposed order like they indicated.

We'll provide a depo date for our investigator. As David knows, we have been attempting to reschedule the depositions of Jim Whelan, Mariela Everst, Justin Brophy, and Chad Bullock since the matter returned to adjudication the first week of May. We need their contact information supplemented or amended in the initial disclosures or for you to confirm that you continue to be the contact and that we can arrange their depositions through you. We also are still waiting for information on how to access the ESI, which we have been seeking since at least last November.

The request for Commissioner depositions is without merit and would serve no purpose other than to harass so we won't agree.

Lastly, if you are now acting as litigation counsel, we expect that you will re-enter your appearance.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Thursday, May 27, 2021 11:09 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: RE: Paragraph 9 language

Tom,

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Perhaps I am missing the finer points of these opinions, but the Supreme Court case actually proves the point discussed yesterday. The original FTC order in the *Colgate* case was ambiguous – it was held to apply to *any* simulation, not just false or deceptive simulations. After losing at the court of appeal, the FTC modified the order as below:

Both respondents were ordered to cease and desist from:

"Unfairly or deceptively advertising any . . . product by presenting a test, experiment or demonstration that (1) is represented to the public as actual proof of a claim made for the product which is material to inducing its sale, and (2) is not in fact a genuine test, experiment or demonstration being conducted as represented, and does not in fact constitute actual proof of the claim, because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

Colgate-Palmolive, 380 U.S. at 382 (emphasis added). Chief Justice Warren had this to say about the original Order – banning all mock-ups:

We find it inconceivable that the Commission could have successfully sought certiorari from this judgment [the first court of appeal decision]. Had it done so, it would have been forced to argue either that every use of mock-ups in commercials is a deceptive practice, an apparently unintended theory, or that this Court should reinstate the Commission's decision on a theory of its own, something the Court said it would not do in *Securities & Exchange Comm'n v. Chenery Corp.*, 332 U. S. 194, 332 U. S. 196.

With due deference to Vizzini, I disagree with the Chief Justice that it is inconceivable, as the FTC has since routinely exceeded its jurisdiction, *see, e.g. AMG Capital Mgt., LLC v. FTC*, 593 U.S. ____ (2021). However, I do agree with him (the Chief Justice) that the FTC does not have the power under the FTC Act to order one to cease or desist anything other than false or deceptive practices (at least under s. 45). Indeed, the whole of the FTC Order contested in the *Colgate* case was a cease and desist directed at unfair or deceptive advertising, not all advertising in general (that's what the Chief Justice said would have been inconceivable for the FTC to argue). The Order the FTC has proposed here (in section I) is completely untethered to these standards. As I explained yesterday, if tomorrow Congress were to pass a law providing for a \$2500 tax refund for purchase of a new vehicle, Respondents would be barred from being involved in any way with the advertising of this 100% legal option, and from doing any true and honest advertising concerning same: to wit, "Respondents, in connection with the advertising, marketing, promoting, offering for sale or lease, or sale or lease of motor vehicles **must not make any representation**, or assist others in making any representation expressly or by implication concerning: A. Financial assistance or relief from the government." This makes no sense.

In line with the *Colgate* case then, and the authority in Section 45, the Order should read as below:

IT IS ORDERED that Respondents, in connection with the advertising, marketing, promoting, offering for sale or lease, or sale or lease of motor vehicles ~~must shall~~ not make ~~any representation~~, nor assist others in making, any unfair or deceptive representation expressly or by implication concerning:

- A. Financial assistance or relief from the government;
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The other cases you cite for a broad "ring fence" authority do not seem to support your interpretation here, unless I am missing something. Here is the language of the ALJ's ruling in *Removatron*:

Based on these findings and holdings, he entered an order, which in pertinent part required the petitioners: (1) to cease and desist from advertising their machine as a method of permanent hair

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The scope of #1 was because the ALJ found as a matter of fact that the machine did not (and could not) permanently remove hair, therefore any such representation was *per se* deceptive. The Commission then voted (in an evenly divided vote) to “cease their permanency claims until they possessed one well-controlled scientific study supporting that claim.” Again, this representation was established, factually, as *per se* deceptive. Although much more complex, the *American Home Products Corp.* case involved an order that dealt specifically with representations that were *per se* misleading based on the facts, and the orders prevented the respondents from engaging any acts involving making misleading representations. Finally, the Listerine case, *Warner-Lambert Co.*, the ALJ made the following factual finding: “It concluded that petitioner had made the challenged representations that Listerine will ameliorate, prevent, and cure colds and sore throats, and that these representations were false.” *Warner-Lambert*, 562 F.2d at 753. Thus, the order in that case was necessarily tethered to an “unfair or deceptive” act or practice, i.e. making a false advertisement.

It seems like this a purely legal issue that dictates an amendment of the Order, and something the FTC Commission has to follow. Are my edits as above acceptable? If not, is this something that we should consult with the ALJ on to fashion the appropriate remedy, even if the Commission chooses to go “above and beyond” its statutory authority? Additionally, if we cannot make movement on this topic, I am going to need to schedule the depositions of (i) the FTC investigator; and (ii) each Commissioner member who spoke to David regarding the proposed Order. I would like to schedule those depositions in June, as time is ticking. Please get me some dates in the next week so I can notice them.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Thursday, May 27, 2021 8:03 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

As we discussed, here are some Supreme Court and Court of Appeals decisions concerning the Commission’s authority to order fencing-in relief. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1964); *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489 (1st Cir. 1989); *American Home Products Corp. v. FTC*, 695 F.2d 681 (3d Cir. 1982); *Warner-Lambert Co. v. FTC*, 562 F.2d 749 (D.C. Cir. 1977).

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 4:59 PM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom,

I can jump on the call at 4:30. As far as answers to my questions, can you confirm the below:

1. 16 CFR 2.32 states that all agreements must contain certain enumerated requirements, including that “any order issued pursuant to the agreement will become final upon service.” I see this language in the Order (VIII), but not in the Agreement. Should we place language to this effect in the Agreement?

FTC position: We do not think it is necessary to place language to this effect in the Agreement.

2. 16 CFR 2.32 also states that all agreements shall provide that “[t]he order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record.” Should we conform Para. 7 in the Agreement to this same verbiage?

FTC position: We do not think it is necessary to recite the precise language to this effect in Para. 7 of the Agreement.

3. Finally, under 16 CFR §2.33, Compliance procedure, “[t]he Commission may in its discretion require that a proposed agreement containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in §4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.” (my emphasis).

I do not see anywhere in the Order the words “cease and desist” which is consistent with the FTC’s investigative jurisdiction under section 45 (my apologies in advance if I am missing some additional jurisdictional grounds supporting the action). Also, as this is discretionary, I assume that the Commission is OK with waiving the requirement that Respondents submit the initial report? Regardless, it would seem to me that to conform the Consent Order to the Complaint (which only alleges false or misleading actions in Counts 1 and 2) to the jurisdiction of the FTC is something that the Commission has to do? Put differently, Doesn’t the Consent Order have to order the Respondents to “cease and desist” the “false or misleading acts or practices” as set forth in the Complaint – especially given that the Order is construed under the Complaint? Apologies if I am rambling here.

FTC position: The FTC is waiving this requirement in its discretion, and there is no need to place cease and desist language in the Order.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 3:47 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeanson <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

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Etienne,

We've had a chance to run up your questions. As to all three, the proposed agreement (and order which is incorporated) conforms with Rule 2.32 and Section 45 and is consistent with past Commission orders. Let us know where you all are on the proposed order and if we need the call or can expect a signed order.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 3:46 PM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom –

I leave it up to you guys as to priority, but if you want to get the answers to those questions it may be more productive to do none call. Not sure what your timing is, but just let us know. Happy to hop on the 4:30 call if you need to do that before hearing back.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 1:51 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

4:30 CST works for us. We can use the same dial-in: (877) 336-1839, Access Code: 9012655. We're looking into your questions.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 11:59 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language
Importance: High

I can do a call at 4:30 pm (CST) this afternoon.

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I have gone through the revised version of the Agreement and Consent Order, and also gone through the FTC's Consent Order Procedures (apologies for backtracking as I am still getting up to speed), and have a few questions, which we would appreciate written responses to:

1. 16 CFR 2.32 states that all agreements must contain certain enumerated requirements, including that "any order issued pursuant to the agreement will become final upon service." I see this language in the Order (VIII), but not in the Agreement. Should we place language to this effect in the Agreement?
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 Jones Walker LLP
 D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 8:45 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficiamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Sure, we are pretty open today except 12-1 CST. Is there a good time for you both that we can hold for a call this afternoon?

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 9:40 AM

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To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>

Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>

Subject: RE: Paragraph 9 language

Tom – thanks for this, and I assume we are not speaking at 9:30. I need this morning to review the entire order and confirm some things with David. Do you want to schedule a call either later this afternoon or first thing tomorrow am to see if there is anything else outstanding?

L. Etienne Balart | Partner

Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192

ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>

Sent: Wednesday, May 26, 2021 7:29 AM

To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>

Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>

Subject: [EXTERNAL] RE: Paragraph 9 language

David and Etienne,

Attached is the proposed consent order with your suggested language. I'm also attaching a redline comparison to the last version.

If we receive a signed agreement today, we can send it up to the Bureau for its review and signature and prepare a joint motion to withdraw from the adjudicative proceeding under Rule 3.25.

Otherwise, we would like to set up a call to discuss the logistics and scheduling of the inspection as well as depositions and interrogatory responses.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>

Sent: Tuesday, May 25, 2021 10:39 AM

To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>

Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>

Subject: RE: Paragraph 9 language

Would this be acceptable for clarity:

Each Respondent agrees to comply with the terms of the proposed Decision and Order, and Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

L. Etienne Balart | Partner

Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192

ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>

Sent: Tuesday, May 25, 2021 9:35 AM

To: David Jeansonne <david@trafficjamevents.com>; Balart, Etienne <ebalart@joneswalker.com>

PUBLIC

Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>

Subject: [EXTERNAL] Paragraph 9 language

Each Respondent agrees to comply with the terms of the proposed Decision and Order ~~from the date that Respondent signs this Consent Agreement~~. Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

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

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 12:44 PM
To: Brickman, Jennifer
Subject: FW: Paragraph 9 language

Categories: Printed

NEW exhibit 5

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Friday, May 28, 2021 3:11 PM
To: David Jeansonne <david@trafficjamevents.com>
Cc: Balart, Etienne <ebalart@joneswalker.com>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: [EXTERNAL] RE: Paragraph 9 language

David,

We will need more specific information about how to access the email, such as credentials to access online or any other process. We also would need more information about what is maintained on the server. If it is easier, we can set up a call with our team, Justin, and anyone else who would have relevant information.

Tom

From: David Jeansonne <david@trafficjamevents.com>
Sent: Friday, May 28, 2021 1:38 PM
To: Widor, Thomas <twidor@ftc.gov>
Cc: Balart, Etienne <ebalart@joneswalker.com>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>
Subject: Re: Paragraph 9 language

I spoke to Justin this morning, Traffic Jam has a server in Tampa but hasn't been used in years. The company used a third party company for emails. Does this help?

David Jeansonne
President
Traffic Jam Events™
a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.trafficjamevents.com)
e: david@trafficjamevents.com
w: [trafficjamevents.com](https://www.trafficjamevents.com)
m: [504-628-3339](tel:504-628-3339)

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p: [800-922-8109](tel:800-922-8109) ext. 201

"We Only Live Once.....But If Done Right, Once Is Enough!!"

On May 28, 2021, at 11:26 AM, Widor, Thomas <twidor@ftc.gov> wrote:

Etienne,

At this point, any further discussion of a settlement is not going to be productive unless Respondents are ready to sign the proposed order like they indicated.

We'll provide a depo date for our investigator. As David knows, we have been attempting to reschedule the depositions of Jim Whelan, Mariela Everst, Justin Brophy, and Chad Bullock since the matter returned to adjudication the first week of May. We need their contact information supplemented or amended in the initial disclosures or for you to confirm that you continue to be the contact and that we can arrange their depositions through you. We also are still waiting for information on how to access the ESI, which we have been seeking since at least last November.

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Etienne

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FTC position: We do not think it is necessary to recite the precise language to this effect in Para. 7 of the Agreement.

3. Finally, under 16 CFR §2.33, Compliance procedure, “[t]he Commission may in its discretion require that a proposed agreement containing an order to **cease and desist** be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in §4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.” (my emphasis).

I do not see anywhere in the Order the words “cease and desist” which is consistent with the FTC’s investigative jurisdiction under section 45 (my apologies in advance if I am missing some additional jurisdictional grounds supporting the action). Also, as this is discretionary, I assume that the Commission is OK with waiving the requirement that Respondents submit the initial report? Regardless, it would seem to me that to conform the Consent Order to the Complaint (which only alleges false or misleading actions in Counts 1 and 2) to the jurisdiction of the FTC is something that the Commission has to do? Put differently, Doesn’t the Consent Order have to order the Respondents to “cease and desist” the “false or misleading acts or practices” as set forth in the Complaint – especially given that the Order is construed under the Complaint? Apologies if I am rambling here.

FTC position: The FTC is waiving this requirement in its discretion, and there is no need to place cease and desist language in the Order.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 3:47 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeanson <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

PUBLIC

Etienne,

We've had a chance to run up your questions. As to all three, the proposed agreement (and order which is incorporated) conforms with Rule 2.32 and Section 45 and is consistent with past Commission orders. Let us know where you all are on the proposed order and if we need the call or can expect a signed order.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 3:46 PM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom –

I leave it up to you guys as to priority, but if you want to get the answers to those questions it may be more productive to do none call. Not sure what your timing is, but just let us know. Happy to hop on the 4:30 call if you need to do that before hearing back.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 1:51 PM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Etienne,

4:30 CST works for us. We can use the same dial-in: (877) 336-1839, Access Code: 9012655. We're looking into your questions.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 11:59 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language
Importance: High

I can do a call at 4:30 pm (CST) this afternoon.

PUBLIC

I have gone through the revised version of the Agreement and Consent Order, and also gone through the FTC's Consent Order Procedures (apologies for backtracking as I am still getting up to speed), and have a few questions, which we would appreciate written responses to:

1. 16 CFR 2.32 states that all agreements must contain certain enumerated requirements, including that "any order issued pursuant to the agreement will become final upon service." I see this language in the Order (VIII), but not in the Agreement. Should we place language to this effect in the Agreement?
2. 16 CFR 2.32 also states that all agreements shall provide that "[t]he order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record." Should we conform Para. 7 in the Agreement to this same verbiage?
3. Finally, under 16 CFR §2.33, Compliance procedure, "[t]he Commission may in its discretion require that a proposed agreement containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in §4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section." (my emphasis).

I do not see anywhere in the Order the words "cease and desist" which is consistent with the FTC's investigative jurisdiction under section 45 (my apologies in advance if I am missing some additional jurisdictional grounds supporting the action). Also, as this is discretionary, I assume that the Commission is OK with waiving the requirement that Respondents submit the initial report? Regardless, it would seem to me that to conform the Consent Order to the Complaint (which only alleges false or misleading actions in Counts 1 and 2) to the jurisdiction of the FTC is something that the Commission has to do? Put differently, Doesn't the Consent Order have to order the Respondents to "cease and desist" the "false or misleading acts or practices" as set forth in the Complaint – especially given that the Order is construed under the Complaint? Apologies if I am rambling here.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 8:45 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeanson <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

Sure, we are pretty open today except 12-1 CST. Is there a good time for you both that we can hold for a call this afternoon?

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Wednesday, May 26, 2021 9:40 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Tom – thanks for this, and I assume we are not speaking at 9:30. I need this morning to review the entire order and confirm some things with David. Do you want to schedule a call either later this afternoon or first thing tomorrow am to see if there is anything else outstanding?

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Wednesday, May 26, 2021 7:29 AM
To: Balart, Etienne <ebalart@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] RE: Paragraph 9 language

David and Etienne,

Attached is the proposed consent order with your suggested language. I'm also attaching a redline comparison to the last version.

If we receive a signed agreement today, we can send it up to the Bureau for its review and signature and prepare a joint motion to withdraw from the adjudicative proceeding under Rule 3.25.

Otherwise, we would like to set up a call to discuss the logistics and scheduling of the inspection as well as depositions and interrogatory responses.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, May 25, 2021 10:39 AM
To: Widor, Thomas <twidor@ftc.gov>; David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: Paragraph 9 language

Would this be acceptable for clarity:

Each Respondent agrees to comply with the terms of the proposed Decision and Order, and Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

PUBLIC

From: Widor, Thomas <twidor@ftc.gov>
Sent: Tuesday, May 25, 2021 9:35 AM
To: David Jeansonne <david@traffijamevents.com>; Balart, Etienne <ebalart@joneswalker.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] Paragraph 9 language

Each Respondent agrees to comply with the terms of the proposed Decision and Order ~~from the date that Respondent signs this Consent Agreement~~. Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

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

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 11:43 AM
To: Brickman, Jennifer
Subject: FW: Emails

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Thursday, June 3, 2021 7:31 PM
To: David Jeansonne <david@trafficjamevents.com>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Balart, Etienne <ebalart@joneswalker.com>
Subject: [EXTERNAL] RE: Emails

David and Etienne,

We are still waiting for information on the ESI and identification of responsive material at your offices to allow us to inspect and copy responsive materials.

We also have not received a response to our notices to depose Mariela Everst, Jim Whelan, Chad Bullock, and Justin Brophy (or a supplemental initial disclosure listing their contact information and whether their depositions should be arranged through Walker Jones).

Additionally, the interrogatory responses you sent via email last Thursday, May 27, do not comply with Rule 3.35, and each response is extremely incomplete and lacking adequate detail or does not even respond to the request. Rule 3.35 requires that “[e]ach interrogatory shall be answered separately and fully in writing under oath. . . . and signed by the person making them. . . .” There is no detail provided in response to Interrogatory No. 1. In addition to lacking details about the relationship with Platinum Plus Printing, the response to Interrogatory 2 fails to identify any officers, managers, employees or agents of Traffic Jam Events who also are associated with Platinum Plus Printing. The response to Interrogatory No. 3 similarly provides no detail about the role of third parties or agents. The response to Interrogatory No. 4 is inadequate as the prior list was limited to 2019 to the present. The response to Interrogatory Nos. 5 and 6 also provide no detail about the method of selection, including the identity of the software or where this information is stored, or the identity of the prize winners.

Finally, Respondents have not complied with the Court’s order granting Respondents’ motion for leave to withdraw as counsel. The order required Respondents to comply with Rule 4.1 within 10 days by entering an appearance.

We’ve been repeatedly trying to resolve these issues and have made no progress over the past month. By Monday, June 7, please (i) identify with specificity to the Requests for Production what responsive material is located at your offices and how to access the ESI, (ii) supplement or amend the initial disclosures with contact information or confirm that you continue to be the contact and that we can arrange their depositions through you, (iii) provide full responses under oath to the interrogatories, and (iv) comply with the Court’s Dec. 21 order requiring an appearance under Rule 4.1. At this point, if we cannot get this by Monday, June 7, we will file a motion with the court as we previously discussed.

Tom W.

From: David Jeansonne <david@trafficjamevents.com>

Sent: Tuesday, June 1, 2021 2:35 PM

To: Widor, Thomas <twidor@ftc.gov>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Etienne Balart <ebalart@joneswalker.com>

Subject: Emails

Tom,

I found out that the third party is Mindset, I am looking into how I get access to retrace emails.

David Jeansonne

President

Traffic Jam Events™

a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.google.com/maps/place/2232+Idaho+Ave,+Kenner,+LA+70062)

e: david@trafficjamevents.com

w: [trafficjamevents.com](https://www.trafficjamevents.com)

m: [504-628-3339](tel:504-628-3339)

p: [800-922-8109](tel:800-922-8109) ext. 201

"We Only Live Once.....But If Done Right, Once Is Enough!!!"

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 11:44 AM
To: Brickman, Jennifer
Subject: FW: [EXTERNAL] Re: In the Matter of Traffic Jam Events, LLC, Do. 9395-- Outstanding Discovery

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: David Jeansonne <david@trafficjamevents.com>
Sent: Thursday, May 27, 2021 10:57 AM
To: Widor, Thomas <twidor@ftc.gov>
Cc: Balart, Etienne <ebalart@joneswalker.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: [EXTERNAL] Re: In the Matter of Traffic Jam Events, LLC, Do. 9395-- Outstanding Discovery

Answers to the very best of my knowledge for the 6 questions:

- 1) President
- 2) Owner and only member
- 3 I am the President. William Lilley was the Sales Manager that sold 96% of all mail. He instructed the graphic designers what he wanted based on the customer.
Once you are able to get into email archives you will see this activity.
- 4) I have been opened as Traffic Jam Events since 2007.
As of today I have zero clients. Any past clients you already have the list of and information from.
- 5) I know there is a software that picks the winning numbers randomly. Then stored.
- 6 same as 5.

Thanks, let me know if there is anything else you need.

David Jeansonne
President
Traffic Jam Events™
a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.trafficjamevents.com)
e: david@trafficjamevents.com
w: [trafficjamevents.com](https://www.trafficjamevents.com)
m: [504-628-3339](tel:504-628-3339)
p: [800-922-8109 ext. 201](tel:800-922-8109)

"We Only Live Once.....But If Done Right, Once Is Enough!!"

PUBLIC

On May 27, 2021, at 8:12 AM, Widor, Thomas <twidor@ftc.gov> wrote:

David, as we discussed yesterday, I'm resending the interrogatory requests that require a response. The attachments also include the court order and our requests for production.

Please let us know when we can set up a time to discuss ESI access with Justin, or, if it is easier, you can provide the information on how to access ESI in a reply.

Tom

From: Widor, Thomas
Sent: Thursday, May 6, 2021 3:24 PM
To: David Jeansonne <david@trafficjamevents.com>; Jim Whelan <jimw@trafficjamevents.com>; Justin Brophy <justinb@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>
Subject: FW: In the Matter of Traffic Jam Events, LLC, Do. 9395-- Outstanding Discovery

Per David's request, I'm forwarding this email from earlier today.

Tom W.

From: Widor, Thomas
Sent: Thursday, May 6, 2021 9:17 AM
To: David Jeansonne <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>
Subject: FW: In the Matter of Traffic Jam Events, LLC, Do. 9395-- Outstanding Discovery

David,

I'm forwarding our prior discussion about the discovery responses from December. I've also attached our discovery requests and Judge Chappell's order requiring production by December 23. When we received the signed proposed consent order that day, we agreed that Respondents would not have to provide the responses that day in case the order would resolve the proceedings. Now that we are back in adjudication, we will need Respondents to comply with the order and request production by next Wednesday, May 12.

We can discuss this on the 10am CST time call.

We will also need to discuss deposition dates but can wait for the court's scheduling order to set those. For now, would you confirm whether Mariela Everst is still employed with Traffic Jam Events?

Tom W.

From: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Sent: Tuesday, December 22, 2020 6:08 PM
To: David Jeansonne <david@trafficjamevents.com>
Cc: Widor, Thomas <twidor@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>
Subject: In the Matter of Traffic Jam Events, LLC, Do. 9395-- Outstanding Discovery

PUBLIC

David,

We wanted to follow-up on outstanding discovery. Per Judge Chappell's Order issued on December 16th, Respondent's responses to the requests for production and the interrogatories are due tomorrow. Please note, per the Order, the relevant time period covered by the discovery requests is January 1, 2015 to the present. Electronically stored documents, including e-mail, are required to be produced in their existing, native formats. Please also note that pursuant to the Order you are also required to produce text messages, voicemails, and any other forms of instant messaging or communications, including IM, Jabber, or Slack. Eleni, our paralegal, is copied on this email and she can provide you a File Transfer Link where you can upload the documents by tomorrow.

We also are awaiting your response to my email from yesterday confirming the proposed deposition schedule. If any of the proposed deponents are no longer with the company, please provide us with any contact information so we can issue third-party subpoenas. We also need to know your position on conducting these depositions remotely.

Apart from deposing you and your employees, we also need to discuss the issuance of third-party depositions. We intend to issue subpoena depositions to some of the printers and dealerships. Please let us know your availability to discuss by tomorrow before we send the proposed time and place for the depositions.

Lastly, the expert witness list was due on December 1, 2020 and therefore assume Respondents do not intend to produce any such witness.

Best Regards,
Sanya S.

Sanya Shahrasbi

Attorney
Federal Trade Commission-Division of Financial Practices
600 Pennsylvania Ave NW, CC-10218
Washington, D.C. 20580
(202) 326-2709

<121620 Order Granting Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories.pdf>

<CC's First Set of Requests for Interrogatories to Traffic Jam Events, LLC.pdf>

<CC's First Set of Requests for Production to Traffic Jam Events, LLC.pdf>

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 12:47 PM
To: Brickman, Jennifer
Subject: FW: [EXTERNAL] Re: Emails

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: David Jeansonne <david@trafficjamevents.com>
Sent: Friday, June 4, 2021 4:24 PM
To: Widor, Thomas <twidor@ftc.gov>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Balart, Etienne <ebalart@joneswalker.com>
Subject: [EXTERNAL] Re: Emails

As you know, I was traveling this week and out of the office. Just wanted to let you know that I am working on the below, and you will have contact information for the people below Monday. I am a little confused by all your jargon about the interrogatories but I will get with Etienne this afternoon and do my best to supplement. Aren't these all the kinds of questions you will ask me at a deposition though? Perhaps we move that up? Regardless of where I am I can/will make myself available.

David Jeansonne
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e: david@trafficjamevents.com
w: [trafficjamevents.com](https://www.trafficjamevents.com)
m: [504-628-3339](tel:504-628-3339)
p: [800-922-8109](tel:800-922-8109) ext. 201

"We Only Live Once.....But If Done Right, Once Is Enough!!"

On Jun 3, 2021, at 7:30 PM, Widor, Thomas <twidor@ftc.gov> wrote:

David and Etienne,

PUBLIC

We are still waiting for information on the ESI and identification of responsive material at your offices to allow us to inspect and copy responsive materials.

We also have not received a response to our notices to depose Mariela Everst, Jim Whelan, Chad Bullock, and Justin Brophy (or a supplemental initial disclosure listing their contact information and whether their depositions should be arranged through Walker Jones).

Additionally, the interrogatory responses you sent via email last Thursday, May 27, do not comply with Rule 3.35, and each response is extremely incomplete and lacking adequate detail or does not even respond to the request. Rule 3.35 requires that “[e]ach interrogatory shall be answered separately and fully in writing under oath. . . . and signed by the person making them. . . .” There is no detail provided in response to Interrogatory No. 1. In addition to lacking details about the relationship with Platinum Plus Printing, the response to Interrogatory 2 fails to identify any officers, managers, employees or agents of Traffic Jam Events who also are associated with Platinum Plus Printing. The response to Interrogatory No. 3 similarly provides no detail about the role of third parties or agents. The response to Interrogatory No. 4 is inadequate as the prior list was limited to 2019 to the present. The response to Interrogatory Nos. 5 and 6 also provide no detail about the method of selection, including the identity of the software or where this information is stored, or the identity of the prize winners.

Finally, Respondents have not complied with the Court’s order granting Respondents’ motion for leave to withdraw as counsel. The order required Respondents to comply with Rule 4.1 within 10 days by entering an appearance.

We’ve been repeatedly trying to resolve these issues and have made no progress over the past month. By Monday, June 7, please (i) identify with specificity to the Requests for Production what responsive material is located at your offices and how to access the ESI, (ii) supplement or amend the initial disclosures with contact information or confirm that you continue to be the contact and that we can arrange their depositions through you, (iii) provide full responses under oath to the interrogatories, and (iv) comply with the Court’s Dec. 21 order requiring an appearance under Rule 4.1. At this point, if we cannot get this by Monday, June 7, we will file a motion with the court as we previously discussed.

Tom W.

From: David Jeansonne <david@trafficjamevents.com>

Sent: Tuesday, June 1, 2021 2:35 PM

To: Widor, Thomas <twidor@ftc.gov>; Shahrabi, Sanya <sshahrabi@ftc.gov>; Etienne Balart <ebalart@joneswalker.com>

Subject: Emails

Tom,

I found out that the third party is Mindset, I am looking into how I get access to retrace emails.

David Jeansonne

President

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a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.trafficjamevents.com)

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p: [800-922-8109 ext. 201](tel:800-922-8109)

"We Only Live Once.....But If Done Right, Once Is Enough!!"

Brickman, Jennifer

From: Balart, Etienne
Sent: Monday, June 14, 2021 12:00 PM
To: Brickman, Jennifer
Subject: FW: [EXTERNAL] Re: Emails

Categories: Printed

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Tuesday, June 8, 2021 3:58 PM
To: Balart, Etienne <ebalart@joneswalker.com>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails

Etienne,

If Respondents comply with the Court's orders, we'll withdraw the motion. Until then, the motion is appropriate given Respondents' continued pattern of delay.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, June 8, 2021 4:33 PM
To: Widor, Thomas <twidor@ftc.gov>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails
Importance: High

Tom,

I apologize for missing your email about filing with the Court, but I just want to go on record that Respondents have offered, and after clarification from you, specified that the data provider (Mindset) has all of the company's ESI. Before granting access to the ESI, we need an agreed protocol to keep and maintain privileges and eliminate irrelevant information. If and when you file on this issue, our position will be the same, and it certainly seems that we could avoid the time and expense of putting this before the Court with an agreement as to a proposed protocol.

As for anything else outstanding, please advise what you are waiting on.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192

PUBLIC

ebalart@joneswalker.com

From: Widor, Thomas <twidor@ftc.gov>
Sent: Tuesday, June 8, 2021 3:25 PM
To: Balart, Etienne <ebalart@joneswalker.com>; 'David Jeansonne' <david@trafficjamevents.com>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails

Etienne,

Respondents can come into compliance by producing the responsive material required by the Court's order (and as we have identified in numerous calls and emails). The Court order does not say anything about inspection and copying. While we were open to using that as a way to resolve one of the discovery issues, we have unsuccessfully tried to engage in good faith negotiations since last fall and still to today do not even have basic information about these systems. We've made no progress and simply have been strung along. Respondents lack any credibility that they will comply with their discovery obligations and make this email or other ESI available without the Court's involvement. As I indicated in my email last week, we are filing with the Court today.

Tom

From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, June 8, 2021 9:44 AM
To: 'David Jeansonne' <david@trafficjamevents.com>; Widor, Thomas <twidor@ftc.gov>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>
Subject: RE: [EXTERNAL] Re: Emails

Tom,

In speaking with David, the third party data provider can be made available. Prior to that, what protocol do you propose concerning data collection to (i) preserve attorney-client privilege and any other applicable privileges; and (ii) exclude irrelevant materials. Can you please provide details so that we can agree to a process. Thanks,

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

From: David Jeansonne <david@trafficjamevents.com>
Sent: Friday, June 4, 2021 4:24 PM
To: Widor, Thomas <twidor@ftc.gov>
Cc: Shahrabi, Sanya <sshahrabi@ftc.gov>; Balart, Etienne <ebalart@joneswalker.com>
Subject: [EXTERNAL] Re: Emails

As you know, I was traveling this week and out of the office. Just wanted to let you know that I am working on the below, and you will have contact information for the people below Monday. I am a little confused by all your jargon about the interrogatories but I will get with Etienne this afternoon and do my best to supplement. Aren't these all the kinds of questions you will ask me at a deposition though? Perhaps we move that up? Regardless of where I am I can/will make myself available.

David Jeansonne

President

Traffic Jam Events™

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e: david@trafficjamevents.com

w: [trafficjamevents.com](https://www.trafficjamevents.com)

m: [504-628-3339](tel:504-628-3339)

p: [800-922-8109 ext. 201](tel:800-922-8109)

"We Only Live Once.....But If Done Right, Once Is Enough!!"

On Jun 3, 2021, at 7:30 PM, Widor, Thomas <twidor@ftc.gov> wrote:

David and Etienne,

We are still waiting for information on the ESI and identification of responsive material at your offices to allow us to inspect and copy responsive materials.

We also have not received a response to our notices to depose Mariela Everst, Jim Whelan, Chad Bullock, and Justin Brophy (or a supplemental initial disclosure listing their contact information and whether their depositions should be arranged through Walker Jones).

Additionally, the interrogatory responses you sent via email last Thursday, May 27, do not comply with Rule 3.35, and each response is extremely incomplete and lacking adequate detail or does not even respond to the request. Rule 3.35 requires that "[e]ach interrogatory shall be answered separately and fully in writing under oath. . . . and signed by the person making them. . . ." There is no detail provided in response to Interrogatory No. 1. In addition to lacking details about the relationship with Platinum Plus Printing, the response to Interrogatory 2 fails to identify any officers, managers, employees or agents of Traffic Jam Events who also are associated with Platinum Plus Printing. The response to Interrogatory No. 3 similarly provides no detail about the role of third parties or agents. The response to Interrogatory No. 4 is inadequate as the prior list was limited to 2019 to the present. The response to Interrogatory Nos. 5 and 6 also provide no detail about the method of selection, including the identity of the software or where this information is stored, or the identity of the prize winners.

Finally, Respondents have not complied with the Court's order granting Respondents' motion for leave to withdraw as counsel. The order required Respondents to comply with Rule 4.1 within 10 days by entering an appearance.

We've been repeatedly trying to resolve these issues and have made no progress over the past month. By Monday, June 7, please (i) identify with specificity to the Requests for Production what responsive material is located at your offices and how to access the ESI, (ii) supplement or amend the initial disclosures with contact information or confirm that you continue to be the contact and that we can arrange their depositions through you, (iii) provide full responses under oath to the interrogatories, and (iv) comply with the Court's Dec. 21 order requiring an appearance under Rule 4.1. At this point, if we cannot get this by Monday, June 7, we will file a motion with the court as we previously discussed.

PUBLIC

Tom W.

From: David Jeansonne <david@trafficjamevents.com>

Sent: Tuesday, June 1, 2021 2:35 PM

To: Widor, Thomas <twidor@ftc.gov>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>; Etienne Balart <ebalart@joneswalker.com>

Subject: Emails

Tom,

I found out that the third party is Mindset, I am looking into how I get access to retrace emails.

David Jeansonne

President

Traffic Jam Events™

a: [2232 Idaho Ave. | Kenner, LA 70062](https://www.google.com/maps/place/2232+Idaho+Ave,+Kenner,+LA+70062)

e: david@trafficjamevents.com

w: trafficjamevents.com

m: [504-628-3339](tel:504-628-3339)

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"We Only Live Once.....But If Done Right, Once Is Enough!!"