The Federal Trade Commission ("FTC" or "Commission") issued a Decision and Order against AJM Packaging Corporation

("AJM") and Abram Epstein in Docket C-3508 ("1994 Order") on July 19, 1994.[1] On September 30, 2013, the Commission filed a complaint in federal district court alleging that AJM violated the 1994 Order by making false and unsubstantiated claims regarding certain paper products.

On October 1, 2013, Judge Beryl A. Howell in the District for the District of Columbia entered a Stipulated Order for Permanent Injunction and Civil Penalty Judgment ("Stipulated Order") resolving the 2013 action. In Section III of the Stipulated Order, AJM consented: (1) to reopening this proceeding; (2) to waiving any rights it might otherwise have under the show cause procedures set forth in Commission Rule 3.72(b), 16 C.F.R. § 3.72(b); (3) to vacating the 1994 Order as to AJM; and (4) to issuing a new FTC order as to AJM as set forth below.

In view of the foregoing, the Commission has determined that it is in the public interest to reopen the proceeding in Docket No. C-3508 pursuant to Commission Rule 3.72(b), 16 C.F.R. § 3.72(b); to vacate the 1994 Order as to AJM; and to issue a new order as to AJM as set forth below. Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that, AJM having consented to vacating the 1994 Order as to it and to issuing a new order as follows, the Commission hereby vacates the 1994 Order as to AJM and issues the attached Decision and Order, which shall become final upon delivery of this Order and the Decision and Order to AJM by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a):

DECISION AND ORDER

The Federal Trade Commission having filed a complaint in Federal District Court on September 30, 2013, alleging that Respondent AJM Packaging Corporation ("AJM") had violated

[1] *In the Matter of AJM Packaging Corporation and Abram Epstein*, 118 F.T.C. 56 (1994).

the Decision and Order in In the Matter of AJM Packaging Corp., et al., 118 F.T.C. 56 (1994), by making false and unsubstantiated claims regarding certain paper products; and

AJM, its attorney, and counsel for the Commission having thereafter executed, and the District Court having thereafter entered, a Stipulated Order for Permanent Injunction and Civil Penalty Judgment in which AJM consented, inter alia, to vacating the 1994 Order as to AJM, and to issuing a new Commission Order as to AJM as set forth below;

Now in further conformity with the procedure prescribed in Commission Rule 3.72(b), 16 C.F.R. § 3.72(b), the Commission hereby issues a new Decision and Order as to AJM, as set forth below.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Clearly and prominently" means

   A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;

   B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the

disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

2. "Close proximity" means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.

5. "Customary disposal" means any disposal method whereby respondent's products ultimately will be

disposed of in a landfill, in an incinerator, or in a recycling facility.

6. "Degradable" includes biodegradable, oxo-biodegradable, oxo-degradable, or photodegradable, or any variation thereof.

7. "Landfill" means a municipal solid waste landfill that receives household waste. "Landfill" does not include landfills that are operated as bioreactors or those that are actively managed to enhance decomposition.

8. "Product or package" means any product or package, including but not limited to bags and plates, that is offered for sale, sold, or distributed to the public by respondent and any such product or package sold or distributed to the public by third parties that is manufactured by respondent.

9. Unless otherwise specified, "respondent" means AJM Packaging Corporation, its successors and assigns and its officers, agents, representatives, and employees.

Part I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, shall not represent, in any manner, expressly or by implication, that any such product or package is degradable, unless

A. the entire item will completely decompose into elements found in nature within one year after customary disposal; or

B. the representation is clearly and prominently and in close proximity qualified by: (1) the time to complete decomposition after customary disposal; or (2) the time to complete decomposition after non-customary disposal, the type of non-customary disposal facility or

method, and the availability of such facility or method to consumers where the item is marketed or sold,

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. Any technical protocol (or combination of protocols) must assure complete decomposition within one year or a stated time frame and must replicate, i.e., simulate, the physical conditions found in the type of disposal facility stated in the representation (e.g., in landfills, where most trash is disposed).

Part II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, shall not represent in any manner, expressly or by implication, that any such product or package is compostable, unless

A. all materials in the item will break down into, or become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner (i.e., in the same time as the materials with which it is composted)

1. in a home composting pile or device;

2. in a municipal or institutional composting facility that is available to a substantial majority of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation that the item is only compostable in such a facility; or

3. in a municipal or institutional composting facility that is not available to a substantial majority of consumers or communities and respondent discloses clearly and prominently and in close

proximity to the representation: (i) that the item is only compostable in such a facility and (ii) the limited availability of municipal or institutional composting facilities that compost the item, such as by disclosing the percentage of consumers or communities that have access to such facilities;

B. and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, shall not represent in any manner, expressly or by implication, that any such product or package is recyclable, unless

A. the entire item can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item;

B. recycling facilities that accept the item for recycling are available

1. to a substantial majority (at least sixty percent) of consumers or communities where the item is sold; or

2. to less than a substantial majority (at least sixty percent) of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation the limited availability of recycling for the item and the extent to which it is limited, such as by disclosing the percentage of consumers or communities that have access to facilities that recycle such item;

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product or package, in or affecting commerce shall not represent, in any manner, expressly or by implication, that any such product or package offers any environmental benefit, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

Part V.

This Order will terminate on November 25, 2033, or twenty (20) years from the most recent date that the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been

filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

RESPONSES TO PETITIONS TO QUASH OR LIMIT COMPULSORY PROCESS

NATIONAL PROCESSING CO. AND VANTIV, INC.

FTC File No. 132 3105. Order, September 6, 2013.

OPINION AND ORDER DENYING PETITION TO QUASH CIVIL INVESTIGATIVE DEMANDS

By WRIGHT, Commissioner.

On August 15, 2013, Petitioners, National Processing Co. ("NPC") and Vantiv, Inc. (collectively the "Vantiv Entities") filed a timely Petition to Quash Commission Civil Investigative Demands ("CIDs") dated July 24, 2013. For the reasons set forth below, the Commission denies the Petition to Quash ("Petition") and orders the Vantiv Entities to comply with the CIDs on or before September 13, 2013.

I. BACKGROUND

The Commission's investigation of the Vantiv Entities concerns activities that are distinct from, but related to, the acts and practices that led to the Commission enforcement action, *FTC v. A+ Financial Center, LLC, et al.*, No. 12-CV-14373-DLG (S.D. Fla. filed Oct. 23, 2012), filed under the authority of 15 U.S.C. §53(b). The *A+ Financial* complaint alleges that the defendants violated Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §45(a), and the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, by deceptively marketing credit card interest rate reduction services to consumers struggling with high credit card debt, illegally collecting an advance fee for their purported services, and illegally using prerecorded calls to contact consumers. Neither NPC nor Vantiv is a defendant in the *A+ Financial* enforcement action. Nonetheless, from December 2009 through October 2012, NPC (a credit card processor) processed the majority of the allegedly illegal advance fees that consumers paid to the *A+ Financial* defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010.

On July 24, 2013, the Commission issued a separate CID to each of the Vantiv Entities as part of its investigation into the Vantiv Entities' role in, and knowledge of, the illegal acts and practices of the *A+ Financial* defendants. The documents sought in these CIDs (the "July 24, 2013 CIDs") will help the Commission evaluate whether the Vantiv Entities violated the FTC Act or the TSR. Each CID contains 14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents.

On August 6, 2013, after it issued the CIDs, the Commission served the Vantiv Entities with subpoenas under Fed. R. Civ. P. 45. The subpoenas seek the same documents as the CIDs. Commission counsel issued these subpoenas, in part, because the presiding judge in the *A+ Financial* enforcement action had suggested that Commission counsel consider sharing any documents produced by the Vantiv Entities with the court-appointed receiver in that enforcement action. However, as a consequence of statutory and regulatory restrictions, Commission counsel could not readily share documents produced in response to a CID with the receiver.[1] The return date on the Rule 45 subpoenas was August 19, 2013. On that date, in a letter to Commission counsel, the Vantiv Entities objected to the subpoenas without producing any documents.

On August 15, 2013, the Vantiv Entities responded to the issuance of the Commission's CIDs by filing a Petition to Quash.[2] In their Petition to Quash, the Vantiv Entities argue that the Commission's authority to issue the CIDs terminated when Commission counsel issued Rule 45 subpoenas seeking the same information in the *A+ Financial* enforcement action.

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[1] Documents produced to the Commission in response to a CID are non-public, and their disclosure is subject to various statutory and regulatory restrictions. 15 U.S.C. §57b-2; 16 C.F.R. §4.10. Documents produced to the Commission in response to Rule 45 subpoenas are not subject to these restrictions.

[2] *See* 15 U.S.C. §57b-1(f) and 16 C.F.R. §2.10. This Petition stayed compliance with the CIDs' original August 19, 2013, return date. 16 C.F.R. §2.10(b).

II. ANALYSIS

The Commission has broad authority under 15 U.S.C. §57b-1 to issue CIDs to further any "Commission investigation"—*i.e.*, "any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. §57b-1(a)(2). The Commission may issue CIDs at any time before it starts an "adjudicative proceeding." 15 U.S.C. § 57b-1(j)(1).

It is settled that, until the Commission names a person as a defendant or a respondent in a complaint, the Commission is not engaged in an adjudicative proceeding with regard to that person and remains solely in an investigative posture. *Genuine Parts Co. v. F.T.C.*, 445 F.2d 1382, 1388 (5th Cir. 1971); *United States v. Anaconda Co.*, 445 F. Supp. 486, 496-97 (D.D.C. 1977); *United States v. Associated Merch. Corp.*, 261 F. Supp. 553, 558 (S.D.N.Y. 1966). *See also In re: Subpoena Duces Tecum Addressed to Atlantic Richfield Co., et al.*, No. 741-0019, 1978 WL 434436, at *6 (F.T.C. June 2, 1978) (discussing *In re: Horizon Corp.*, No. 9017, 88 F.T.C. 208, 1976 WL 180725, at *1 (July 28, 1976), where the Commission properly issued investigative subpoenas to investigate third-party lenders who had financed the land development activities of respondents in an FTC administrative adjudicative proceeding).

Because the Commission did not name either of the Vantiv Entities as a defendant in the *A+ Financial* enforcement action, it necessarily follows that the Commission may issue CIDs to them. The cases cited by the Petitioners (Petition at 6-7) do not suggest otherwise. Indeed, they uniformly hold that the Commission may issue CIDs to anyone *at least* until the Commission commences an adjudicatory proceeding against that person.[3]

[3] The Commission may also issue CIDs to a party already in adjudication with the Commission where the Commission is investigating whether that party committed violations beyond those alleged in the pending adjudication. *See Resolution Trust Corp. v. Grant Thornton*, 41 F.3d 1539, 1545-46 (D.C. Cir. 1994) ("[A]n agency's investigative powers survive the commencement of litigation where the agency seeks to uncover *additional wrongdoing*." (emphasis in original)); Commission Letter to Mr. Glynn, Counsel to Dr. William V. Judy, Denying Petition to Quash, F.T.C. File No. X000069 (Sept.

Nor is there any inconsistency in the contemporaneous issuance of CIDs and Rule 45 subpoenas. The Commission has good reason to pursue this dual-track effort: the CIDs are justified by the Commission's ongoing investigation of the conduct of the Vantiv Entities for violations of the FTC Act and the TSR, and the Rule 45 subpoenas are justified by the Vantiv Entities' business relationship with the defendants. The issuance of the Rule 45 subpoenas does not somehow void otherwise valid CIDs. The July 24, 2013 CIDs and the Rule 45 subpoenas simply constitute alternative and appropriate routes to the same overriding Commission objective: prompt production of the documents the Commission needs.[4]

Finally, having denied the Petition to Quash, the Commission may now commence CID enforcement proceedings, pursuant to 15 U.S.C. §57b-1(e) and 16 C.F.R. §2.13(b), at any time after the new return date if the Vantiv Entities do not comply. We have full confidence that any proceedings to enforce the Rule 45 subpoenas and the July 24, 2013 CIDs will be managed in a manner that both expeditiously secures the necessary documents from the Vantiv Entities and promotes judicial economy.

III. CONCLUSION

For all the foregoing reasons,

IT IS HEREBY ORDERED THAT the Petition of Vantiv, Inc. and National Processing Co. be, and hereby is, **DENIED.**

10, 2002) ("It is axiomatic that the Commission's authority to investigate one product is not cut off by the filing of a federal lawsuit relating to another."); *see also United States v. Litton Indus., Inc.*, 462 F.2d 14, 16 (9th Cir. 1972); *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 619-20 (S.D.N.Y. 1959).

[4] On August 22, 2013, after the return date on the Rule 45 subpoenas had passed and the Vantiv Entities had produced no documents, the Commission moved to compel compliance with the subpoenas in the federal district courts for the Southern District of Ohio (as to Vantiv) and the Western District of Kentucky (as to NPC). The Vantiv Entities' responses are due on September 16, 2013.

IT IS FURTHER ORDERED THAT Petitioners Vantiv, Inc. and National Processing Co. shall comply in all respects with the July 24, 2013 CIDs on or before September 13, 2013.

By the Commission.

AEGIS MOBILE LLC

FTC File No. 132 3247. Order, October 24, 2013.

ORDER STAYING PETITION TO QUASH PROCEEDINGS

On September 24, 2013, Petitioner, Aegis Mobile, LLC ("Aegis") filed a petition to quash a civil investigative demand ("CID") issued by the Commission to Aegis in response to a request by the Competition Bureau Canada ("Competition Bureau") for investigative assistance.[1] The CID requested materials needed by the Competition Bureau in connection with its enforcement litigation in Canada against Bell Canada, Rogers Communications Inc., Telus Corporation, and the Canadian Wireless Telecommunications Association (collectively, the "Canadian Companies"). In the Canadian proceeding, currently pending in Ontario Superior Court, the Competition Bureau alleges that the Canadian Companies engaged in the deceptive marketing of premium text messaging and digital content services. The FTC's CID in aid of the Canadian proceedings sought materials from Aegis regarding the marketing of premium text messages and rich content in Canada, as well as Aegis's work for and on behalf of the Canadian Companies.

The Commission issued the CID pursuant to its authority under Section 6(j) of the Federal Trade Commission Act ("FTC

[1] Pursuant to Section 2.10(5)(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.10(5)(b), the timely filing of a petition to quash a CID stays the remaining period of time permitted for compliance.

Act"), which was added to the FTC Act by the U.S. SAFE WEB Act of 2006.[2] Specifically, the statute authorizes the Commission to assist foreign law enforcement agencies in their investigations of, or enforcement proceedings against, "possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission." 15 U.S.C. § 46(j). Section 6(j) gives the Commission two routes to provide such assistance. Under Section 6(j)(2)(A), the Commission may "conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by [the FTC Act]; . . ." 15 U.S.C. § 46(j)(2)(A). Under Section 6(j)(2)(B),the Commission may also – "when the request is from an agency acting to investigate or pursue the enforcement of civil laws" – "seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of Title 28." 15 U.S.C. § 46(j)(2)(B).

Due to the recent interruption in U.S. government operations, considerable time has elapsed since the Commission received the request for assistance in obtaining access to materials that are highly relevant to the Competition Bureau's pending litigation in Canada. Accordingly, the Commission finds that greater expedition is warranted and, therefore, has determined to stay the instant petition to quash proceedings while it exercises its authority under Section 6(j)(2)(B) of the FTC Act, 15 U.S.C. § 46(j)(2)(B), to institute a proceeding under 28 U.S.C. § 1782. In that proceeding, the Commission will seek an appointment of Commission attorneys by the United States District Court for the District of Maryland to obtain information needed by the Competition Bureau for use in the Canadian enforcement proceedings.[3] In staying the instant proceedings, the Commission expresses no views on the substantive issues raised by Aegis's petition to quash. Accordingly,

[2] Pub. L. No. 109-455, 120 Stat. 3372 (2006).

[3] Aegis's obligation to comply with the Commission's CID shall remain stayed pending disposition of the petition to quash. *See supra* note 1.

IT IS HEREBY ORDERED THAT consideration of the Petition of Aegis Mobile, LLC is **STAYED** pending the federal courts' disposition of an application by the Commission pursuant to 28 U.S.C. § 1782.

By the Commission.

HEALTHYLIFE SCIENCES, LLC

FTC File No. 122 3287. Order, December20, 2013.

OPINION AND ORDER DENYING PETITION TO LIMIT CIVIL INVESTIGATIVE DEMAND

By WRIGHT, Commissioner.

On November 22, 2013, petitioner HealthyLife Sciences, LLC ("HLS") filed a petition to limit a Civil Investigative Demand ("CID") issued by the Commission in connection with its investigation of certain HLS products and policies. For the reasons stated below, the Commission denies the petition.

I. BACKGROUND

Through a variety of advertising and marketing platforms, HLS claims that its "Healthe Trim" brand dietary supplements help users lose weight. In response to these claims and other marketing practices, the Commission's Division of Advertising Practices opened an investigation to determine whether HLS may have violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

On October 30, 2013, as part of this investigation, the Commission issued a CID seeking materials relating to Healthe Trim products ("Specified Products"), including Healthe Trim