

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

[PUBLIC]

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

NORTH TEXAS SPECIALTY PHYSICIANS' MOTION TO COMPEL

Document 16 CED 8220 Docket No. 9312

Almost 14 months after the pre-complaint investigation regarding NTSP had begun, the FTC, on September 16, 2003, instituted an adjudicative proceeding against NTSP. The

and practices that restrained trade, hindered competition, and constituted unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.³ The Complaint sets forth general allegations regarding the acts and practices of NTSP upon which the FTC bases its claims, but provides no indication of (a) which persons allegedly conspired with NTSP in

of competition, including the date of each such act or practice and
how that act or practice restrained trade or hindered competition.⁷

The FTC has refused, however, to answer these interrogatories. Instead, it has objected

and argued that each of the following is “irrelevant” and “unduly burdensome.”

effective discovery device, which would be less burdensome than depositions at which contention questions were propounded.”¹¹ Contention interrogatories assist in narrowing and defining the issues and enable the propounding party to determine the proof required to rebut the adverse party’s position.¹² As such, “the general view is that contention interrogatories are a useful

contention interrogatories were not premature and must be answered.²³

Like the plaintiffs in *Rusty Jones* and *Bove*, the FTC has also conducted substantial pre-suit discovery. In fact, the amount and types of pre-suit discovery conducted by the FTC are even more extensive than that conducted in those cases. The plaintiff in *Rusty Jones* had received only documents from the opposing party, but the FTC has received documents from

to narrow the issues to which it must respond and is forcing NTSP to engage in expensive and wasteful discovery regarding issues that may not underlie the FTC's allegations.

Presently, NTSP knows only that it is alleged to have conspired with certain unnamed other persons, conducted activities that hindered competition or restrained trade, and engaged in

unfair competition. General allegations like those of 6:11-12; NTSP's 1-6-11

when the FTC has had over a year's worth of discovery before the Complaint was filed. 1-7

NTSP's interrogatories, but it has nonetheless claimed that it does not have to disclose that information to NTSP, at least not until all discovery is completed, and possibly not at all.

The fact that discovery is not complete does not distinguish this case from the ETC.

Oppose NTSD's contention interrogatories. The Date of Discovery is 1/1/00. ETC.

numbers 1 and 2; and (c) grant such other and further relief to which NTSD is entitled.

entitled.

Respectfully submitted,



William M. Katz, Jr.
Gregory D. Binns

THOMPSON & KNIGHT LLP
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214.969.1700
214.969.1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com
megan.hines@tklaw.com

I, Gregory D. Binns, hereby certify that on November 4, 2002, I [redacted]

Texas Specialty Physicians' North Texas Specialty Physicians' Motion to Compel Responses to Interrogatories, to be served upon the following persons:

Michael Bloom (via e-mail and Federal Express)

Senior Counsel

Federal Trade Commission

Northeast Region

One Bowling Green, Suite 219

EXHIBIT A



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

North Texas Specialty Physicians
c/o Gregory S. C. Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693

of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation you are entitled to as a witness for the
Competition. The associated travel voucher and this demand should be presented to Commissaire General

**CIVIL INVESTIGATIVE DEMAND
DIRECTED TO NORTH TEXAS SPECIALTY PHYSICIANS**

If the company believes that the required search or any other part of this Civil

[REDACTED]

NTSP CIVIL INVESTIGATIVE DEMAND

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Civil Investigative Demand, the following definitions and instructions apply:

A. The terms "the company" and "NTSP" mean North Texas Specialty Physicians and each of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the

company. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which

there is partial (25 percent or more) or total ownership or control between the company and any other person.

B. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

C. The terms "and" and "or" have both conjunctive and disjunctive meanings.

NTSP CIVIL INVESTIGATIVE DEMAND

This response to the Civil Investigative Demand, together with any and all
exhibits and attachments thereto, was prepared and assembled under the

supervision in accordance with instructions issued by the Federal Trade
Commission. Subject to the recognition that, where so indicated, reasonable
estimates have been made because books and records do not provide the required

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

DOCS & FOREIGN TRADE

Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

RESOLUTION AUTHORIZING USE OF COMPULSORY

PROCESS IN AN ANTI-PUBLIC INVESTIGATION

File No. 0210075

Nature and Scope of Investigation:

To determine whether North Texas Specialty Physicians, its past and present members, its agents or other persons, partnerships, or corporations have agreed on the terms or conditions upon which they would deal with health care insurers; concertedly negotiated with health care insurers; boycotted or threatened to boycott health care insurers; or otherwise engaged in unfair methods of

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

DOCKET NO. 9312

COMPLAINT COUNSEL'S RESPONSE TO RESPONDENT'S
FIRST SET OF INTERROGATORIES

Response in Section 235 of the Federal Trade Commission's ("the Commission") Rules
[REDACTED]

Case No. 93-1102, Respondent North Texas Specialty

CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Molloy, Esq.
CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Neil Fleishman, Esq.
~~Blue Cross (Blue Shield) of Texas~~

Gary Cole
Humana, Inc.

Gary Reed, Esq.

Chris Bulger
Texas Health Choice, L.C.

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk

Michael Ile, Esq.
United Healthcare, Inc.

Dawn Boyd
ProNet

Daniel L. Wellington, Esq.
(Hickman, Rose, Peltzer & Homan, Inc.)

Fulbright & Jaworski, LLP

Phyllis Brasher, J.D., M.H.A.
Texas Health Choice, L.C.

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Jene Clayton

Maureen Redman
Automation

Dennis Dear, Esq.
Automation

Eric Bassett
Mercer Human Resources Consulting

Mike Reece
Rockwall Independent School District

Tommie Smith
Rockwall Independent School District

Ted Troy
McCombs County Park & Tourism

Carla Britten
Private Health Care Systems

Interrogatory Number 4:

Identify each person or entity from whom you have received documents or information concerning NTSP.

Kelly Weber
ProNet

Austin Pittman
Pacificare

Rick Grizzle
CIGNA HealthCare of Texas

James Sabolik
CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Mellow, Esq.

CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Blue Cross/Blue Shield of Texas

Neil Fleishman, Esq.

Gary Cole
Humana, Inc.

Gary Reed, Esq.

Arlene Ormsby
Humana, Inc.

John Lovelady
Pacificare

Lynda Marshall, Esq. (Pacificare)
Hogan & Hartson

Chris Bulger
Texas Health Choice

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk
United Healthcare of Texas, Inc.

Michael Ile, Esq.
United Healthcare, Inc.

C. Mark Bailey
Blue Cross/Blue Shield

David Rainey
CIGNA Healthcare of Texas

Diane Youngblood
HealthTexas Provider Network

Virginia Nisbet
American Airlines

Jackie Quick
American Airlines

Kevin Towery
AELRx

John Mayer

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Denise Eisen
AdvancePCS

Jene Clayton
Automation

Maureen Redman
Automation

Dennis Dear, Esq.
Automation

Eric Bennett

Merissa Hunter Resources Consulting

Tommie Smith
Rockwall Independent School District

Ted Troy
McQuery Henry Bouls Troy

Terrie Henderson
Carter BloodCare

Tad Linn, Esq.
First Health

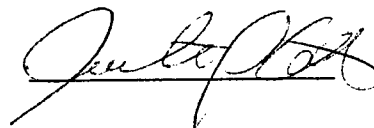
Mike Wilson
First Health

Tom Byers,
USC Health Services

Denise Southhall

Private Health Care Systems

Respectfully submitted,



Jonathan Platt
Complaint Counsel
Northeast Region
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004

Dated: October 27, 2003

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 27, 2003, I caused a copy of Complaint Counsel's Response to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

and by email upon the following: William Katz (William.Katz@tklaw.com).

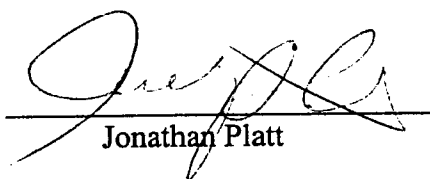

Jonathan Platt

EXHIBIT C

10-6

BEFORE FEDERAL TRADE COMMISSION

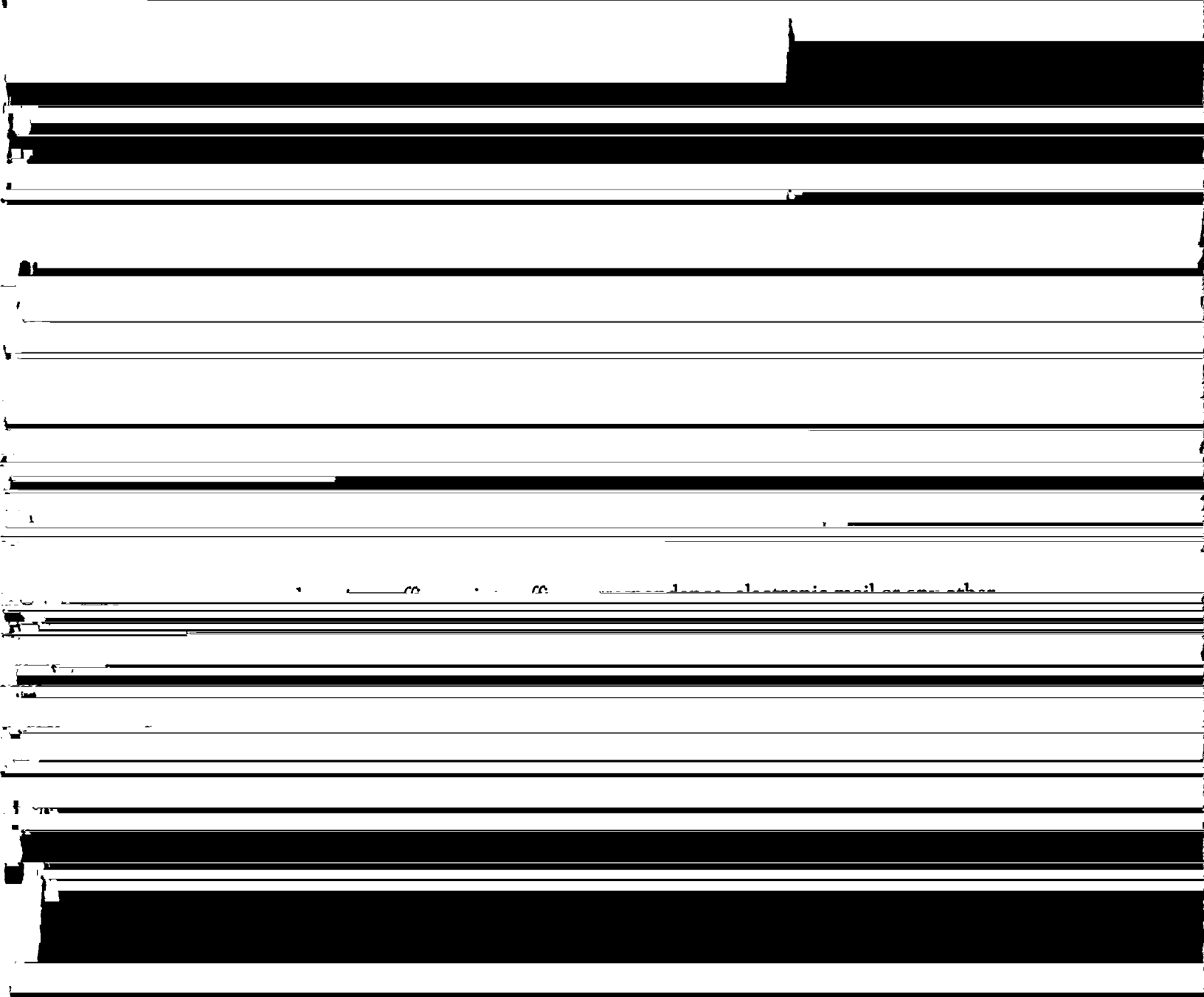
IN THE MATTER OF

Docket No. 9312

D. "NTSP" refers to Respondent North Texas Specialty Physicians, its employees, representatives, attorneys, agents, past and present participating physicians, directors, officers, and consultants.

E. The singular includes the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the past tense includes the present tense and vice versa.

F. "Communication" as used herein shall mean any transmission or exchange of information, either orally or in writing, and includes without limitation any conversation, letter



J. "Participating physician" means any physician or physician entity that has contracted with NTSP with regard to the provision or contemplated provision of the physician's services to any hospital, payor, or other physician organization.

3. Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.

[REDACTED]

concerning NTSP.

Respectfully submitted

[REDACTED]

CERTIFICATE OF SERVICE

I, Gregory S.C. Huffman, hereby certify that on October 6, 2003, I caused a copy of the

Michael Bloom
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

and I caused the following e-mail to be sent to Susan Deitz (sdeitz@ftc.gov) and Jonathan Blatt

EXHIBIT D

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

DOCKET NO. 9312

COMPLAINT COUNSEL'S OBJECTIONS TO
RESPONDENT'S FIRST SET OF INTERROGATORIES

Pursuant to § 3.35 of the Federal Trade Commission's Rules of Practice for Adjudicative

Proceedings ("Rules of Practice"), 16 C.F.R. § 3.35, complaint counsel hereby submits

objections to Respondent's Interrogatories to Complaint Counsel ("Interrogatories") issued on

incorporated by reference as though set forth fully in each of the responses to follow.

Objections and Responses to Individual Interrogatories

Dated: October 16, 2003

D. 10.11.2003

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 16, 2003, I caused a copy of Complaint Counsel's Objections to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

Gregory.Huffman@tklaw.com

EXHIBIT E

LEXSEE 1981 FTC LEXIS 110

In the Matter of FLOWERS INDUSTRIES, INC., a corporation

DOCKET NO. 9148

EXHIBIT 1

1981 FTC LEXIS 110

ORDER COMPELLING ANSWERS TO INTERROGATORIES

October 7, 1981

ALJ: [*1]

James P. Timony, Administrative Law Judge

ORDER:

ORDER COMPELLING ANSWERS TO INTERROGATORIES

Respondent moves to compel answers to interrogatories 10 through 25, 27 through 31, 34 and 37 of its initial set of

counsel have not yet chosen the evidence they will use they can so state. n3 In all likelihood, however, they have reached a preliminary determination as to some documents and witnesses they will use at trial, and they certainly must have a more elaborate theory of the case than they had when the complaint issued. Based upon this assessment, complaint counsel should answer the contention interrogatories by sufficiently identifying documents and stating facts, and by elaborating their legal contentions, so that respondent will have a current road map of where this case is headed.

n3 Complaint counsel did in fact state in response to interrogatory 34 that they have not yet selected the experts they will call as witnesses.

Interrogatory 37, however, goes too far. That interrogatory would require [*4] complaint counsel to:

Identify the names of the persons not previously identified in response to these Interrogatories who has or

[REDACTED]

EXHIBIT F

LEXSEE 1986 US DIST LEXIS 19384

DANIEL BOVE, et al. v. WORLCO DATA SYSTEMS, INC., et al.

Civil Action No. 86-1419

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF

DELAWARE

1986 U.S. Dist. LEXIS 19384

October 7, 1986, Decided; October 8, 1986, Filed

LexisNexis (TM) HEADNOTES- Core Concepts:

allegation that . . ."; (3) "Identify all persons having knowl-
edge or information which you contend supports your al-
legation that . . ." The allegations the support for which is
inquired into include Worlco's estimated time to complete
the project; Worlco's use of best efforts to complete the
project; defendants' conspiracy to defraud plaintiffs into
believing that Worlco did use its best efforts; Worlco's
obligation to refund plaintiffs' investment; and so forth. A
second group of interrogatories asks plaintiffs to specify
which statements in several letters are contended to be
misleading in what way, and based upon what informa-

COUNSEL: [*1]

Carl T. Bogus, Esq., for plaintiffs.

Dennis R. Suplee, Esq., for defendants.

OPINIONBY:

POLLAK

MEMORANDUM/ORDER

Defendants object that these are "contention inter-

POLLAK, J.

This case involves a contract between plaintiffs

rogatories," and are premature. Under Fed. R. Civ. P.
33(b),

months before interrogatories were served, the history of the litigation is longer: defendants discuss, and plaintiffs do not contest, prior state court litigation dating back to June of 1985 in which depositions and documentary discovery were conducted. Defendants further discuss prior

not think it unduly burdensome to ask plaintiffs to set forth the factual basis for their RICO claims on a continuing basis.

Plaintiffs' position is that they should only have to

[REDACTED]

EXHIBIT G

H
Only the Westlaw citation is currently available.

interrogatories.

Work Product Protection

United States District Court, N.D. Illinois, Eastern Division.

Beatrice served Rusty Jones with a number of "contention
interrogatories" asking Rusty Jones to state all information

of answering interrogatories does not necessitate a finding that the interrogatories are unduly burdensome. *Federal Deposit Insurance Corp. v. Mercantile National Bank of*

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

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

**Order Granting North Texas Specialty Physicians' Motion
to Compel Responses to Interrogatories**

I.

Respondent North Texas Specialty Physicians filed a Motion to Compel Responses to Interrogatories on November 4, 2003. The FTC filed its opposition. For the reasons set forth below, Respondent's motion is GRANTED.

II.

Pursuant to 16 C.F.R. § 3.38, Respondent seeks an order compelling the FTC to provide responses to Interrogatories 1 and 2. The FTC contends that these interrogatories are contention interrogatories and, therefore, should be answered only after discovery is completed, if at all. Because the FTC has already conducted substantial discovery in the pre-complaint investigation of this matter, the FTC is ordered to provide full and complete responses to NTSP's Interrogatories 1 and 2 with the information and facts it currently has available. The FTC's responses to Interrogatories 1 and 2 shall be served on Respondent no later than five days from the date of this order.

III.

Rule 3.31(e)(2) of the Commissions' Rules of Practice imposes a duty upon parties to "supplement or correct [a] disclosure or response" under certain circumstances, and includes "a duty seasonably to amend a prior response to an interrogatory . . . if the party learns that the response is in some material respect incomplete or incorrect." 16 C.F.R. § 3.31(e)(2). The FTC is ordered to timely supplement or amend its responses to Interrogatories 1 and 2, as necessary, if subsequent discovery so requires.

Ordered:

D. Michael Chappell
Administrative Law Judge

Date: