



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

April 7, 2011

VIA E-MAIL AND EXPRESS MAIL

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RE: Petition to Limit or Quash Civil Investigative Demands Directed to Carey V. Brown, Credit Payment Services, Inc., Credit Protection Depot, Inc., Discount Advances Dot Com, Inc., Midland Financial Management Corp., and My Cash Now, Inc.

Dear Counsel:

On February 23, 2011, the Federal Trade Commission ("FTC" or "Commission") received your Petition to limit or quash six civil investigative demands ("CIDs") issued by the Commission on January 25, 2011, and directed to your clients, Carey V. Brown, Credit Payment Services, Inc., Credit Protection Depot, Inc., Discount Advances Dot Com, Inc., Midland Financial Management Corp., and My Cash Now, Inc. (collectively, "Petitioners"). This letter advises you of the Commission's disposition of the Petition, effected through the issuance of this ruling by Commissioner Julie Brill, acting as the Commission's delegate.

For the reasons explained below, the Petition is denied, and the information required by the CIDs must now be produced on or before May 6, 2011. Further, Petitioner Brown is required to appear and testify before a representative of the Commission, as described below. Petitioners have the right to request review of this ruling by the full Commission, and any such request must be filed with the Secretary of the Commission within three days after service of this letter ruling.² The timely filing of a request for review of this ruling by the full Commission does not stay the return dates established by this ruling.

¹ See 16 C.F.R. § 2.7(d)(4).

² Id. § 2.7(f). This letter ruling is being delivered by email and express mail. The email copy is provided as a courtesy, and the deadline by which an appeal to the full Commission must be filed shall be calculated from the date Petitioners receive the ruling by express mail.

³ Id.

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⁴ FTC Resolution No. 9923140 (Apr. 15, 1999).

⁵ FTC Resolution No. 7823071 (May 20, 1982).

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limit or quash to be filed within twenty service of CID or subpoena). “[T]he Commission expects strict adherence to all procedural rules, *see* *Postal Careers, Inc.*, 125 F.T.C. 1317, 1318 (1998), and Petitioners’ failure to comply with Rule 2.7(d)(1) is an independent and sufficient basis for denying the Petition. However, in the exercise of its discretion, the Commission will accept the late submission, and this letter ruling will address the merits of Petitioners’ arguments.

⁸ See e.g., *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992) (upholding enforcement of a similarly worded resolution); *FTC v. Carter*, 636 F.2d 781, 787

directly behind the CID cover sheet, sufficiently put the Petitioners on notice as to the purpose and scope of the investigation. Simply because the cover sheet incorporated the resolutions by reference does not somehow vitiate that notice.

- B. The inadvertent omission of the date and time for oral testimony is of no consequence.

In their Petition, Petitioners correctly state that the CID compelling Petitioner Brown to provide oral testimony fails to identify the date and time for such testimony, as required by the FTC Act.¹⁰ However, this inadvertent omission is no basis for quashing the CID “in [its] entirety,” as Petitioners request. The FTC Act specifies different requirements for different kinds of informational demands, and the failure to specify the date and time for oral testimony at best renders only the demand for testimony invalid. It does not follow that valid accompanying demands for documents or written answers to interrogatory questions are also deficient.

To cure the deficiency with respect to the demand for oral testimony, the Commission has reissued the CID with a specific date, time and place for Brown’s testimony. The re-issued CID is being served upon Brown under separate cover; a courtesy copy of the new CID is attached to this ruling.

- C. The CIDs are not unduly burdensome.

Petitioners also argue that the CIDs are unduly burdensome and should therefore be limited or quashed. First, Petitioners argue that the CIDs are unduly burdensome because they include interrogatories in excess of the number permitted by the discovery provisions of the Federal Rules of Civil Procedure and the Commission’s Rules of Practice for adjudicative proceedings.¹² Those provisions, however, only apply to the discovery of facts in litigation. This is an investigation, not litigation.

Over half a century ago, the United States Supreme Court recognized that the Commission “does not depend on a case or controversy for power to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.”¹³ Subsequent lower court cases have repeatedly affirmed this

¹⁰ 15 U.S.C. § 57b-1(c)(6)(A).

¹¹ Seeid. § 57b-1(c)(3) (demands for documents), (c)(5) (demands for written reports or answers to questions).

¹² See Fed. R. Civ. P. 33(a)(1); 16 C.F.R. § 3.35(a).

¹³ United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950)

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IT IS FURTHER ORDERED THAT the responses to interrogatories and documents required by the CIDs to all Petitioners must now be produced on or before May 6, 2011; and

IT IS FURTHER ORDERED THAT Petitioner Carey V. Brown is required to appear and testify before Sana Coleman Chriss or other designated person, at the Office of the Attorney General of Tennessee, 540 McCallie Avenue, Chattanooga, Tennessee, 37402 at 10:30 a.m. on May 16, 2011. The CID to Mr. Brown has been reissued accordingly as of the date of this letter ruling. A courtesy copy of the CID is enclosed.

By direction of the Commission.

Donald S. Clark
Secretary

Encl.