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	EDERAL TRADE CO.
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In the Matter of) was the party
1-800 CONTACTS, INC.,) NACYET NO 1272
) DOCKET NO. 9372
Respondent.	ĺ
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COMPLAINT	COUNSEL'S OPPOSITION TO
DESDUNENTS DENEMED WOLL	
r	
Respondent has renewed its effo	ort to serve several document requests on the Federal
Trade Commission trains to somet the	dofootoin the first sulma and that the Cameil - C. 1.
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]	BACKGROUND
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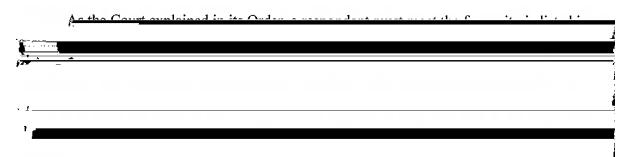
(identifiable studies, reports, and analyses."	Order
<u> </u>		-	
	-		
		ARGUMENT	
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requests, in an attempt to cure	e these defects.	However, the revised set of requests suffer	s the
same type of defects.			
Respondent (Cannot Show G	Good Cause for Additional Discovery from	1 the

In the absence of a showing of good cause, Respondent has not provided a basis for approval of Requests 1, 4, 5, and 6 (and portions of requests 2 and 3) seeking additional discovery from either BC or BE.

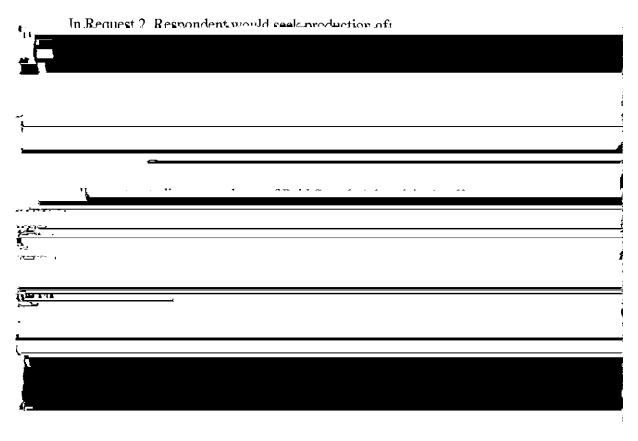
II. Respondent Has Not Shown a Need for Discovery from BCP or OPP (Requests 2-6).

	\mathbf{A}	Respondent Is Entitled to Discovery from BCP or OPP Only Unon							
_			=						
		Meeting the Requirements of Rule 3.36.							

Neither the Bureau of Consumer Protection ("BCP") nor the Office of Policy Planning ("OPP") were involved in the investigation or this litigation. For such bureaus or offices, Rule 3.31(c)(2) cross-references Rule 3.36, which governs subpoenas directed to "any Bureau or Office *not* involved in the matter." Rule 3.36 establishes exacting standards for such discovery.

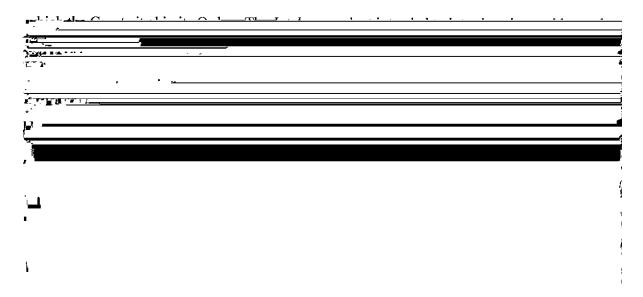


B. Request 2 Does Not Meet the Requirements of Rule 3.36.²



provide for such discovery.

This conclusion is supported by In re Intel Corp., 2010 FTC LEXIS 56 (June 9, 2010),



serve Request 2 on the Commission should be denied because just like Respondent's	firet
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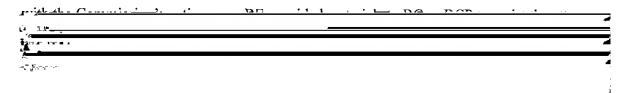
II), 2015 WL 2193777, at *4 (denying motion to compel production of "general background information" about the industry).

<u> </u>	<u> </u>	<u></u>	<u>:</u>	·	1_	, ,1 ,	119 .
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	D.						

We also are concerned that if articles independently nublished by FTC assessed are extensively with

First, the January 13, 2011 letter was prepared by BE and BC, as well as OPP, and
therefore the request should be evaluated under the good cause standard of Rule 3.31(c)(2).
<u>D 1 </u>
documents.
Second, Respondent's suggestion of the relevance of materials is based on conjecture:
• The January 13, 2011 FTC letter "could" be used to refute the Commission's contentions
• With respect to the 2015 Policy Statement, "[o]ne assumes that the Commission
conducted surveys, focus groups or other consumer research"
"clearly relevant."
Respondent's Brief at 6, 7. None of these requests meets the exacting Rule 3.36 standards the
Court set forth in <i>Intel</i> .
Third, the requests themselves do not meet the "reasonable particularity" requirement of
_
Rule 3.36. Unlike the subpoena that the Court approved in <i>Intel</i> , Requests 4 and 5 seek "all data,
otalica prolingen and a second

extent that either BC or BCP	attorneys prep	pared materials to	give leg	al advice in	conjunction
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CONCLUSION

For the foregoing reasons, we respectfully request that the Court deny Respondent's renewed motion for issuance of a Rule 3.36 Subpoena.⁷

Dated: December 8, 2016 Response

Respectfully submitted,

/s/ Daniel J. Matheson
Daniel J. Matheson

Federal Trade Commission Bureau of Competition 600 Pennsylvania Ave., NW Washington, DC 20580

Telephone: (202) 326-2075

⁷ The Commission recommends the wight to union amonific abiquitions to the control in the state of the control of the control

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION : CIVIL ACTION

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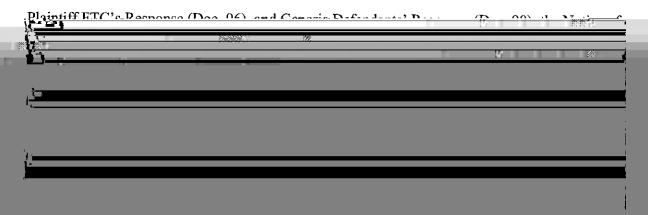
v.

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CEPHALON : No. 08-2141

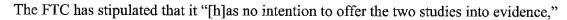
ORDER

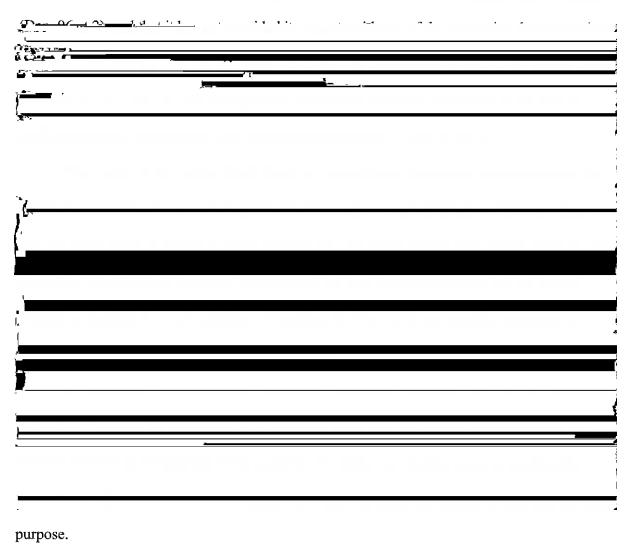
AND NOW, this 28th day of February, 2011, having considered Defendant Cephalon's Motion to Compel Documents From Plaintiff Federal Trade Commission ("FTC") (Doc. 84),



1. Defendant's Motion to Compel (Doc. 84) is DENIED.¹ It is further ORDERED that Plaintiff FTC is not precluded from citing the publicly-available studies at issue: *Generic Drug Entry Prior to Patent Expiration: An FTC Study* or *Pay for Delay: How Drug Company Pay-Offs Cost Consumers Billions*.

¹ The Court finds the parties' written submissions sufficient to render a decision regarding Defendant Cephalon's Motion to Compel. Therefore, the Court declines to hold oral argument, which was tentatively scheduled for March 4, 2011.





3. Third Party Pharmaceutical Companies' Motion for Protective Order (Doc. 88) is DENIED as moot, in light of the denial of Defendant's Motion to Compel.

BY THE COURT:

/s/ L. Felipe Restrepo
L. Felipe Restrepo
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2016, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark Secretary Federal Trade Commission 600 Pennsylvania Ave., NW, Rm. H-113 Washington, DC 20580

The Honorable D. Michael Chappell Administrative Law Judge Federal Trade Commission 600 Pennsylvania Ave., NW, Rm. H-110 Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing documents to:

Gregory P. Stone Steven M. Perry Corth T. Vincent

Justin P. Raphael Munger, Tolles & Olson LLP

justin.raphael@mto.com

gregory.stone@mto.com

steven.perry@mto.com

garth.vincent@mto.com stuart.senator@mto.com gregory.sergi@mto.com sgates@charislex.com

Counsel for Respondent 1-800 Contacts, Inc.

Dated: December 8, 2016

By: /s/ Daniel J. Matheson

Attorney

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

December 8, 2016

By:

/s/ Daniel J. Matheson

Attorney