

Service, the Better Business Bureau, and the National Advertising Division (“NAD”), which is one of four self-regulatory advertising programs administered by the Council of Better Business Bureaus. The CID directed HLS to produce the responsive materials and information by November 25, 2013.

On November 21, 2013, counsel for HLS sent a letter to FTC staff regarding Original Formula’s inclusion in the CID’s definition of “Specified Products.” HLS sought to exclude Original Formula from the scope of the CID because HLS had already produced some responsive documents to the NAD in response to that organization’s own review of HLS’s substantiation for the weight-loss claims for Original Formula.² HLS argued that requiring it to produce these documents to the FTC as well would impose an undue burden. FTC staff and HLS counsel were unable to resolve the dispute. The following day, HLS filed this Petition to Limit Civil Investigative Demand (“Petition”), asking the Commission to exclude Original Formula from that definition. (Pet. at 1).

II. ANALYSIS

HLS principally contends that compliance with the CID would be unduly burdensome because HLS previously submitted some of the materials regarding Original Formula to the NAD in connection with NAD’s ongoing inquiry. (Pet. at 3-5). That assertion lacks merit.

As a preliminary matter, HLS has not met its evidentiary burden in seeking to limit the CID because it has not provided any affidavits or other evidence that would establish that producing these materials would unduly disrupt or seriously hinder its normal operations. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). Indeed, one would expect that producing materials that HLS has already largely compiled for the NAD proceedings would involve minimal additional effort.

In addition, HLS’s petition rests on a false premise: that an NAD investigation into deceptive advertising somehow obviates the need for an FTC investigation. In fact, an FTC investigation is typically broader in its substantive scope. For example, FTC staff will consider a marketer’s entire advertising campaign in multiple media channels over a long period, whereas the NAD usually examines only selected components of a marketer’s advertising. Moreover, as

² That review had begun in July 2012, after the NAD r

shown by the CID's specifications, FTC staff is examining a wide variety of issues that NAD did not fully study, such as HLS's continuity programs, its "free" trial offers, and its material connections with endorsers. Also, the CID seeks information and materials relating to a broader set of remedies, such as consumer redress, that FTC staff may want to consider after completing its review of HLS's practices.

In any event, even were the NAD and FTC investigations identical in scope, an advertiser's participation in a parallel self-regulatory program cannot limit an FTC inquiry. To be sure, the NAD is an important partner in protecting American consumers from deceptive advertising. As the Commission has noted, it "will not necessarily defer, however, to a finding by a self-regulation group," and instead must discharge its responsibilities by "mak[ing] its judgment independently, evaluating each case Stemilel segT[(s51MD583 Tw 1(Policy Ston m[(jRegard com)ope