Dec 29, 1997

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
R.J. REYNOLDS TOBACCO COMPANY,	)	DOCKET NO. 9285
a corporation.	)	

CERTIFICATION TO COMMISSION OF COMPLAINT COUNSEL'S REQUEST FOR JUDICIAL ENFORCEMENT OF THIRD PARTY SUBPOENA ISSUED TO NICHOLAS RESEARCH ASSOCIATES INTERNATIONAL, INC.

In August 1997, complaint counsel served a non-party, Nicholas Research Associates International, Inc. ("Nicholas"), with a subpoena duces tecum. The subpoena calls for documents prepared since January 1, 1984, that relate to focus groups and other documents referring or relating to R.J. Reynolds Tobacco Company, the Camel brand, Joe Camel or several specific terms and ages.[1]

On November 3, 1997, Nicholas moved to quash or limit the subpoena on the ground that the subpoena requires production of materials that are irrelevant to the subject matter of this proceeding. Specifically, Nicholas argued that only materials that relate directly to advertisements containing anthropomorphic camel characters, such as Joe Camel, are relevant and subject to discovery. In opposing Nicholas' motion, complaint counsel relinquished any demand for documents that relate solely to non-Camel brands and do not refer to Camel or any

[1] Specification 4 requests, "all documents referring or relating to smoking by any persons ages 20 or younger or attitudes toward tobacco or tobacco use by any persons ages 20 or younger, or referring or relating to nonsmokers, presmokers, new smokers, learning smokers, first brand smokers or first usual brand younger adult smokers."

of the specified terms or ages. Complaint counsel opposed all other limitations that Nicholas sought to impose on the subpoena.

After duly considering the motion, the opposition, and the subpoena, I concluded that the subpoena seeks documents that are relevant to the issues in this proceeding. I therefore denied Nicholas' motion to quash or limit on November 14, 1997 and directed Nicholas to comply with the subpoena by December 16, 1997. I am informed by complaint counsel in a filing dated December 22, 1997, that Nicholas did not comply on the required return date; and on December 19, 1997, its counsel informed complaint counsel that Nicholas will not produce any documents that do not directly discuss the illustrated Joe Camel figure.

Nicholas' refusal to comply with my order justifies complaint counsels' request for court enforcement of the subpoena. Therefore, pursuant to Commission Rule 3.38(c), complaint counsels' request is certified to the Commission with the recommendation that it seek court enforcement of the subpoena duces tecum issued to Nicholas.

James P. Timony
Administrative Law Judge

Dated: December 31, 1997