

FBI Exhibit No. 27: FDA “Blacklisting” of FoodQuestTQ by the U.S. Government

On November 20, 2013, the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA), Mr. Brian Castro, referred the matter of FoodQuestTQ to the Inspector General of the Department of Health and Human Services for a possible investigation. A copy of Mr. Castro’s letter appears [FBI Exhibit No. 27 a](#). Inspector General Levinson to the best knowledge of FoodQuestTQ LLC did not conduct an investigation of the matter. Mr. Castro’s referral for investigation came only after FoodQuestTQ complained repeatedly that the statement appearing at the official U.S. Government website of the NOSB-SBA that proclaims a zero tolerance policy for retaliation was not true given the retaliation being taken against the small company by the Department of Health and Human Services (DHHS) and the Food and Drug Administration (FDA). The form of the FoodQuestTQ complaints to the SBA expressing their concerns took the form of letters directly to Mr. Castro from FoodQuestTQ LLC followed by a series of e-mails to the private sector to members of the NOSB-SBA’s Advisory Committee. A copy of the NOSB-SBA proclamation of their zero tolerance policy for any retaliation by federal agencies against small companies for filing complaints with the NOSB-SBA appears at [FBI Exhibit 27 b](#).

Attached to Mr. Castro’s letter indicating a referral of the matter to the Inspector General of DHHS, Mr. Daniel Levinson, was an April 29, 2013, memorandum written by Mr. Andrew Moss, Deputy Ombudsman of the Food and Drug Administration describing an interview with Dr. David Acheson of Leavitt Partners, a business partner of FoodQuestTQ LLC. A copy of this FDA memorandum appears at [FBI Exhibit 27 a](#). The memorandum asserts that Dr. Hnatio encouraged the FDA to contact Dr. Acheson. In a subsequent letter to Mr. Castro dated November 22, 2013, FoodQuestTQ indicated that they never authorized any FDA contact with Mr. Acheson. A copy of this FoodQuestTQ letter appears at [FBI Exhibit 27 c](#).

On April 16, 2013, FoodQuestTQ received a letter of termination from Dr. David Acheson of Leavitt Partners terminating their business relationship. The April 29, 2013, FDA memorandum fails to specify the exact date of their interview with Dr. Acheson and it is unclear whether the interview preceded or took place after Leavitt partners terminated their agreement with FoodQuestTQ.

More information on the business relationship between FoodQuestTQ, Dr. Acheson and Leavitt Partners appears at [FBI Exhibit 27 d](#). FoodQuestTQ LLC alleges that Dr. Acheson and his colleague Dr. Jennifer McEntire, acting as agents of the U.S. Government, misappropriated the FoodQuestTQ copyrighted research, patented and unpatented ideas and trade secrets that appear in several of the computer software tools that the FoodQuestTQ LLC contends were duplicated by the FDA.

Moreover, FoodQuestTQ LLC uses a publicly available commercial software package that monitors the opening and distribution of company e-mails by each recipient. The software is known by the commercial name *Mail Chimp*. The accuracy and reliability of the *Mail Chimp* software package is demonstrated by the 24-7 maintenance of the system by over 250 employees and over six million satisfied users across the globe. The government itself uses the services of *Mail Chimp*.

On May 28, 2014, FoodQuestTQ sent a letter to the Director of the Office of Government Information Services (OGIS) of the National Archives, Ms. Miriam Nisbet, to inform her of potential violations of P.L. 89–554, 80 Stat. 378, 5 U.S.C. § 552 (Freedom of Information Act-FOIA) to obstruct justice in the matter of FoodQuestTQ LLC. A copy of the letter appears at [FBI Exhibit No. 27 e](#).

On June 2, 2014, FoodQuestTQ LLC received a letter from DHHS stating that FDA employees were allowed to conduct searches of their own electronic records for damning evidence implicating themselves in response to a FoodQuestTQ FOIA request. A copy of the letter stating that Ms. Leanne Jackson, an FDA employee implicated in the FoodQuestTQ matter, was allowed to search her own records for damning electronic evidence appears at [FBI Exhibit No. 27 f.](#)

When confronted by FoodQuestTQ LLC with electronic *Mail Chimp* records demonstrating that Ms. Jackson may have intentionally deleted or withheld official U.S. Government e-mails requested pursuant to the FOIA, DHHS and the FDA denied that any such records ever existed. A copy of the U.S. Government memorandum denying that such records ever existed appears at [FBI Exhibit No. 27 g.](#)

On June 19, 2014, FoodQuestTQ filed a Freedom of Information Act (FOIA) request with DHHS and the FDA pursuant to P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 asking for an independent forensic “deep dive” into the current and archival FDA and DHHS computer databases to determine the degree of possible spoliation of the evidence. FoodQuestTQ requested that the Director OGIS oversee the integrity of the search. A copy of the FoodQuestTQ letter to Ms. Nisbet appears at [FBI Exhibit No. 27 g.](#)

On June 25, FoodQuestTQ wrote a letter to the Baltimore Office of the FBI and informed them of the spoliation of evidence, asked them to intervene to prevent any further destruction of evidence and requested an investigation of the matter to determine if Federal laws were being violated. A copy of the FoodQuestTQ letter requesting FBI intervention to preclude the further spoliation of evidence appears at [FBI Exhibit No. 27 h.](#)

Based on the electronic records maintained by *Mail Chimp* FoodQuestTQ prepared the table appearing below. The table shows that Ms. Leanne Jackson, a member of the FDA Food Defense Team, opened and or distributed documents related to the FoodQuestTQ LLC matter on 764 separate occasions over the period December 6, 2012 to March 8, 2014.

Name of Campaign	Number of Openings by Ms. Jackson	Date
Food Defense	55	6-Dec-12
C.A.R.V.E.R. + Shock According to an Army Special Forces Officer	32	25-Feb-13
The Answer to Food Fraud	20	17-May-13
FDA Using Projectioneering Intellectual Property	558	20-May-13
A Message to the Food Industry	9	9-Sep-13
FDA-TQ Information Memorandum to the Food Industry	35	12-Sep-13
Update to September 11, 2013 Information Memorandum	6	26-Sep-13

Information Memorandum	5	27-Nov-13
INFORMATION MEMORANDUM	7	21-Dec-13
INFORMATION MEMORANDUM 1/27/14	5	28-Jan-14
At the GFSI Conference Be Sure to Ask the FDA, "Who is John Hnatio?"	13	20-Feb-14
Application of Analytics to FoodQuestTQ LLC Updates to the Food Industry	9	22-Feb-14
Anticompetitive Conduct by the Department of Health and Human Services	5	25-Feb-14
Fighting Food Fraud: A Primer for the European Food Industry	5	8-Mar-14