

February 17, 2022

Hon. Teresa J. James
Magistrate Judge
United States District Court
500 State Avenue, Suite 208
Kansas City, KS 66101

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VIA EMAIL

RE: *Sprint Communications Co. L.P. v. Charter Communications, Inc., et al.*,
No. 2:20-cv-0261-JWB-TJJ (D. Kan.)

Dear Judge James:

As requested during the February 11, 2022 hearing, I write to provide the Court with an update on any attorney-client privilege or work product claims over documents in Shook, Hardy & Bacon LLP's files relating to Corporate Defendants' motion to compel, Dkt. 328. As explained in more detail below and as originally stated in Sprint's responses to the Corporate Defendants' discovery requests, after a reasonable investigation counsel for Sprint is not aware of, and therefore not withholding on the basis of privilege or work product, any documents or communications dated prior to August 6, 2019¹ concerning Sprint's trade secret misappropriation claims in the First Amended Petition.²

¹ August 6, 2019 is the date Corporate Defendants' use in their discovery requests presumably because that was the date counsel for Charter first alerted Sprint's counsel that the documents subject to Sprint's trade secret misappropriation claims were discovered on certain Charter computers.

² Sprint previously provided Corporate Defendants with this response. (*See, e.g.*, Dkt. 330-5 at 9, Sprint's Response to Time Warner Cable's Interrogatory No. 15; *see also* Dkt. 330-6 at 6-7, Sprint's Response to Charter's Requests for Admission Nos. 21-26; Dkt. 330-10, Oct. 5, 2021 Email from Mr. Bergsten to Mr. Cohn ("I repeat here that after a reasonable investigation we are not aware of any evidence that anyone working for or on behalf of Sprint (other than Mr. Cowden himself) learned about these '2008 Cowden emails and attachments' before 2019").)

While Sprint maintains its position that it has not put any information protected by the attorney-client privilege or work product protection “at issue” such that Sprint waived privilege or work product claims, to avoid any concerns that Sprint, or its counsel, may be withholding documents relating to the claims in the First Amended Petition that Messrs. Cowden and Woelk, and their employers, committed the alleged trade secret misappropriation, Sprint’s counsel provides these additional facts regarding its investigation into the information sought by Corporate Defendants’ discovery requests. To the extent necessary, Sprint will provide supplemental responses to Corporate Defendants’ discovery responses with the below information.

Sprint and its counsel undertook the following steps to identify any evidence that they were aware, before August 2019, that either Mr. Cowden or Mr. Woelk misappropriated the trade secrets subject of Sprint’s First Amended Petition:³

³ Several of the Corporate Defendants’ discovery requests broadly seek discovery into documents that are not relevant to any claim or defense in this case. For example, several requests seek information relating to Mr. David Flessas. (See Dkt. 330-7, at 13-16, 19-21 (Charter RFP Nos. 167 and 171). This Court has already determined that Corporate Defendants have not shown why discovery into Mr. Flessas’ work at Sprint or Time Warner Cable is relevant to Sprint’s trade secret misappropriation claims in the First Amended Petition. (Dkt. 141 at 11-14.) Sprint agrees and has not undertaken an investigation into requests relating to Mr. Flessas because such information is not relevant or proportional to the issues in this case. Other requests broadly seek information relating to disclosure of any of Sprint’s confidential information by Defendants or other possible trade secret misappropriation claims, regardless of whether the information relates to Sprint’s trade secret misappropriation claims in the First Amended Petition. (See Dkt. 330-5, at 12-21 (Time Warner Cable’s Interrogatory Nos. 17-20); Dkt. 330-7, at 22-26 (Charter RFP Nos. 173 and 174).) Because such requests go beyond the issues that are relevant to the claims and defenses in this case, the reasonable investigations described herein and in Sprint’s discovery responses were limited to the claims in Sprint’s First Amended Petition.

1. Counsel commissioned an electronic search and manual review of all files stored in Shook, Hardy & Bacon LLP’s electronic file system for the *Sprint v. Time Warner Cable* litigation using the search terms “Woelk” or “Cowden” appearing anywhere in any document in the electronic document system. Searches were also run using the Bates Numbers for the Cowden E-Mails and Brighthouse Panel Discussion Presentation.⁴ Shook’s electronic document system contains draft pleadings, filed pleadings, email communications among attorneys and with the client, attorney working files, deposition transcripts, outlines, trial documents, and other attorney work product. These searches revealed no responsive documents that are being withheld as privileged or work product. Additionally, these searches identified no evidence that anyone at Shook, Hardy & Bacon LLP was aware of, accessed, or reviewed the December 13, 2008 Cowden E-Mails or Brighthouse Panel Discussion Presentation prior to August 6, 2019. (*See also* Dkt. 330-5 at 9, Sprint’s Response to Time Warner Cable’s Interrogatory No. 15; Dkt. 330-6 at 6-7, Sprint’s Response to Charter’s Requests for Admission Nos. 21-26.)

2. The vendor hosting Sprint’s document production in the *Sprint v. Time Warner* cable litigation was consulted to review the metadata associated with the Cowden Emails and Brighthouse Panel Discussion Presentation. Other than an automated branding process (*see* Dkt. 294, Declaration of Mr. Bergsten), that search revealed no evidence that anyone had accessed or reviewed these documents prior to August 6, 2019.

3. The following Shook, Hardy & Bacon LLP attorneys who were primarily responsible for discovery and trial in *Sprint v. Time Warner Cable* were consulted to see if anyone had recalled seeing the Cowden Emails and Brighthouse Panel Discussion Presentation, or otherwise had any responsive documents in their personal files:

Trent Webb, Rob Reckers, Aaron Hankel, Ryan Dykal, Ryan Schletzbaum, Jordan Bergsten, Lauren Douville, and Mark Schafer.⁵

⁴ SPRIKS_07_00350376, SPRIKS_07_00350377,
SPRIKS_07_00350397, SPRIKS_07_00350398, SPRIKS_07_00350419,
SPRIKS_07_00350420.

⁵ Attorneys Peter Strand, Jared Tong, and Thomas Patton were also involved with various discovery and trial phases of the *Sprint v. Time Warner Cable* litigation. These attorneys are no longer employed by Shook, Hardy & Bacon LLP.

Once again, that search returned no evidence that anyone was aware of the Cowden Emails and Brighthouse Panel Discussion Presentation prior to August 6, 2019 or the claims in Sprint's First Amended Petition.

In light of these reasonable investigations, Sprint's counsel is not withholding documents dated prior to August 6, 2019 concerning the Cowden Emails and Brighthouse Panel Discussion Presentation, or any other document or communication dated prior to August 6, 2019 evidencing any awareness of Sprint's asserted claims in the First Amended Petition.

Best regards,

A handwritten signature in blue ink, appearing to read "Ryan Schletzbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ryan Schletzbaum

CC: All counsel of record