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February 21, 2022

Honorable Teresa J. James
Magistrate Judge
United States District Court
500 state Avenue, Suite 2008
Kansas City, Kansas 66101

Dear Judge James,

As requested in Ms. Tourtillott's February 17, 2022 email, Corporate Defendant's (or "Defendants") write to provide a response to Sprint's February 17, 2022 letter ("Sprint Letter").

Sprint's letter acknowledges that Sprint conducted a search that was narrower than Defendants requested in their Motion to Compel (Dkt. 328).

First, Sprint represents that it "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, 2019 concerning Sprint's trade secret misappropriation claims in the First Amended Petition." (Sprint Letter at 1, emphasis added.) Defendants, however, seek discovery that could demonstrate that Sprint knew or should have been aware of the existence of the documents at issue whether or not Sprint believes the documents "concern[] Sprint's trade secret misappropriation claims." Several of Defendants requests call for such information:

- "collections from Cowden and Woelk that were collected for other litigations" (Charter Interrogatory No. 15, Dkt. 329 at 13);
- versions of the "December 13, 2008 Cowden E-mails and Brighthouse Panel Discussion Presentation produced by Sprint in this or any other lawsuit" (Charter Interrogatory No. 17, Dkt. 329 at 16);
- the "identification of how, when, and where the native version of each production version was obtained and processed for production, and whether or not any of the document's metadata was deleted or altered at any stage of the collection, review, or production" (Charter Interrogatory No. 18, Dkt. 329 at 18);
- information regarding "any awareness of, suspicion of, discovery of, or investigation by Sprint or its agents (including Shook, Hardy & Bacon) into any unauthorized acquisition, use, or disclosure of Sprint confidential information by Defendants" (TWC Interrogatory No. 17, Dkt. 330 Ex. 5 at 12); and

- documents that concern Sprint's awareness of the facts that led to Sprint's First Amended Petition. (TWC Interrogatory Nos. 17-20, Dkt. 330 Ex. 5 at 12-19.)

Sprint should be ordered to extend its search to all such documents, provide a log for whatever it contends is privileged, and produce the rest.

Second, Sprint represents that its 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.” (Sprint Letter at 3.). Once again, the scope of Sprint's searches are too narrow. Corporate Defendants seek discovery from Sprint and its agents (Charter Interrogatory No. 18, Dkt. 329 at 18; TWC Interrogatory Nos. 17-20, Dkt. 330 Ex. 5 at 12-19; Charter RFPs Nos. 173-175, Dkt. 330, Ex. 7 at 22-26). Shook, Hardy & Bacon LLP is but one of those agents. The letter makes no representations regarding searches at Sprint or other agents of Sprint, including outside discovery vendors.¹

Third, Sprint represents that a search of its document hosting vendor “revealed no evidence that anyone had accessed or reviewed these documents prior to August 6, 2019.” However, Sprint has previously explained that its document “collection and review methodology for emails (such as Mr. Cowden's) in the TWC Case consisted of: (1) using an automated process to identify the documents that hit on the agreed upon ESI search terms; and (2) running automated privilege searches to flag documents that might be protected by the attorney-client or other privilege for subsequent attorney review.” (Dkt. 294 at ¶3.) That is, Sprint's representation does not address whether the documents had been tagged in some way without accessing or reviewing them, a task that can occur through the ESI process Sprint has already indicated it used, or other algorithmic or batch tagging processes. Any such tagging may have identified the documents as relevant or pertaining to a particular issue. Such information is relevant to the question of whether Sprint knew or should have known about facts that put it on notice of its alleged trade secret claim. Accordingly, Sprint should be ordered to provide this information, including a printout from its document database reflecting the coding metadata for the relevant documents identified in the document requests, which include Cowden's December 13, 2008 Emails, Cowden's “BHN Communication Slide Deck,” and The Bright House Panel Discussion Deck.

Fourth, Defendants note that Sprint's letter fails to address several issues raised in Defendants' motion to compel including:

- The identification and descriptions of “collections from Cowden and Woelk that were collected for other litigations” (Charter Interrogatory No. 15, Dkt. 329 at 13);

¹ Sprint's letter refers to a search of Sprint's document production hosting vendor; however, this search was also incomplete as explained later in Defendants' letter.

- The identification and description of the versions of the December 13, 2008 Cowden E-mails and Brighthouse Panel Discussion Presentation produced by Sprint in this or any other lawsuit between the parties (Charter Interrogatory No. 17, Dkt. 329 at 16);
- The explanation and description of the steps “taken by Sprint or its agents to obtain, review, and produce” identified documents (Charter Interrogatory No. 18; Dkt. 329 at 18); and
- Any documents requested in possession of Sprint or agents of Sprint other than Shook, Hardy, & Bacon.

Furthermore, Sprint acknowledges that it did not investigate requests relating to Mr. David Flessas because it alleges the issues concerning Mr. Flessas are not at issue in the case. (Sprint Letter at 2 n.3.) Defendants are willing to agree that discovery related to Mr. Flessas is not at issue in this case if Sprint will agree to not rely, or to be precluded by Court order from relying, on any facts related to Mr. Flessas’ former employment at Sprint or TWC or introducing any such evidence at trial. Sprint should not be able to refuse discovery related to Mr. Flessas by arguing it is not relevant and then later rely on evidence relating to Mr. Flessas.

Accordingly and for the foregoing reasons, Sprint’s letter does not resolve the issues Defendants raised in their motion to compel (Dkt. 328).

Sincerely,

FOULSTON SIEFKIN LLP



Scott C. Nehrbass