

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



[REDACTED]

The implied subject matter waiver rule is applied in light of its purpose: to prevent parties from gaining tactical advantage by using attorney-client privilege as both a sword and a shield. "When a party reveals part of a privileged communication *in order to gain an advantage in litigation*, it waives the privilege as to all other communications relating to the same subject matter because 'the privilege of secret consultation is intended only as an incidental means of defense and not as an independent means of attack, and to use it in the latter character is to abandon it in the former.'" *In re Sealed Case*, 676 F.2d 793, 818 (D.C. Cir. 1982) (emphasis added). Subject matter waiver is "based on fairness considerations" and "aim[s] to prevent prejudice to a party and distortion of the judicial process that may be caused by the privilege-holder's selective disclosure during litigation of otherwise privileged information." *In re von*

communications on the same subject matter where the client has merely disclosed a

communication to a third party, as opposed to making some use of it." *Sealed Case*, 676 F.2d at 809 n.54; see also *In re United Mine Workers of Am. Employee Benefit Plans Litig.*, 159 F.R.D.

shield. Rather, because [defendant] has partially let down its shield,
[plaintiff] insists that it must be stripped entirely.”

~~Yampuz did not selectively reveal favorable confidential documents while shielding~~