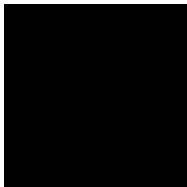


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of the Secretary

June 18, 2012

BY E-MAIL AND COURIER DELIVERY

Gregory S. C. Huffman
Nica, LLC

To Limit Subpoena Dces Tecum, File No. 111 0163

Dear Messrs. Huffman and Soltz and Ms. W. Kenan Tj 27.7200 0.000.

¹ See 16 C.F.R. § 2.7(d)(4).

² 16 C.F.R. § 2.7(f).

³ *Id.* This ruling is being delivered by e-mail and courier delivery. The e-mail copy is provided as a courtesy, and the deadline by which an appeal to the full Commission would have to be filed should be calculated from the date on which you receive the original letter by courier delivery.

⁴ *Id.*

⁵ Petition of Samsung Telecomm of America, LLC, to Limit Subpoena Duces Tecum, File No. 111-0163, Google, Inc., Att. 1, Exh. A (Apr. 21, 2012) [hereinafter Petition].

⁶ *Id.*

⁷ *Id.*

Id. at A

On April 5, 2012, Samsung requested a second extension of the return date.¹⁰ In subsequent discussions regarding the need for the extension, Samsung for the first time also asked staff to limit the required response in several respects¹¹ Specifically, with regard to Specifications 5, 9, and 10, Samsung asked FTC staff to provide a set of keywords that Samsung would then use to search a "limited set" of custodians. Samsung asked staff to offer one set of keywords to reflect Google products and services and a second set of keywords to reflect competing non-Google products and services, both of which it would then run in Boolean searches to find documents containing one or more terms from both sets.¹² Samsung also asked staff to accept other limitations, including foregoing a search for informal agreements between Samsung and Google, and stated its request for an extension of the return date.

FTC staff accepted some of Samsung's proposals, modified the subpoena pursuant to 16 C.F.R. § 2.7(c), and extended the return date to April 23, 2012.¹³ On April 11, 2012, staff provided 36 keywords related to Google products and services and 15 keywords related to competing non-Google products and services.¹⁴

On April 11, shortly after receiving the requested keywords from FTC staff, Samsung claimed that their proposed search was going to be unduly burdensome.¹⁵ On April 20, 2012, based on the results of the searches it had performed to date, Samsung requested a third extension of time. When staff declined a further extension, Samsung filed the instant petition.

¹⁰ *Id.* at Att. 4, Ex. B (E-mail from Gregory Huffman to Melissa Westman-Cherry (Apr. 5, 2012, 6:15 PM)).

¹¹ *Id.* at Att. 4, Ex. C (Letter from Melissa Westman-Cherry to Gregory Huffman (Apr. 10, 2012)).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, at Att. 4, Ex. B (Letter from Melissa Westman-Cherry to Gregory Huffman (Apr. 11, 2012)).

¹⁵ *Id.*, at Att. 4, Ex. B. (E-mail from Melissa Westman-Cherry to Gregory Huffman (Apr. 11, 2012, 4:15 PM); E-mail from Richard Rosalez to Melissa Westman-Cherry and Gregory Huffman (Apr. 11, 2012, at 6:45 PM)).

¹⁶ Samsung objects generally that the subpoena calls for documents in the possession, custody, and control of its corporate parent in Korea, and goes on to assert that it cannot access these documents and therefore should not have to produce them. FTC staff has already agreed that Samsung need not obtain documents from its Korean parent. Att. 4, Ex. B (E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar. 2, 2012, 10:27 AM); E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar 2, 2012, 11:55 AM)). As this issue has been resolved, we need not address it here.

FTC v. Shaffner, 626 F.2d 32, 38 (7th Cir. 1980); accord *FTC v. Texaco*,

of the inquiry is commensurate with the magnitude or complexity of a recipient's business operations.

Here, Samsung offers essentially three arguments to support its claim of burden.

²⁰ *Texaco*, 555 F.2d at 882.

²¹ The cases Samsung cites for the proposition that requests that ask for “all documents” are overly broad and unreasonable are inapposite. In *McKinley v. F.D.I.C.* 807 F. Supp. 2d, 1 (D.D.C. 2011), the request at issue was directed to the FDIC under FOIA. The request did not ask for “all documents” but rather “any information available.” *Id.* at 6-77. The court found that such requests for records that relate “in any way” did not enable FDIC staff to identify responsive records with reasonable effort. *Id.* In this case, however, FTC staff has not asked Samsung for documents that relate to subjects “in any way.”

For the same reason, *Judicial Watch, Inc. v. Ex-Im Bank* 108 F. Supp. 2d 19, 27-28 (D.D.C. 2000) is also inapposite. In *Judicial Watch* the request at issue asked for contacts between two individuals and “companies, entities, and/or persons related or doing or conducting business *in any way* with the People's Republic of China.” *Id.* at 26 (emphasis added). None of the requests in the FTC’s subpoena to Samsung is similarly broad.

²² Petition, *supra* note 5, at 3-4.

²³ *Id.*, at 5.

²⁴ *Id.*, Att. 5.

²⁵ *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir. 1996) (“[A] subpoena is not unduly burdensome merely because it requires production of a large number of documents”*See also F.D.I.C. v. Garner*, 126 F.3d 1138, 1145-46 (9th Cir. 1997) (enforcing subpoena that called for over one million documents where recipients failed to demonstrate the requests were unduly burdensome).

²⁶ *See, e.g., Texaco*, 555 F.2d at 882.

²⁷ *Texaco*, 555 F.2d at 882.

²⁸ *See, e.g., Petition, supranote 5*, at 8-10.

²⁹ One such example is Samsung’s claim that the subpoena calls for irrelevant

(N.D. Ind. 1982) *rev'd on other grounds*, 715 F.2d 331 (7th Cir. 1983)).

³¹ *FTC v. Invention Submission Corp.*, 965 F. 2d 1086, 1090 (D.C. Cir. 1992) (emphasis in original; internal citations omitted) (citing *FTC v. Carter*

companies of Samsung's size and complexity. In particular, w

³⁵ *Id.*, Att. 1, Ex. A, at 7.

³⁶ *Carolina Food Processors, Inc.*, 81 F3d at 513-14.