

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

01 17 2017
585351

In the Matter of)
)

1-800 CONTACTS, INC.,)
a corporation,)

Respondent)
)
_____)



DOCKET NO. 9372

**OPPOSITION OF NON-PARTY GOOGLE INC. TO
TGUROPFGPV6U"OOVKQP"VQ"EQORGN"EQORNKCPEG"YKVJ"UWDRQGPC**

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January 10, 2017

INTRODUCTION

Non-

{

}, resolving decade-old

because (i) the Agreements are inadmissible, (ii) the Agreements are duplicative of testimony, and (iii) production may lead to abuse by Respondent or others.

GOVERNING STANDARDS

may be reasonably expected to yield information relevant to the allegations of the complaint, to

it] is unreasonably

cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) [t]he party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) [t]he burden and expense of the

oppression,

scope of the Subpoena. While negotiations did not avoid this particular dispute, many other issues were resolved.

The only authority Respondent cites for its novel waiver argument pertains to a Civil

FTC v.

~~2 ¶ & R Q Q H O O \$, 828 F Supp. 109 (E.D.N.Y. 1993).~~ Part 2 is a non-adversarial

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relief in district court. There is no right to respond with objections in Part 2. Thus, district courts require the party receiving a CID to file a motion to quash with the Commission prior to

the first instance.³

acknowledged this by negotiat

*2 (W.D. Tex. Apr. 5, 2013); *Big Baboon Corp. v. Dell, Inc.*, 2010 WL 3955831, at *4 (C.D. Cal. Oct. 8, 2010).

Respondent cannot meet this heightened standard by arguing that *three* vertical agreements to resolve decade-

A. The Agreements are Vertical, Not Horizontal

Even if *vertical* agreements between search engines and { } settling
trademark } *horizontal*

Disability Grp. is also misguided. There the plaintiff alleged that defendant fraudulently used its trademarks in ad text appearing on the results page. Second Amended Complaint, *Binder v. Disability Grp., Inc.*, 2010 WL 1323240 (C.D. Cal. Jan. 6, 2010). Finally, in

Even settlements arising from a common incident are not necessarily discoverable. In *Rhines v. United States*, the court denied a request by plaintiff to review third-party settlements need to take into account a host of legal and factual variables unique to each claimant . . .

*4 (M.D. Pa. Aug. 4, 2014).

Respondent's argument would be disastrous to the consent decree process. For example, in Part 3 merger litigation, respondents would be entitled to confidential documents related to settling prior merger allegations in the same industry. Such documents are irrelevant in that

id.,

information.

III. EVEN IF RELEVANT, THE AGREEMENTS SHOULD NOT BE PRODUCED

A. The Agreements are Inadmissible under FRE 408

Respondent intends to show that the settlement terms reflect that claims in the underlying

This use is exactly what 408(a

B. The Agreements are Duplicative of Deposition Testimony

Respondent has already deposed Gavin Charlston about the Agreements. To the extent

129 F.R.D. 528, 531 (E.D. Wis. 1990). Respondent failed to make such a showing.

CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court deny Respondent's Motion to Compel.

Dated: January 12, 2017

Respectfully submitted,

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ning a motion to compel. The letter requested a response by December 28, 2016.

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Responded to Mr. Cator's letter on December 28, 2016 from [redacted] 70-75-0.

Dated: January 17, 2017

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CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: January 17, 2017

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Notice of Electronic Service

I hereby certify that on January 17, 2017, I filed an electronic copy of the foregoing Non-Party Google's Opposition to Respondent's Motion to Compel - PUBLIC, with:

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I hereby certify that on January 17, 2017, I served via E-Service an electronic copy of the foregoing Non-Party Google's Opposition to Respondent's Motion to Compel - PUBLIC, upon:

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