

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson

FTC Matter No. P162318

ORDER TO FILE A SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission (“FTC” or “the Commission”) dated November 24, 2021, entitled “the Recipient”) is ordered to file with the Commission, no later than 45 days after date of service, a Special Report containing the information and data specified herein.

The Commission is seeking information concerning the source supply chain disruptions and the impact such disruptions on competition in consumer goods retail markets. The Special Report will assist the Commission in conducting a study of these supply chain issues.

The Special Report is required to be subscribed and sworn by an official of the Recipient who has prepared or supervised the preparation of the report from books, records, correspondence, and other data and material in your possession. Your written report must restate each item of this Order with which the corresponding answer is identified. If any question cannot be answered fully, give the information that is available and explain in writing why the answer is incomplete. The Special Report and all accompanying documents must be Bates-stamped.

The Recipients required to respond to this Order using information in the Recipient's

possession, custody, or control, including information maintained in a central data repository to which the Recipient has access. The Recipient should not seek any responsive information and data from separately incorporated subsidiaries or affiliates or from individuals (other than in their capacity as the Recipient). (17 CFR 1.375 (a)(1)(ii)). However, if the Recipient

already has possession, custody, or control of such information. No later than 14 days from the date of service, the Recipient should contact Commission staff and indicate whether all of the information required to respond to this Order is in the Recipient's possession, custody, or control. If certain information is not in the Recipient's possession, custody, or control, no later than 14 days from the date of service, the Recipient also must (1) Identify, both orally and in writing, each question or sub-question that the Recipient is not able to fully answer because information is not in the Recipient's possession, custody, or control, and (2) for each, provide the full names and addresses of all entities and individuals who have possession, custody, or control of such missing information.

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act. Individual submissions responsive to this Order that are marked "confidential" will not be disclosed without first giving the Recipient ten (10) days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act.

Specifications

1. Describe the supply chain disruptions you have experienced and how those disruptions have varied by geography. Include in your description
 - a. the primary factors causing disruptions in your acquisition of products, inputs, or transportation and the geographic regions in which those issues are most prevalent;
 - b. the primary factors causing disruptions in your sale/distribution of products by region, including issues regarding:
 - i. air freight;
 - ii. shipping container availability;
 - iii. container shipping;
 - iv. ports, terminals, and terminal operators, including fees and rules;
 - v. warehouses;
 - vi. trucking and chassis availability; and
 - vii. rail;

service providers (e.g., freight brokerage, contract carriage). For each such third party provider include

- a. the identity of your logistics service provider;
 - b. a description of the services provided to you; and
 - c. how your use of such services has been affected by supply chain disruptions.
10. Produce all reports, analyses, and studies provided to you by any third party logistics provider.
11. Describe your supply chain, procurement and distribution strategy prior to the COVID 19 pandemic, including with respect to the elements of the supply chain identified in

D8. The term “senior management” refers to the Company’s Board of Directors, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, or equivalent positions as well as the most senior individuals with direct responsibility for each of the following: pricing strategy, supply chain strategy, marketing strategy, promotions, and customer relationships.

D9. The term “store” refers to any brick and mortar store, consumer-facing online platform, or warehouse that ships directly to consumers.

D10. The term “supplier” refers to any company that sells you consumer goods for resale, with or without further processing

D11. The term “supply chain disruption” refers to any delay, delivery shortfall, or cost increase associated with the delivery of products you have manufactured or ordered from a supplier

Instructions

For the purposes of this Order, the following Instructions apply:

1. All requests seek information and documents covering the period from January 1, 2010 to the date of this Order.
2. Unless otherwise specified, this Order requires the production of all responsive documents, data, and other information in your possession, custody, or control on the date that this Order was issued.
3. In order to comply in a manner consistent with the Commission's Rules of Practice, 16 C.F.R. § 2.7(k), the Recipient shall schedule a teleconference within 14 days after receiving this Order, with the Commission representative identified in Instruction 1. Reference source not found of this Order to confer regarding your response. Upon request, an extension of no more than 30 days for the teleconference may be granted in writing by a Commission official.
4. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular Specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

The term "Sensitive Personally Identifiable Information" means an individual's Social Security Number alone; or an individual's name, address, or phone number in combination with one or more of the following:

date of birth

driver's license number or other state identification number, or a foreign

- i. Submit Microsoft Excel, Access, and PowerPoint files in native form with extracted text and metadata.
- ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]



Metadata/Document Information	Description
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with the extension.
Hash	Identifying value used for deduplication typically SHA1 or MD5.
Native Link	Relative file path to submitted native or non-native files. Example:\NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example:\TEXT\001\FTC0003090.txt
Time Created	Time file was created [HH:MM:SS AM/PM]
Time Modified	Time file was saved [HH:MM:SS AM/PM]

- iv. Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.

Metadata/Document

- a. if you use Technology Assisted Review to identify documents and information responsive to this Order or to exclude documents and information from further review describe your collection and review methodology, including: (a) how any software is used to identify responsive documents or exclude nonresponsive documents; (b) the process to identify and validate any seed set documents, if applicable; (c) the process to determine and validate accuracy of the automatic determinations of responsiveness and nonresponsiveness; and (d) the collection and review process for foreign language documents, whether reviewed manually or by some technology-assisted method
 - b. if you use search terms to identify documents and information responsive to this Order or to exclude documents and information from further review for each custodian, search location, or document population provide (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the number of documents containing each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company acronyms and terminology
 - c. provide prevalence, recall, precision, validation, and confidence level statistics;
 - d. provide access to randomized, statistically-significant samples of non-privileged documents excluded from review or production by use of keyword search terms, Technology Assisted Review software, or any other means;
 - e. identify the person(s) able to testify on your behalf about information known or reasonably available to the organization relating to your use of software or technology in responding to this Order
7. All documents responsive to this Order
- a. shall be produced in complete form, redacted unless privileged, and in the order in which they appear in your files;
 - b. shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC0001);
 - c. if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - d. shall be produced in color;
 - e. shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive

affiliations of all authors, recipients, and persons copied on the material provided in a legend appended to the log. However, provide in the log the information required by Instruction 6(f). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest, in writing, to the log.

A document, including all attachments, may be withheld or redacted only to the extent necessary to preserve any claim of protected status. Unless otherwise provided in the instructions accompanying the Order, and except for information and material subject to a valid claim of protected status, all responsive information and material shall be produced without redaction.

9. Any questions that you have relating to the scope or meaning of anything in this Order or suggestions for possible modifications to it should be directed to Kenneth Merber at kmerber@ftc.gov or (202) 326-3551. Please notify Mr. Merber by email in advance of each production. Any password(s) necessary to access response to the Order shall be emailed to Mr. Merber.

You are advised that penalties may be imposed under applicable provisions of federal law for failure to file special reports or for filing false reports.

By direction of the Commission.

Lina M. Khan, Chair