



BitMart. More specifically, the Commission seeks to determine whether Spread's business practices in operating BitMart constituted an unfair or deceptive practice related to consumer privacy and/or data security, the privacy or security of consumer financial information, or deceptive and manipulative conduct on the internet. The investigation includes inquiries into BitMart's representations to consumers about its advertised exchange services; allegations that consumers have been unable to access their accounts and have received inadequate and insecure customer services; and the publicly reported loss of more than \$200 million in cryptocurrency.

On May 11, 2022, the Commission issued a CID to Spread asking for responses to interrogatories and document requests. The CID was sent by U.S. mail on May 12, 2022 and Spread acknowledged service May 16, 2022. *Petition* at 1-3. The CID requests information about Spread's knowledge of, involvement in, and ability to prevent, security breaches that jeopardize currency investments traded on its BitMart platform; reported fraud associated with BitMart and its customer service processes; the veracity of BitMart's representations about its service and security; the structure of BitMart's operations and its methods of communicating with consumers, including the identities of third parties advertising its service; and consumer complaints, lawsuits, other investigations, and compliance with federal law. CID, at 29 (interrogatories), 9

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previously recognized, a CID need not be limited, much less quashed, based on this objection when the CID already contains the appropriate limiting instructions and those instructions are in accord with applicable precedent that require an entity subject to the jurisdiction of United States courts to produce all information and documents within its possession, custody, or control – even if such materials are located abroad.<sup>5</sup> “Control,” in this context, has been defined to include the legal or practical ability to obtain responsive materials, including those possessed by a party’s agent, or maintained by a third party on the party’s behalf.<sup>6</sup> Indeed, Spread not only recognizes this very principle in its petition,<sup>7</sup> but importantly does not disclaim that it exerts control over information held by its self-styled “custodians” (who might also be its “agents” or

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See also FTC Form 144 (“You are required to produce all documents described in the attached schedule that are in your possession, custody, or control.”).

<sup>4</sup> See Political Opinions of America, 155 F.T.C. 1681, 1688-89 (2013).

<sup>5</sup> See *In re* May 7, 2018 Subpoena Duces Tecum and Subpoena Ad Testificandum Issued to Banibu II Holdings, Inc., File No. 181-0030 (June 26, 2018), 411 F.3d at 245 (collecting authority); 15 U.S.C.A. § 57b-1(c)(1) (person receiving agency CID must produce responsive non-privileged documents and information within its “possession, custody, or control”); Restatement (Third) of Foreign Relations Law § 442(1)(a) (1987) (“A court or agency in the United States when authorized by statute . . . may order a person subject to its jurisdiction to produce documents . . . or other information relevant to an . . . investigation, even if the information or the person in possession of the information is outside the United States.”).

<sup>6</sup> See, e.g., Political Op. Amer., 155 F.T.C. at 1688-89 (control “means the legal or practical ability to obtain the responsive documents”); *S. Intern. Trade Com’n v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005) (“Control’ is defined as the legal right, authority or ability to obtain documents upon demand”); *In re* Flag Telecom Holdings, Ltd. Sec. Litig., 236 F.R.D. 177, 180 (S.D.N.Y. 2006); *Dietrich v. Bauer*, No. 95 Civ. 7051, 2000 WL 1171132, at \*3 (S.D.N.Y. 2000) (“Control’ has been construed broadly by the courts as the legal right, authority or practical ability to obtain the materials sought upon demand.”).

<sup>7</sup> *ASAT*, 411 F.3d at 253-54; *Flagg v. City of Detroit*, 252 F.R.D. 346, 353 (E.D. Mich. 2008) (citing *Commercial Credit Corp. v. Repper*, 309 F.2d 97, 98 (6th Cir. 1962)).

<sup>8</sup> *Flagg*, 252 F.R.D. at 354 (citing *Tomlinson v. El Paso Corp.*, 245 F.R.D. 474, 477 (D. Colo. 2007)).

<sup>9</sup> See *Petition at 5* (citing *United States Antitrust Guidelines For International Enforcement and Cooperation*, 2017 WL 11655745, at \*21 (Jan. 13, 2017) (the FTC “may compel the production of documents or information, including documents or informats);













Commission staff which would have allowed it to present any evidence of burden to staff – further undermines its burden objections. Concerns about burden or breadth often can be mitigated through discussions or negotiations with agency counsel. *Texaco*, 555 F.2d at 882-83.

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III. CONCLUSION

For the foregoing reasons, Spread's petition to quash or limit is denied.

IT IS HEREBY ORDERED THAT Spread Technologies LLC's Petition to Quash the May 11, 2022 Civil Investigative Demand be, and hereby is, DENIED.

IT IS FURTHER ORDERED THAT Spread shall comply in full with the Commission's Civil Investigative Demand no later than Thursday, July 28, 2022, at 9:00 a.m. (Eastern Time), or at such other date, time, and location as the Commission staff may determine.

By the Commission, Commissioner Slaughter not participating.

April J. Tabor  
Secretary

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