

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of

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May 11, 2022 Civil Inv06 pc3BL 1 Tf12.213u3BL 1 Tw 3BL 1.6 (CTS Da)-6 (t)mBL 1 TwalON

The Exchange operates globally and many of its operations are in jurisdictions outside the United States.

II. The CID

On May 16, 2022, Petitioner's registered agent received the CID via first class mail. The CID is attached hereto as Exhibit A. The CID describes the "Subject of the Investigation" as:

Whether entities marketing or operating [the Exchange], as defined herein, have engaged in deceptive, unfair, or otherwise unlawful acts or practices in connection with the advertising, marketing, offering for sale, or sale of currency exchange services in violation of the FTC Act, 15 U.S.C. § 45, or violated the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-27; and whether Commission action to obtain monetary relief would be in the public interest. See also the attached resolutions.

Ex. A at 2. The referenced resolutions (File Nos. 2123125, 1823036, & 0023284) (the "FTC Resolutions") further describe the nature and scope of the FTC's investigation as authorized:

. . . whether any persons, partnerships or corporations, or others have been or are engaged in unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices, in or affecting commerce, relating to the marketing of goods and services on the Internet, the manipulation of user interfaces (including but not limited to, dark patterns), or the use of e-mail, metatags, computer code or programs . . .

(*Id.* at 28 (File No. 2123125).)

. . . whether unnamed persons, partnerships, corporations, or others are engaged in, or may have engaged in, deceptive or unfair acts or practices related to consumer privacy and/or data security, including but not limited to the collection, acquisition, use, disclosure, security, storage, retention, or disposition of consumer information, in or affecting commerce . . .

(*Id.* at 29 (File No. 1823036).)

. . . whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in acts or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827, the Privacy of Consumer Financial Information Rule (16 C.F.R. pt. 313), the CFPB's Regulation P (12 C.F.R. pt. 1016), the Safeguards Rule (16 C.F.R. pt. 314),

(*Id.* at 30 (File No. 0023284).)

The CID includes 24 interrogatories and 31 document requests. (*Id.* at 2-13.) Many of these interrogatories and discovery requests contain several subparts. (*Id.*) The CID's discovery requests cover essentially every facet of Petitioners' business: from information concerning the finances of Petitioner and affiliated companies (e.g., Document Request 6 ("Financial statements including income statements, balance sheets, reserve computations, and statements of cash flow, for" Petitioner and affiliated companies); to Petitioner's communications to customers (e.g., Interrogatory N ("Identify all media, including email, internet websites, blogs, social media accounts . . . , and mobile applications, used to communicate with [the Exchange's] customers, and the manager or agent responsible for operating the media) & Document Request 21 (requesting documents for each "materially different advertisement" identified in Interrogatories N and O); to the webpages Petitioner's customers are presented with when accessing Petitioner's service (e.g., Document Request 19 ("Each materially different screen or page presented to a[n Exchange]

On June 1, 2022, Petitioner's counsel and FTC's counsel had another telephone call to discuss the CID. In this call, Petitioner's counsel informed FTC's counsel that Petitioner intended to cooperate with the investigation and was trying to cooperate but explained that the scope of the requests within the CID was, among other things, overly broad. Petitioner's counsel proposed extending the deadline to respond to the CID and the deadline for a motion to quash so that
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II. The CID Should Be Quashed or Limited to the Extent it Seeks Information Not Located in the United States or Outside of Petitioner’s Custody and Control

Some of the information the CID seeks from Petitioner is located outside of the United States and may not be in the Petitioner’s legal custody or control. The FTC’s statutory subpoena authority states that production of “documentary evidence [] may be required from any place in the United States. 15 U.S.C. § 49. FTC guidelines state that the FTC can compel the production of documents or information located outside of the United States only “when the documents or

consumer privacy and/or data security, including but not limited to the collection, acquisition, use, disclosure, security, storage, retention, or disposition of consumer information, in or affecting commerce; and (3) “acts or practices in or affecting commerce with respect to the privacy or security of consumer information,” including conduct violating the Gramm-Leach Bliley Act, and applicable data protection and privacy regulations. (Ex. A at 28-30.)

Responding to such sweeping requests would be unduly burdensome for Petitioner. Information responsive to these requests touches on nearly every facet of Petitioner’s business and on information covering nearly the whole of Petitioner’s existence. Petitioner is a relatively small company. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Therefore, the CID should be quashed or limited for being unduly burdensome. Many of the requests contained in the CID bear no relevance to the conduct referenced in the FTC Resolutions. For example, Interrogatory B seeks Petitioner’s “total number of employees and the total annual revenue” for Petitioner and its affiliated entities and individuals. Interrogatory D seeks information concerning “each type of service [the Exchange] offers” and information concerning the number of customers and funds being traded on [the Exchange]. Interrogatory M seeks information concerning “any fees assessed for the services in response to Interrogatory D.” Document Request 6 seeks “financial statements, including income statements, balance sheets, reserve computations, and statements of cash flow” for Petitioner and affiliated entities.” Document Request 7 asks for audit reports or opinions associated with these financial documents and Interrogatory E asks for identification of third parties preparing or auditing these financial statements. Interrogatory F also seeks improper information relating to

third parties. Each of these requests is overly broad, unduly burdensome, and not sufficiently related to the subject of the investigation.

The CID seeks information concerning “materially different screen[s] and page[s]” viewed by [the Exchange]’s customers. (E.g., Ex. A at 12 (Document Request 18).) Not only are these types of requests impermissibly vague and confusing, as it is unclear what the FTC is referring to when it requests “screens” or “pages,” to the extent the requests are talking about webpages, this information is not discoverable because Petitioner does not possess every webpage containing responsive information. Petitioner cannot determine exactly what webpages consumers have seen and even if it could, it would not have this information in its records. Document Request 9 is also impermissibly vague because it asks for “each agreement, formal or informal” governing certain services involving third parties, and Petitioner is unable to determine what the FTC means by an “informal” agreement. Interrogatory T asks for information relating to any government “actions” including “inquiries” which, in addition to being impermissibly vague, is overbroad as it requests information outside the scope of the CID. Petitioner therefore cannot be compelled to produce this information and requests that the CID should be quashed or modified accordingly.

Further, information concerning Petitioner’s finances, each and every service it provides, and the fees it collects from those services, in addition to being overbroad, are irrelevant to the FTC’s investigation into purportedly improper marketing, manipulation, and consumer privacy and data security. Such sweeping requests are not justified under the FTC Resolutions and are therefore not reasonably related to the FTC’s investigation and should be stricken.

Finally, many of the CID requests are plainly overbroad and too inde(o)6 (n)6 (s)14 (y)17 mr86 (eq)6 the FTC’s investigatory power. For example, Interrogatories N and O ask (nv5.3 P)12 (et)0.6 (i).6 8nioner to ‘ a032 0 Td[Bc(o)rmedia used to com[Bc(Ex)hañg(s)]dctate5iniv Interrogatory R

comply with the CID. The FTC is not authorized to issue such unreasonably broad and limitless requests, which should be stricken or modified.

Finally, many of the requests seek information protected by the attorney-client privilege. For example, Interrogatory X asks Petitioner to identify each person who has prepared, supervised the preparation of, or reviewed the response to this CID. This request and any/all other requested documents protected by privilege should be stricken or modified.

CONCLUSION

Petitioner intends to cooperate as fully as possible with the FTC's investigation. However, the CID in its current state contains requests that are irrelevant, unduly burdensome, and impossible to comply with because they seek information over which Petitioner does not have control. For these reasons, Petitioner respectfully requests that the FTC quash the CID. Alternatively, Petitioner respectfully requests that the FTC quash or modify Interrogatories B, D, E.5&6, F, G, H, I, J, K, L, M, N, O, Q, S, T, U, V, X, and Document Requests: 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29 in the CID. Petitioner further respectfully requests that the applicable time period of the CID be modified from "May 1, 2019, until the date of full and complete compliance with the CID" to "January 1, 2021 to May 12, 2022," and that the FTC grant Petitioner any other modifications deemed proper. Finally, Petitioner requests that this Motion to Quash be treated as confidential pursuant to Sections 21(f) and 21(c) of the Federal Trade Commission Act and/or any other applicable confidentiality laws. *See* 15 U.S.C. §§ 57b-2 (c) and (f).

Dated: June 5, 2022

MCDERMOTT WILL & EMERY LLP

By: /s/ Todd Harrison

Todd Harrison
Joseph B. Evans
1 Vanderbilt Avenue
New York, New York 10017
(212) 547-5400
tdharrison@mwe.com
jbevans@mwe.com

*Attorneys for Petitioner Spread
Technologies LLC*

CERTIFICATION OF GOOD FAITH

Counsel for Petitioner Spread Technologies LLC certifies that he has tried on several occasions, and in good faith, to resolve with the Commission Staff the issues raised in this Motion to Quash. However, those efforts have proven unsuccessful and have necessitated the filing of this Motion.

Dated: June 5, 2022

By: /s/ Todd Harrison
Todd Harrison