

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Petitioner,

v.

JURGEN JOST and JOHN TRACY,

Respondents.

Civil Action No. 04 C 1854

Filed: 3/10/04

PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMANDS

The United States of America and R. Hewitt Pate, Assistant Attorney General of the Antitrust Division of the United States Department of Justice, by the undersigned attorneys, respectfully petition this Court, pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1314(a), to enforce Civil Investigative Demand (“CID”) Nos. 022855 and 022856, which were duly issued and served on Jurgen Jost and John Tracy, respectively, and as grounds state as follows:

1. This is a proceeding brought pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1314(a), to judicially enforce CIDs served upon each of the Respondents.
2. In enacting and amending the Antitrust Civil Process Act (“ACPA”), 15 U.S.C. §§ 1311-1314, Congress provided the Antitrust Division with broad precomplaint powers to investigate possible violations of the federal antitrust laws. More specifically, the ACPA empowers the Attorney General and the Assistant Attorney General in charge of the Antitrust Division to issue a CID to any person who they have reason to believe “may be in possession, custody, or control of any documentary material, or may have information, relevant to a civil antitrust investigation.” 15 U.S.C. §1312(a). Such a CID may require the recipient “to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony . . . , or to furnish any combination of such material, answers or testimony.” *Id.*

3. The Respondent, Jurgen Jost, resides at 1575 West Hundley St., Hoffman Estates, IL 60194.
4. The Respondent, John Tracy, resides at 1620 Sunnyside Ave., Westchester, IL 60154.
5. Both Respondents were employed until June 27, 2003 by NSM Music, Inc., a Delaware corporation with its primary office at 1275 Hamilton Parkway, Itasca, IL 60143, that engages in the sales and service of jukeboxes in the United States.
6. The Antitrust Division is currently conducting an investigation into possible violations of § 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, by companies that entered an agreement not to compete with each other in the sale of digital jukeboxes.
7. In connection with that investigation, the Antitrust Division on February 4, 2004, issued a CID compelling Respondent Jurgen Jost to produce documentary material by March 5, 2004. A copy of the CID and attached schedule is attached hereto as Exhibit 1 and incorporated herein as part of this petition.
8. Also on February 4, 2004, the Antitrust Division issued a second CID compelling Respondent John Tracy to produce documentary material by March 5, 2004. A copy of the CID and attached schedule is attached hereto as Exhibit 2 and incorporated herein as part of this petition.
9. While Respondents Jost and Tracy have produced some documents in response to the CIDs, both have stated that they possess additional responsive documents that they will not produce without a court order. Respondents explained that they have withheld documents that they believe may be subject to nondisclosure obligations created by one or more agreements between Respondents and NSM Music Group, Ltd., a parent company of their former employer, NSM Music, Inc. Those agreements, according to Respondents, may prohibit them from divulging certain trade secret or confidential information related to NSM Music, Inc. and/or its parent companies.

10. A CID recipient may not properly withhold documents responsive to a CID on the ground that they contain trade secret or confidential information. The ACPA states that no CID shall require the production of documents that would be protected from disclosure under the standards applicable to subpoenas issued in aid of a grand jury or to civil discovery requests under the Federal Rules of Civil Procedure. 15 U.S.C. § 1312(c)(1). Congress recognized that those standards permit demands for confidential or trade secret information, *see* H.R. Rep. No. 94-1343, at 10 (1976), as courts routinely rejected petitions to quash grand jury subpoenas that demanded the disclosure of such sensitive information. *See, e.g., In re Grand Jury Subpoenas Duces Tecum Involving Charles Rice*, 483 F. Supp. 1085, 1090 (D. Minn. 1979); *In re Radio Corp. of Am.*, 13 F.R.D. 167, 172 (S.D.N.Y. 1952). Those courts found objections to the production of confidential information to have “no validity” in light of the secrecy of grand jury proceedings. *In re Grand Jury Subpoenas*, 483 F. Supp. at 1090. Such objections to CIDs similarly lack validity, as Congress insisted on “strict confidentiality of all CID investigative files in order to protect . . . trade secrets and proprietary financial data.” H.R. Rep. No. 94-1343, at 8. Those express restrictions against disclosure are embodied in the ACPA at 15 U.S.C. §§ 1313(c)(3) & 1314(g).

Accordingly, the United States and R. Hewitt Pate respectfully request that this Court:

1. Order Respondents Jost and Tracy to comply with the requirements of CID Nos. 022855 and 022856 and to produce all responsive, nonprivileged documents within 14 days of the Court’s Order; and
2. Grant such other and further relief as is just and proper.

Respectfully submitted,

/s/

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March 10, 2004