

**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.

No. 04 C 1854

Hon. Judge Amy J. St. Eve

Filed: 3/11/04

NOTICE OF MOTION

To: William Skuster, Esq.
Synergy Law Group, L.L.C.
730 West Randolph St.
6th Floor
Chicago, IL 60661

PLEASE TAKE NOTICE that on Wednesday, March 17, 2004, at 9:00 a.m. or as soon thereafter as counsel may be heard, I will appear before Judge St. Eve in the courtroom usually occupied by her in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in her place and stead, and then and there present **MOTION OF THE UNITED STATES TO COMPEL COMPLIANCE WITH CIDs**, at which time and place you may appear, if you see fit.

Respectfully submitted,

_____/s/_____
Michael W. Boomgarden
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Antitrust Division
Chicago Field Office
Rookery Building
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Chicago, IL 60604-1204
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MOTION OF THE UNITED STATES TO COMPEL COMPLIANCE WITH CIDs

The Antitrust Division of the United States Department of Justice is conducting an investigation into possible violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, by companies that agreed not to compete with each other in the sale of digital jukeboxes. In connection with that investigation, the Antitrust Division on February 4, 2004, served upon Respondents Jurgen Jost and John Tracy two Civil Investigative Demands (“CIDs”) compelling the production of documents. Jost and Tracy have withheld certain documents that are responsive to the CID because they believe those documents may be subject to nondisclosure obligations they owe to their former employer.

Because confidentiality concerns do not provide a proper basis on which to withhold documents demanded by a CID, the United States moves this Court, pursuant to the Antitrust Civil Process Act (“ACPA”), 15 U.S.C. § 1314(a), for an order compelling Jost to comply with CID No. 022855 and Tracy to comply with CID No. 022856.

BACKGROUND

In enacting and amending the 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.” *Id.* § 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.*

On February 4, 2004, the Antitrust Division issued CID Nos. 022855 and 022856 to Jurgen Jost and John Tracy, respectively. Jost and Tracy are former employees of NSM Music, Inc., a company that engages in the sale and service of jukeboxes in the United States. The CIDs to Jost and Tracy demanded the production of documents for use by the Antitrust Division in connection with its ongoing investigation into an agreement between two companies not to compete in the digital jukebox marketplace. The CIDs required them to complete their production of documents to the Antitrust Division by March 5, 2004.

Jost and Tracy produced some documents in response to the CIDs, but also advised the Antitrust Division that they possess additional responsive documents that they will not produce without a court order. They explained that they have withheld documents that they believe may be subject to nondisclosure obligations created by one or more agreements between them and NSM Music Group, Ltd., a parent company of their former employer, NSM Music, Inc. Those agreements, according to Jost and Tracy, may prohibit them from divulging certain trade secret or confidential information related to NSM Music, Inc. and/or its parent companies.

ARGUMENT

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. *Id.* § 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).

CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court enter the attached order.

Dated: March 11, 2004.

Respectfully submitted,

/s/

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