

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CYWEE GROUP LTD.,

Plaintiff

v.

SAMSUNG ELECTRONICS CO., LTD.
AND SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

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NO. 2:17-CV-00140-WCB-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL CORPORATE REPRESENTATIVE DEPOSITION ON THE SUBJECT OF
IMPORTATION AND SALES TO SAMSUNG SUBSIDIARIES**

CyWee’s Motion to Compel Corporate Representative Deposition not only mischaracterizes the facts but also demands information that is unimportant to the remaining issues in this case. The motion rests on allegations that Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc. (“SEA”) (collectively, “Samsung”) hid [REDACTED] [REDACTED] [REDACTED]. However, Samsung voluntarily disclosed the existence of [REDACTED] [REDACTED], and CyWee cites no facts supporting its allegation that Samsung is hiding other U.S. subsidiaries. The motion appears to be nothing more than an attempt to depose an additional witness after the close of fact discovery. The motion should therefore be denied.

I. STATEMENT OF FACTS

A. Samsung Voluntarily Disclosed [REDACTED] and the Relevant Financial Information

Samsung disclosed the existence of [REDACTED] not in response to a court order but rather in response to a letter from CyWee. CyWee claims that “Samsung was forced by an Order from this Court to reveal for the first time that SEC subsidiary [REDACTED] [REDACTED]” Dkt. No. 168 at 5. This is completely false, and CyWee’s citation for this claim is confusing and at best unavailing. Dkt. No. 168 at 5. CyWee cites to paragraph 3 of the Shore declaration, which does not cite any court order. Dkt. No. 168-1. Instead—and contrary to CyWee’s claim that Samsung has [REDACTED] [REDACTED] [REDACTED] were offered and produced voluntarily by Samsung.

Specifically, on August 13, two weeks after the close of fact discovery, CyWee sent a letter to Samsung seeking “all documents showing importation of the Accused Products” to determine who “record importer[s]” were. Dkt. No. 157-4. Despite the questionable relevance of the existence of any other importers, and despite the fact that discovery had closed, Samsung voluntarily stated that [REDACTED] for the Accused Products. Dkt. No. 157-5 at 2. Samsung further offered to produce “[REDACTED] [REDACTED] Dkt. No. 157-8. This voluntary production of information and documents directly contradicts CyWee’s unsupported claim that the information was “intentionally hidden,” “fraudulently concealed,” or that “Samsung was forced by an Order from this Court to reveal for the first time [REDACTED].” Dkt. No. 168 at 5. In reality, Samsung voluntarily disclosed this information. Additionally, it is unclear that Samsung could have hidden the existence [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Samsung’s investigation related to this case has revealed that [REDACTED]

[REDACTED] Brann Decl. ¶ 4. CyWee already has extensive financial information for SEA, and importation information for SEA is currently the

subject of a pending motion to compel. Dkt. No. 157. Additionally, Samsung has already produced a deponent for SEA, Sean Diaz. Brann Decl. ¶ 5.

B. CyWee Mischaracterizes Sean Diaz's Testimony

CyWee's motion mischaracterizes the testimony of Sean Diaz as falsely admitting that

[REDACTED]

CyWee also states that [REDACTED]

[REDACTED] That is

incorrect. It appears instead that counsel for CyWee asked Mr. Diaz [REDACTED]

[REDACTED]

[REDACTED]

Neither of these statements shows that Mr. Diaz was [REDACTED]

[REDACTED] nor does CyWee explain why it believes this is the case. *Id.*

C. CyWee Changed the Scope of Its Demanded 30(b)(6) Deposition Even After Filing This Motion.

After CyWee filed this motion, it sent Samsung a 30(b)(6) deposition notice on some of these same topics and some additional topics. Ex. 4. CyWee told Samsung, “When you respond to the Motion to Compel, consider the notice as the topics actually at issue.” Ex. 5. Once again CyWee has moved the target on Samsung making it difficult to meet, let alone comprehend, its ever-shifting demands. It appears CyWee has set a moving target for the Court as well by filing a motion to compel a deponent on certain topics, then adding and subtracting topics mid-briefing.

II. ARGUMENT

Samsung will not address the merits of the specific topics listed in CyWee’s motion (Dkt. No. 168) because it understands those topics to no longer be operative. Instead Samsung will address the demand to compel a deponent on importation information generally. Such a deposition is inappropriate because it was made after the close of discovery and CyWee has not demonstrated good cause for the deposition. *Lucent Techs., Inc. v. Gateway, Inc.*, No. 07-cv-2000-H CAB, 2008 WL 183637, at *2 (S.D. Cal. Jan. 17, 2008) (stating that “[a] party may obtain relief from a ‘cut-off’ date only by demonstrating good cause for allowing further discovery” and granting a motion for protective order where the party seeking a deposition after the close of fact discovery “offer[ed] no reasons as to why it could not have completed this discovery in a timely manner”).

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