

**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 SUR-REPLY IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL FULLY RESPONSIVE ANSWERS TO DEPOSITION ON
WRITTEN QUESTIONS**

I. CYWEE CONTINUES TO MISCHARACTERIZE THE COURT-MANDATED SCOPE OF THE DEPOSITION ON WRITTEN QUESTIONS

CyWee states in its reply that “the reason we are here” is because Samsung allegedly failed to answer Interrogatory 14 and “the reason the Court ordered the DOWQs was Samsung failed to provide the SEC Financial Information in its interrogatory responses.” Dkt. No. 184 at 1. That is incorrect. In reality, CyWee complained in previous motions to compel that Samsung did not provide SEC financial information in response to Interrogatory 14. *See, e.g.*, Dkt. No. 124 at 4; Dkt. No. 130 at 1. Samsung offered to produce that information before CyWee filed those motions to compel, and Samsung subsequently did produce the SEC financial information. Dkt. No. 129 at 1–3; Dkt. No. 180-1 ¶ 6. Then, at the August 10 hearing, the Court clearly limited the scope of this deposition on written questions to the already produced SEC financial information. *See* 8/10/2018 Hr’g. Tr. at 106:4–8; 104:12–14. The Court’s order for the deposition on written questions further supports this understanding of the scope. Dkt. No. 145. The Court’s order as to the scope obviously controls.

II. SEC’S RESPONSES TO THE DEPOSITION ON WRITTEN QUESTIONS ARE NOT MATERIALLY DEFICIENT

A. Samsung Did Not Agree to an “Interrogatory-like” Format

CyWee incorrectly claims that Samsung chose to answer the written questions in an “interrogatory-like” format. Dkt. No. 184 at 1. Instead Samsung merely stated “Samsung will provide its answers in writing with the witness swearing to the same oath that he would take at a deposition under Rule 30.” Supp. Brann Decl., Ex. 1. Further, and in explicit contrast to CyWee’s current position, CyWee responded to Samsung that “the objections are still limited to ‘Form’ and to assert a privilege. These are not interrogatories.” *Id.* Indeed, deponents are not expected to answer deposition questions in exacting detail and instead these questions are more suited for interrogatories. *United States ex rel. Fago v. M & T Mortg. Corp.*, 235 F.R.D. 11, 25

(D.D.C. 2006). Fact discovery has closed and the time for interrogatories has passed. As CyWee admits that the basis of its Motion is to obtain interrogatory-like answers, the Motion seeking to compel such answers is improper and should be denied.

B. The Responses to the Financial Information Questions Are Not Materially Incomplete (Numbers 6, 8–14, 40–42, and 64–67)

CyWee's claims in its reply regarding Question 6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Dkt. No. 180 at 3–4. The response was not materially deficient. Additionally, by CyWee's own admission that was an attempt to propound additional interrogatories. Dkt. No. 184 at 1–2. That attempt is improper and should be rejected. Dkt. No. 180 at 3–4.

CyWee's reply does not explain how the response to Question 8 is deficient besides the fact that it does not possess the detail CyWee now desires, but never asked for in the deposition on written questions. Dkt. No. 184 at 2. CyWee's apparent remorse over the questions it posed does not make the response materially deficient. The question was fully and fairly answered as asked. Dkt. No. 180 at 5.

As CyWee's reply does not mention Question 9, it appears CyWee no longer claims the response to that question is deficient. In any event, the question was fully and fairly answered, especially in light of the supplemental response, which CyWee apparently neglected to read. Dkt. No. 180 at 5–6.

CyWee's remaining complaint in regards to the response to Question 10 is that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] CyWee's question was fully and fairly answered. The response is not materially deficient because CyWee does not like the wording.

CyWee goes on to complain that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, the question asked was fully and fairly answered. The Court may note that these allegations are being dealt with in the parallel briefing on CyWee's Motion to Compel a Corporate Representative Deposition. Dkt. No. 194 at 2.

CyWee's only remaining complaint regarding Questions 11–14 is that [REDACTED]

[REDACTED]

[REDACTED] This request is therefore moot.

Again, CyWee fails to explain how the responses to Questions 41 and 42 are deficient. Samsung believes these questions have been fairly and fully answered as asked. Dkt. No. 180 at 8. As to Questions 40 and 64–67, CyWee complains that [REDACTED]

[REDACTED]

[REDACTED] That is incorrect. [REDACTED]

[REDACTED]

[REDACTED] and is therefore improper at this stage. Dkt. No. 180 at 8–10.

The request is also improper as it is outside the Court-mandated scope of already produced SEC financial data. *Id.*

C. The Operating Profit Questions Were Not Ignored (Question Numbers 72–79)

CyWee claims that Samsung ignored CyWee’s complaints regarding questions relating to Samsung components and operating profits. Dkt. No. 184 at 5. That is also incorrect. Samsung’s Opposition clearly stated that these questions appeared to be belated interrogatories and were outside the Court-mandated scope of the deposition, *i.e.*, SEC financial data already produced in this case. Dkt. No. 180 at 10. [REDACTED]

[REDACTED]

[REDACTED]

D. Question Numbers 72–76 Were Outside the Scope of the Deposition

In its reply, CyWee claims that Samsung has ignored CyWee’s complaints that Mr. Han was not prepared to answer Questions 72–76. Dkt. No. 184 at 5. To the contrary, Samsung has objected to the questions as additional, belated and improper interrogatories and as outside the Court-mandated scope of the deposition. Dkt. No. 180 at 10. CyWee’s claim that Mr. Han was not sufficiently prepared ignores those objections and is incorrect.

E. The “Critical Components” Questions Were Outside the Court-Mandated Scope of the Deposition (Question Numbers 82–87)

Again, CyWee claims that these questions were not answered due to Mr. Han’s lack of knowledge. Dkt. No. 184 at 5. As already explained, however, these questions are outside the scope of the deposition mandated by the Court. Dkt. No. 180 at 11. They are additionally, and apparently by CyWee’s own admission, an attempt to propound additional interrogatories. Dkt. No. 184 at 1–2. That is improper. Dkt. No. 180 at 11. CyWee’s reply ignores Samsung’s objections that the questions were improper in the first place. Further, it is difficult to see how CyWee can, in the same brief, take the contrasting positions that “[a]s a Rule 30(b)(6) witness, the Deponent was required to gather information to answer the DOWQs from anyone and any

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