

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FEDERAL TRADE COMMISSION,	:	CASE NO. 1:12-MC-22
Plaintiff,	:	Judge _____
v.	:	
KEVIN TRUDEAU, <u>et al.</u> ,	:	
Defendants,	:	MOTION OF NON-PARTY
v.	:	GLOBAL INFORMATION
	:	NETWORK TO QUASH
	:	SUBPOENA TO PRODUCE
THIRD PARTY	:	DOCUMENTS, INFORMATION,
	:	OR OBJECTS OR TO PERMIT
	:	<u>INSPECTION OF PREMISES</u>
	:	

Pursuant to Federal Rules of Civil Procedure 45(c)(3), Global Information Network (“GIN”) moves to quash or modify the February 10, 2012 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (“Subpoena”) issued by Plaintiff Federal Trade Commission (“FTC”) to Fifth Third Bank. The FTC’s Subpoena stems from an action between the FTC and Kevin Trudeau in the United States District Court for the Northern District of Illinois. The FTC presumably is requesting post-judgment discovery by sending a subpoena to non-party Fifth Third Bancorp (“Fifth Third”) to produce financial information. Mr. Trudeau is not, and never has been, an owner, manager, officer or director of GIN and GIN is not a party to this action; therefore, under the Federal Rules, the FTC is not permitted to obtain information about a third party's assets when the third party is unrelated to the case. Pursuant to Federal Rules of Civil Procedure 69(a)(2) and 26, the FTC’s post-judgment discovery requests must be limited in scope to information regarding the judgment debtor.

GIN's financial information is both irrelevant and unrelated to the pending civil action between the FTC and Kevin Trudeau. Accordingly, this Court should quash the FTC's Subpoena or modify the Subpoena by limiting it to information solely regarding parties to this litigation.

GIN was never served with notice of this subpoena and the return date is March 5, 2012. Therefore, GIN's motion is timely under Fed. R. Civ. P. 45.

The FTC's failure to serve GIN with notice of the Subpoena and the "fishing expedition" nature of seeking random discovery of unrelated parties, but with specific account information, begs the question of whether FTC has filed numerous other subpoenas of which GIN is unaware. The Court should therefore grant to GIN the equitable remedy of forcing the FTC to reveal all post-judgment subpoenas and other discovery requests that it has issued in relation to the litigation against Kevin Trudeau, as well as the contents of what it has received regarding GIN. The Court should also prevent the FTC from conducting any further discovery regarding GIN with that litigation.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR
TO PERMIT INSPECTION OF PREMISES OF THIRD PARTY
GLOBAL INFORMATION NETWORK**

The underlying case giving rise to this Miscellaneous Docket Motion does not involve Global Information Network (“GIN”), but involves a dispute between Plaintiff Federal Trade Commission (“FTC”) and Defendant Kevin Trudeau (“Trudeau”). After obtaining judgments against Trudeau in the underlying action in the United States District Court for the Northern District of Illinois, the FTC presumably seeks post-judgment discovery from Fifth Third Bancorp (“Fifth Third”) regarding Trudeau's assets in order to satisfy the judgments. The FTC's February 10, 2012 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (“Subpoena”), however, goes beyond the scope of post-judgment discovery and should be quashed. GIN is a multi-form foundation formed under the laws of the country of Nevis. Mr. Trudeau is not, and never has been, an owner, manager, officer or director of GIN.

This Subpoena ostensibly seeks banking information in aid of execution on behalf of a judgment creditor, the FTC. Accordingly, the requirements of the Federal Rules of Civil Procedure relating to judgment creditor discovery apply. Fed. R. Civ. P. 69(a)(2) provides:

“In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided in these rules or by the procedure of the state where the court is located.”

Under Rule 69, judgment debtors may utilize the discovery devices permitted under the Federal Rules, but the inquiries “must be kept pertinent to the goal of discovering concealed assets of the judgment debtor and not be allowed to become a means of harassment of the debtor or third persons.” Caisson Corp. v. County West Bldg. Corp., 62 F.R.D. 331, 334 (E.D. Pa. 1974) (citing

Monticello Tobacco Co., Inc. v. American Tobacco Co., 12 F.R.D. 344(S.D.N.Y. 1952); Moore's Federal Practice § 69.05(1) (1974); and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)). Third parties “can only be examined about assets of the judgment debtor and cannot be required to disclose their own assets.” Id. (citing Burak v. Scott, 29 F. Supp. 775 (D.D.C. 1939) and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)).

Here, the FTC seeks discovery of not only assets of Kevin Trudeau, the judgment debtor, but it also requests financial information regarding GIN, a non-party to this litigation. The Federal Rules do not permit a party to request discovery regarding a non-party's assets. The Subpoena must be limited to obtaining information regarding assets of parties to the litigation, such as Trudeau. By requesting GIN's financial information, the FTC's Subpoena goes beyond the scope of discovery permitted under the Federal Rules.

Not only should the Court quash the Subpoena because it exceeds the parameters of Fed. R. Civ. P. 69, but also because it is beyond the constraints of Fed. R. Civ. P. 26. Fed. R. Civ. P. 26(b)(1) limits the scope of discovery to information “regarding any nonprivileged matter that is relevant to any party's claim or defense” The FTC's Subpoena should be quashed because it seeks discovery that is irrelevant and overbroad. In the present matter, the FTC seeks banking statements, deposits, and various other documents regarding GIN. However, GIN's financial information is irrelevant to this litigation. GIN is not a party to the litigation and the FTC has not provided any evidence as to how this information is pertinent to this litigation against Kevin Trudeau. Such an overbroad request suggests that the FTC is attempting to use its discovery request to conduct a “fishing expedition” in hopes of finding evidence that is damaging to GIN. However, the Federal Rules do not allow the use of Subpoenas and discovery tools in this manner.

GIN's motion to quash is also timely under the Federal Rules. Under Fed. R. Civ. P. 45, “[s]erving a subpoena requires delivering a copy to the named person” The FTC failed to take reasonable steps to notify GIN regarding the Subpoena. Instead, the FTC chose to serve the Subpoena upon Fifth Third and hoped to obtain information beyond what is permitted under the Federal Rules. By not serving GIN with a copy of the Subpoena, the time limits under Fed. R. Civ. P. 45(c) are inapplicable as to GIN.

Finally, the FTC’s shotgun approach to discovery regarding assets that may tangentially have a remote relation to Mr. Trudeau is well beyond the scope of the Federal Rules and its failure to notify GIN (and likely others named in the Subpoena) is inexcusable. The FTC’s overbroad Subpoena, along with its failure to serve GIN with notice, begs the question of whether the FTC has issued any other post-judgment discovery in relation to the litigation against Kevin Trudeau. GIN was only able to learn about this Subpoena through second-hand information. GIN is therefore concerned that this is not the first instance, nor the last, that the FTC has acted with patent disregard towards the Federal Rules in relation to GIN. In this Subpoena, for instance, the FTC identifies GIN’s account information with Fifth Third, despite the fact that GIN never provided such information to the FTC in this action. GIN is also unaware of any other occasion where it disclosed its financial information to the FTC. Therefore, it is reasonable to surmise that the FTC obtained this information by filing other subpoenas without serving GIN with notice. GIN therefore requests the Court to grant equitable relief to GIN by forcing the FTC to disclose all other post-judgment discovery requests and subpoenas that the FTC has issued in connection with the litigation against Kevin Trudeau, and to force the FTC to provide to GIN all of the information that the FTC has obtained thus far as a result of other discovery requests and subpoenas in relation to this litigation. The Court should

also prevent the FTC from filing any future subpoenas or discovery requests regarding GIN in relation to the instant action.

The FTC's Subpoena is contrary to Fed. R. Civ. P. 26, 45, and 69. Accordingly, this Court should quash the Subpoena or, in the alternative, modify the Subpoena so that it is limited to information regarding relevant parties to this litigation. This Court should also force the FTC to disclose all post-judgment subpoenas and other discovery requests it has issued in connection with the litigation against Kevin Trudeau, as well as the contents of what it has obtained regarding GIN, and should prevent the FTC from issuing any further discovery relating to GIN in connection with that litigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2012, I filed the foregoing Motion of Non-Party Global Information Network to Quash Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises with the Clerk of Courts using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF parties:

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