

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**PUBLIC RECORD VERSION**

In the Matter of  
May 11, 2022 Civil Investigative Demand  
Issued to Spread Technologies LLC

FTC Matter No. 2223050

**Spread Technologies LLC’s Petition to Quash Civil Investigative Demand**

Petitioner Spread Technologies LLC (“Petitioner”), through undersigned counsel, hereby petitions the Federal Trade Commission (“FTC”), pursuant to 16 C.F.R. §2.7(d) to quash in the entirety the Civil Investigative Demand (“CID”) dated May 11, 2022 and served on Petitioner on May 16, 2022. In the alternative, Petitioner requests that the FTC quash or limit portions of the CID as described below. The CID includes document requests that exceed the FTC’s authority under Section 45 of the Federal Trade Commission Act; these requests improperly ask Petitioner to provide information that is irrelevant and unlikely to lead to relevant evidence in the FTC’s investigation.

**STATEMENT OF FACTS**

**I. Petitioner and The Exchange**

Petitioner is a Delaware Limited Liability Company that was incorporated on June 4, 2018. The requests in the CID appear to be focused on the cryptocurrency exchange (the “Exchange”).

The Exchange operates globally and many of its operations are in jurisdictions outside the United States.

## II. The CID

On May 16, 2022, Petitioner's registered agent received the CID via first class mail. The CID is attached hereto as Exhibit A. The CID describes the "Subject of the Investigation" as:

Whether entities marketing or operating [the Exchange], as defined herein, have engaged in deceptive, unfair, or otherwise unlawful acts or practices in connection with the advertising, marketing, offering for sale, or sale of currency exchange services in violation of the FTC Act, 15 U.S.C. § 45, or violated the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-27; and whether Commission action to obtain monetary relief would be in the public interest. See also the attached resolutions.

Ex. A at 2. The referenced resolutions (File Nos. 2123125, 1823036, & 0023284) (the "FTC Resolutions") further describe the nature and scope of the FTC's investigation as authorized:

. . . whether any persons, partnerships or corporations, or others have been or are engaged in unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices, in or affecting commerce, relating to the marketing of goods and services on the Internet, the manipulation of user interfaces (including but not limited to, dark patterns), or the use of e-mail, metatags, computer code or programs . . .

(*Id.* at 28 (File No. 2123125).)

. . . whether unnamed persons, partnerships, corporations, or others are engaged in, or may have engaged in, deceptive or unfair acts or practices related to consumer privacy and/or data security, including but not limited to the collection, acquisition, use, disclosure, security, storage, retention, or disposition of consumer information, in or affecting commerce . . .

(*Id.* at 29 (File No. 1823036).)

. . . whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in acts or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827, the Privacy of Consumer Financial Information Rule (16 C.F.R. pt. 313), the CFPB's Regulation P (12 C.F.R. pt. 1016), the Safeguards Rule (16 C.F.R. pt. 314), or whether any financial institution or its affiliates have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce with respect to the privacy or security of consumer information . . .

(*Id.* at 30 (File No. 0023284).)

The CID includes 24 interrogatories and 31 document requests. (*Id.* at 2-13.) Many of these interrogatories and discovery requests contain several subparts. (*Id.*) The CID’s discovery requests cover essentially every facet of Petitioners’ business: from information concerning the finances of Petitioner and affiliated companies (e.g., Document Request 6 (“Financial statements including income statements, balance sheets, reserve computations, and statements of cash flow, for” Petitioner and affiliated companies); to Petitioner’s communications to customers (e.g., Interrogatory N (“Identify all media, including email, internet websites, blogs, social media accounts . . . , and mobile applications, used to communicate with [the Exchange’s] customers, and the manager or agent responsible for operating the media) & Document Request 21 (requesting documents for each “materially different advertisement” identified in Interrogatories N and O); to the webpages Petitioner’s customers are presented with when accessing Petitioner’s service (e.g., Document Request 19 (“Each materially different screen or page presented to a[n Exchange] account user in the process of logging in and requesting a transaction”).

### **III. Discussions with the FTC Prior to the Filing of this Motion**

On May 16, 2022, a package containing the CID was delivered to Petitioner’s registered agent in Delaware. Petitioner’s counsel exchanged emails with FTC’s counsel leading to telephone conferences between Petitioner’s counsel and FTC’s counsel on May 25, 2022 and June 1, 2022. In the initial phone call, Petitioner’s counsel indicated that Petitioner was interested in working with the FTC to provide information necessary for the FTC to conduct its investigation, but that Petitioner’s counsel had just recently been informed of the CID and needed time to understand the issues raised within it.

On June 1, 2022, Petitioner’s counsel and FTC’s counsel had another telephone call to discuss the CID. In this call, Petitioner’s counsel informed FTC’s counsel that Petitioner intended to cooperate with the investigation and was trying to cooperate but explained that the scope of the requests within the CID was, among other things, overly broad. Petitioner’s counsel proposed extending the deadline to respond to the CID and the deadline for a motion to quash so that Petitioner’s counsel and FTC’s counsel could work together to reach an agreement regarding the CID’s contents. The FTC’s counsel rejected Petitioner’s proposal to extend these deadlines, necessitating the submission of this motion.

## **ARGUMENT**

### **I. Legal Standard**

The FTC has broad authority, but that authority is not limitless and was exceeded here with the requests in this CID. *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001). The U.S. Supreme Court has observed that the FTC may “exceed [its] investigatory power” when it conducts an “investigation into corporate matters . . . of such a sweeping nature and so unrelated to the matter properly under inquiry.” Accordingly, requests contained within a CID must not be “too indefinite” and the information sought must be “reasonably relevant.” *Id.* The relevance of an FTC subpoena request is measured against the purpose and scope of its investigation as defined in an FTC resolution. *F.T.C. v. Turner*, 609 F.2d 743, 745 (5th Cir. 1980). Further, the FTC exceeds its investigatory power where it seeks information that is “unduly burdensome or unreasonably broad.” *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977).

## **II. The CID Should Be Quashed or Limited to the Extent it Seeks Information Not Located in the United States or Outside of Petitioner’s Custody and Control**

Some of the information the CID seeks from Petitioner is located outside of the United States and may not be in the Petitioner’s legal custody or control. The FTC’s statutory subpoena authority states that production of “documentary evidence [] may be required from any place in the United States. 15 U.S.C. § 49. FTC guidelines state that the FTC can compel the production of documents or information located outside of the United States only “when the documents or information sought are within the ‘possession, custody, or control’ of an individual or entity subject to the jurisdiction of the United States.”<sup>1</sup>

The CID seeks information generated from business operations that is created and held by custodians located in jurisdictions outside of the United States. For information held in jurisdictions outside the United States, foreign law likely prevents this information from being re-located to the United States and ultimately produced to U.S. authorities. Therefore, the FTC cannot compel Petitioner to produce information not located in the United States.

## **III. The CID Should Be Quashed or Modified because its Requests are Unduly Burdensome, Overly Broad, and Demand Irrelevant Information or Information Protected by Privilege**

The CID is replete with requests that greatly exceed the scope of the FTC’s investigation into Petitioner. The scope of the FTC’s investigation into Petitioner is defined by the FTC Resolutions. *F.T.C. v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980). According to the FTC Resolutions, the FTC’s inquiry is limited to the following conduct: (1) engaging in “marketing of goods and services on the Internet, the manipulation of user interfaces (including but not limited to, dark patterns), or the use of e-mail, metatags, computer code or programs”; (2) “related to

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<sup>1</sup> Department of Justice & Federal Trade Commission, *Antitrust Guidelines for International Enforcement and Cooperation*, at 39 (January 13, 2017).

consumer privacy and/or data security, including but not limited to the collection, acquisition, use, disclosure, security, storage, retention, or disposition of consumer information, in or affecting commerce; and (3) “acts or practices in or affecting commerce with respect to the privacy or security of consumer information,” including conduct violating the Gramm-Leach Bliley Act, and applicable data protection and privacy regulations. (Ex. A at 28-30.)

Responding to such sweeping requests would be unduly burdensome for Petitioner. Information responsive to these requests touches on nearly every facet of Petitioner’s business and on information covering nearly the whole of Petitioner’s existence. Petitioner is a relatively small company. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Therefore, the CID should be quashed or limited for being unduly burdensome. Many of the requests contained in the CID bear no relevance to the conduct referenced in the FTC Resolutions. For example, Interrogatory B seeks Petitioner’s “total number of employees and the total annual revenue” for Petitioner and its affiliated entities and individuals. Interrogatory D seeks information concerning “each type of service [the Exchange] offers” and information concerning the number of customers and funds being traded on [the Exchange]. Interrogatory M seeks information concerning “any fees assessed for the services in response to Interrogatory D.” Document Request 6 seeks “financial statements, including income statements, balance sheets, reserve computations, and statements of cash flow” for Petitioner and affiliated entities.” Document Request 7 asks for audit reports or opinions associated with these financial documents and Interrogatory E asks for identification of third parties preparing or auditing these financial statements. Interrogatory F also seeks improper information relating to

third parties. Each of these requests is overly broad, unduly burdensome, and not sufficiently related to the subject of the investigation.

The CID seeks information concerning “materially different screen[s] and page[s]” viewed by [the Exchange]’s customers. (E.g., Ex. A at 12 (Document Request 18).) Not only are these types of requests impermissibly vague and confusing, as it is unclear what the FTC is referring to when it requests “screens” or “pages,” to the extent the requests are talking about webpages, this information is not discoverable because Petitioner does not possess every webpage containing responsive information. Petitioner cannot determine exactly what webpages consumers have seen and even if it could, it would not have this information in its records. Document Request 9 is also impermissibly vague because it asks for “each agreement, formal or informal” governing certain services involving third parties, and Petitioner is unable to determine what the FTC means by an “informal” agreement. Interrogatory T asks for information relating to any government “actions” including “inquiries” which, in addition to being impermissibly vague, is overbroad as it requests information outside the scope of the CID. Petitioner therefore cannot be compelled to produce this information and requests that the CID should be quashed or modified accordingly.

Further, information concerning Petitioner’s finances, each and every service it provides, and the fees it collects from those services, in addition to being overbroad, are irrelevant to the FTC’s investigation into purportedly improper marketing, manipulation, and consumer privacy and data security. Such sweeping requests are not justified under the FTC Resolutions and are therefore not reasonably related to the FTC’s investigation and should be stricken.

Finally, many of the CID requests are plainly overbroad and too indefinite to fall within the FTC’s investigatory power. For example, Interrogatories N and O ask Petitioner to “Identify all media used to communicate with [the Exchange’s] customers.” Interrogatory R asks Petitioner

to Identify and describe the methods used to provide customer support to [the Exchange]. Interrogatory T asks for information relating to any government “actions”. Interrogatory Q asks for all policies “applicable to advertising”. Document Requests 1-5 ask for, among other things, organizational charts, bylaws, and other information relating to parties other than Petitioner and are thus overbroad and outside the scope of this CID. Interrogatory S and Document Request 10 ask Petitioner to describe every customer service request relating to [the Exchange]. Document Requests 18 through 22 request documents concerning all “materially different” webpages, advertisements, and communications that were directed towards customers. Document Requests 25 and 26 request documents concerning seemingly all customer complaints ever received by Petitioner. Document Request 27 seeks all documents “relating to any actions, inquiries, investigations, proceedings, subpoenas, lawsuits, or arbitration proceedings identified” in response to earlier requests that are objectionable in their own right for being outside the scope of this CID.

These requests are not explicitly tied to the conduct described in the FTC Resolutions. Accordingly, there is a significant amount of information responsive to these requests that fall well outside the scope of the FTC Resolutions and therefore the FTC’s subpoena power. Further, these requests are not limited to any reasonable time period. The applicable time period for the CID “is from May 1, 2019, until the date of full and complete compliance with the CID.” (Ex. A at 2.) Seeking information as far back as May 2019 is unreasonable as it encompasses nearly the entire time period of Petitioner’s existence and would require months to recover, review, process and sort the voluminous amount of irrelevant data. Further, seeking information for an indeterminate period of time essentially gives the FTC the power to compel an unlimited range of irrelevant information from Petitioner in perpetuity. In addition, as a technical matter, because data is constantly being generated, this would also mean that Petitioner would never be able to fully



comply with the CID. The FTC is not authorized to issue such unreasonably broad and limitless requests, which should be stricken or modified.

Finally, many of the requests seek information protected by the attorney-client privilege. For example, Interrogatory X asks Petitioner to identify each person who has prepared, supervised the preparation of, or reviewed the response to this CID. This request and any/all other requested documents protected by privilege should be stricken or modified.

### **CONCLUSION**

Petitioner intends to cooperate as fully as possible with the FTC's investigation. However, the CID in its current state contains requests that are irrelevant, unduly burdensome, and impossible to comply with because they seek information over which Petitioner does not have control. For these reasons, Petitioner respectfully requests that the FTC quash the CID. Alternatively, Petitioner respectfully requests that the FTC quash or modify Interrogatories B, D, E.5&6, F, G, H, I, J, K, L, M, N, O, Q, S, T, U, V, X, and Document Requests: 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29 in the CID. Petitioner further respectfully requests that the applicable time period of the CID be modified from "May 1, 2019, until the date of full and complete compliance with the CID" to "January 1, 2021 to May 12, 2022," and that the FTC grant Petitioner any other modifications deemed proper. Finally, Petitioner requests that this Motion to Quash be treated as confidential pursuant to Sections 21(f) and 21(c) of the Federal Trade Commission Act and/or any other applicable confidentiality laws. *See* 15 U.S.C. §§ 57b-2 (c) and (f).

Dated: June 5, 2022

**MCDERMOTT WILL & EMERY LLP**

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**CERTIFICATION OF GOOD FAITH**

Counsel for Petitioner Spread Technologies LLC certifies that he has tried on several occasions, and in good faith, to resolve with the Commission Staff the issues raised in this Motion to Quash. However, those efforts have proven unsuccessful and have necessitated the filing of this Motion.

Dated: June 5, 2022

By: /s/ Todd Harrison  
Todd Harrison