



UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

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Reid B. Horwitz
Attorney

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Direct Dial
202.326.2037

June 4, 2008

Take-Two Interactive Software, Inc.
c/o Stephen Axinn, Esquire
Axinn, Veltrop & Harkrider LLP
114 West 47th Street
New York, NY 10036

Re: Subpoena *Duces Tecum* and Civil Investigative Demand Issued to Take-Two Interactive Software, Inc. in Connection with Electronic Arts Inc. Proposed Acquisition of Take-Two Interactive Software, Inc., File No. 081-0138

Dear Mr. Axinn:

As you know, your client, Take-Two Interactive, has been out of compliance with the above-referenced Subpoena and CID since May 16, 2008. Moreover, as recently as June 2, you have represented that your client does not intend to ever come into compliance with the Subpoena and CID. Commission staff repeatedly has attempted to work with Take-Two and its various counsel to attempt to reach a compromise concerning this process that would benefit Take-Two by narrowing the scope of the process and benefit the Commission by helping to assure the prompt submission of the most critical responsive information. But, on both occasions where Commission staff and counsel for Take-Two reached such agreements, within one week counsel for Take-Two informed staff that Take-Two was renegeing on the agreement.

Instead, after these false starts, Take-Two has reviewed the files of only three of its employees and these reviews were very limited in scope. On June 2, you indicated that, at most, Take-Two would be willing to conduct a similarly limited review of the files of three additional current or former employees. As has been repeatedly indicated to you, this attempt at unilateral line drawing by Take-Two regarding the scope of the Commission's investigation does not comprise satisfactory compliance with the Subpoena and CID.

As a result of the impasse created by Take-Two, the Commission sees little alternative to seeking judicial enforcement of its compulsory process. After much consideration, we will file

an action unless, by 9 a.m. tomorrow morning, Take-Two, in writing, agrees to the following terms:

- To search the files of the nine employees that we discussed on May 28 and again on June 2 (many of whom have files that we had requested as far back as April);¹
- To search the files of each custodian for responsive documents consistent with the parameters that you agreed to on May 7;²
- To produce all such responsive, non-privileged documents by June 18, 2008;
- To produce all of the current employees whose files are reviewed for investigational hearings;³ and
- To search the files and to produce all responsive, non-privileged documents for any additional current or former employees of Take-Two designated by the Commission, as you also agreed to do on May 7.

Unless we receive an affirmative response from you, we will presume that Take-Two rejects this final effort at compromise by the Commission and the Commission will seek immediate judicial relief.

Very truly yours,

Reid B. Horwitz

1 These custodians are: Ben Feder, Christoph Hartmann, Greg Thomas, Gary Dale, David Gershik, Erik Whiteford, Jason Argent, Evan Drew Smith, and Christopher Snyder.

2 A copy of the May 8, 2008, letter memorializing the May 7 agreement is attached for your convenience.

3 Our understanding is that all of the individuals whose files would be reviewed are currently employees of Take-Two other than Eric Whiteford.