

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

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

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In the Matter of)	
)	
DECEMBER 6, 2017 CIVIL INVESTIGATIVE)	File No. 172 3090
DEMAND ISSUED TO SLAC, INC.)	February 13, 2018
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)	
_____)	

**ORDER DENYING PETITION TO LIMIT OR
QUASH CIVIL INVESTIGATIVE DEMAND**

By McSWEENEY, Commissioner:

SLAC, Inc. has submitted a petition seeking to limit or quash the Civil Investigative Demand (CID) that the Commission issued on December 6, 2017. For the reasons described below, the petition is denied.

I. BACKGROUND

SLAC sells services to consumers who want to reduce their monthly student loan payments by applying for income-based repayment plans offered through the U.S. Department of Education. In connection with an investigation into whether the business practices of SLAC or other identified individuals, including SLAC’s President Adam Owens, violate the FTC Act or the Telemarketing Sales Rule (TSR), the Commission issued a CID seeking information about the company and its business practices.

SLAC objects to two of the CID’s specifications. It argues that Interrogatory 10, which asks for a description of “each step the Company takes to ensure that it does not collect payment from consumers until after [its student loan services] have been fully delivered or rendered,” is beyond the stated scope of the investigation and therefore the Commission’s jurisdiction. It also contends that Document Request 13, which asks for documents related to a presentation given by Mr. Owens at a conference of the Association for Student Loan Relief, is outside the scope of the Commission’s investigation and abridges the First Amendment rights of both SLAC and Mr. Owens. As explained below, SLAC’s objections lack merit.

II. ANALYSIS

A. Applicable legal standards

The power to investigate is vital to the Commission's ability to carry out its congressionally-mandated duty to prevent unfair or deceptive acts or practices.¹ Law enforcement agencies like the Commission "have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest."² Administrative compulsory process such as a CID is proper if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the scope of the inquiry.³

Agencies have wide latitude to determine what information is relevant to their law enforcement investigations and are not required to have "a justifiable belief that wrongdoing has actually occurred."⁴ Thus, "[t]he relevance of the material sought by the FTC must be measured against the scope and purpose of the FTC's investigation, as set forth in the Commission's resolution."⁵ The standard of relevance in an investigatory setting "is more relaxed than in an adjudicatory one."⁶ Moreover, agencies are "free to determine, in the first instance, the scope of their own jurisdiction when issuing investigative subpoenas."⁷

B. The challenged specifications are within the scope of the Commission's investigation.

SLAC states that it "does not challenge the FTC's statutory authority to investigate practices that it believes may constitute deceptive or unfair trade practices when used in the

¹ *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (en banc); 15 U.S.C. § 45(a).

² *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

³ *Id.*; *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992); *Texaco*, 555 F.2d at 874.

⁴ *See, e.g., Morton Salt*, 338 U.S. at 642-43 ("[Administrative agencies have] a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.").

⁵ *Texaco*, 555 F.2d at 874.

⁶ *Invention Submission Corp.*, 965 F.2d at 1090; *see also id.* ("At the investigatory stage, the Commission does not seek information necessary to prove specific charges; it merely has a suspicion that the law is being violated in some way and wants to determine whether or not to file a complaint.").

⁷ *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001).

course of trade.”⁸ Rather, it argues that the challenged specifications seek information “wholly unrelated to any purported fraud and deception being investigated.”⁹

Information sought in an administrative subpoena must be “reasonably relevant” to the Commission’s investigation.¹⁰ Here, the Commission described the subject of the investigation in the CID Schedule:

Whether [SLAC], Adam Owens, Scott Brown, Mindy Fincher, and others have engaged in deceptive or otherwise unlawful activity in connection with the marketing, promotion, offering for sale, or sale of student loan debt relief products or services, as defined herein, in violation of the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.*, or the Telemarketing Sales Rule, 16 C.F.R. Part 310, and whether the Commission action to obtain monetary relief would be in the public interest. See also attached resolution.¹¹

SLAC argues that Interrogatory 10 seeks information outside the stated scope of the Commission’s investigation because as a student loan document preparation and assistance company, its business is not covered by the TSR.¹² In particular, SLAC argues that it does not offer “debt relief services,” as the TSR defines that term.¹³ With regard to Document Request 13, SLAC argues that the specification “exceed[s] the FTC’s investigatory power in that it seeks information related to lobbying efforts,” and that such efforts are beyond the scope of the Commission’s investigation.¹⁴ SLAC argues further that the Commission’s request violates the First Amendment rights of free speech and association of both SLAC and company President Owens.¹⁵ Each of SLAC’s arguments is addressed below.

1. Interrogatory 10

Interrogatory 10 asks SLAC to describe the steps it takes to ensure “that it does not collect payment from consumers until after [its student loan services] have been fully delivered or rendered.” SLAC is correct in stating that the TSR prohibits telemarketers from collecting fees for “debt relief services” before delivering such services.¹⁶ SLAC is incorrect, however, to

⁸ Pet. at 3-4.

⁹ *Id.* at 7.

¹⁰ *Morton Salt*, 338 U.S. at 652.

¹¹ Pet. Exh. A (CID Schedule) at 2.

¹² Pet. at 8.

¹³ *Id.* at 8-11; *see* 16 C.F.R. § 310.2(o) (defining “debt relief service”). *See also* Pet. Exh. A (CID Schedule) at 7 (definition of “Debt relief product or service”).

¹⁴ Pet. at 7, 11-13.

¹⁵ *Id.* at 11-13.

¹⁶ *Id.* at 8; *see* 16 C.F.R. § 310.4(a)(5).

suppose that the scope of the Commission’s investigation is limited by SLAC’s assertion that its services do not meet the TSR’s definition of “debt relief services.”

Whether or not SLAC is selling “debt relief services” as defined by the TSR turns on how the company *represents* its services to consumers. SLAC states that it does not negotiate or settle consumers’ debts but instead provides “document preparation services” in connection with the Department of Education’s student loan consolidation program.¹⁷ Notwithstanding its own characterization of its business model, if SLAC represents to consumers, directly or by implication, that it will “renegotiate, settle, or in any way alter the terms of payment ... including, but not limited to, a reduction in the balance, interest rate, or fees owed” to a creditor, then it is engaged in the provision of “debt relief services” subject to the TSR.¹⁸ The scope of the Commission’s investigation includes not only determining whether SLAC has violated the FTC Act or the TSR in connection with the services it sells, but also whether those services are a “debt relief service” as defined in the TSR. The CID includes other requests seeking materials that will enable the Commission to determine how SLAC represented its services to consumers,¹⁹ and if they meet the TSR definition in question. Therefore, the Commission has the “legitimate right” to satisfy itself “that [SLAC’s] behavior is consistent with the law and the public interest,”²⁰ and is entitled to make its own determination as to the nature and legal status of the services SLAC provides.²¹

Moreover, regardless of the legal characterization of the services provided, seeking information regarding the timing of payments relative to the rendering of services is potentially relevant to the issue of monetary relief, should the Commission determine that a law violation has occurred.

Therefore, Interrogatory 10 is directly relevant to the stated purpose of the investigation. SLAC’s argument that it need not respond to this interrogatory because it does not offer “debt relief services” is therefore without merit. We find no reason to limit or quash the CID’s request for information in Interrogatory 10.

¹⁷ Pet. at 8-11.

¹⁸ 16 CFR § 310.2(o).

¹⁹ See, e.g., Pet. Exh. A (CID Schedule) at 5 (Document Request 3 seeking copies of advertisements, and Document Request 5 seeking copies of sales scripts).

²⁰ *Morton Salt*, 338 U.S. at 652.

²¹ We also note that at least one court has rejected arguments similar to the ones raised by SLAC here. In *CFPB v. Irvine WebWorks, Inc.*, the defendants argued that their services were simply assisting consumers in consolidating their loans with the Department of Education and therefore did not constitute a “debt relief service” under the TSR. 2016 U.S. Dist. LEXIS 36097, at *19 (C.D. Cal. Feb. 5, 2016). The court rejected this position, however, explaining that the TSR defined “debt relief services” in “broad terms” that covered “entities that engage in practices substantially similar to those of loan consolidation middlemen.” *Id.* at 18.

2. Document Request 13

Document Request 13 directs SLAC to produce notes and other materials relating to a presentation by its president at the annual conference of the Association for Student Loan Relief: “An Industry Under Fire by Regulators and What Can Be Done To Help Save Our Businesses!” SLAC argues that the materials requested are outside the scope of the Commission’s investigation because, it claims, the presentation involved efforts to organize lobbying activities for the student loan relief industry. SLAC argues that the request is “an unlawful attempt to censor Mr. Owens’ and SLAC’s First Amendment rights.”²² These arguments are unfounded.

First, SLAC asserts that “[l]obbying efforts and a presentation made related to those efforts clearly fall outside the Scope of the CID.”²³ But even assuming that the presentation related to lobbying efforts,²⁴ it does not follow that materials related to the presentation fall outside the scope of the investigation. Indeed, one reason businesses might decide to lobby for a change in the law could be that they believe their current practices are illegal. In such a case, the presentation could well contain relevant facts about both the practices and the presenter’s knowledge that such practices are unlawful. Here, such facts would be relevant to the purpose of the Commission’s investigation because Mr. Owens’s conduct—and thus his knowledge of any illegality—is also a subject of the investigation. Accordingly, SLAC’s assertion that Mr. Owens’s presentation related to lobbying efforts does not show that the materials requested by the specification are outside the scope of the investigation.

Second, SLAC argues that by requesting information about the presentation, the Commission is “trying to bully or intimidate” SLAC, and is asking for information “as a way to silence those speaking out.”²⁵ SLAC further suggests that the CID is “an unlawful attempt to censor” SLAC and its President.²⁶ There is no basis for these claims.

To justify noncompliance with an administrative request for information such as the Commission’s CID, the recipient must make “a prima facie showing of arguable first amendment infringement.”²⁷ That showing requires “objective and articulable facts, which go beyond broad allegations or subjective fears.”²⁸ The recipient must show both “a causal link between the disclosure and the prospective harm” to its First Amendment rights and “adverse consequences” that could reasonably flow from the disclosure.²⁹

²² Pet. at 11-13.

²³ *Id.* at 4; *see also id.* at 12-13.

²⁴ SLAC does not offer any factual support for this assertion.

²⁵ Pet. at 4.

²⁶ *Id.* at 13.

²⁷ *Brock v. Local 375, Plumbers Int’l Union*, 860 F.2d 346, 349 (9th Cir. 1988).

²⁸ *Id.* at 350 n.1.

²⁹ *Dole v. Local Union 375, Plumbers Int’l Union*, 921 F.2d 969, 972 (9th Cir. 1990)

SLAC's First Amendment claims are based on the following allegations:

- 1) an executive of the Missouri Higher Education Loan Authority attended Mr. Owens's presentation;
- 2) the Authority services student loan debt and therefore stands to lose money if students enroll in repayment plans;
- 3) the Authority services debt for the U.S. Department of Education; and
- 4) the executive later told the president of the conference sponsor that he intended to meet with the Commission and the Consumer Financial Protection Bureau to discuss the student loan industry.³⁰

SLAC concludes from these allegations that the executive was an "undisclosed agent of the federal government" who (presumably through the Commission) is "penalizing SLAC and Mr. Owens" for exercising their free speech rights and "bullying the industry to cease all efforts to lobby legislators."³¹

SLAC's allegations are not "objective and articulable facts" that demonstrate an arguable First Amendment violation.³² Even assuming SLAC's averments are accurate, SLAC has not shown how producing information about the presentation would bully, censor, or intimidate SLAC or Mr. Owens. Indeed, SLAC does not describe any harm to its speech or association rights beyond broad, conclusory allegations and subjective fears. Nor has SLAC identified any consequences that could flow from producing the requested materials. The petition thus provides no reason to limit or quash the request for documents regarding Mr. Owens's presentation.

III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition to Limit or Quash Civil Investigative Demand filed by SLAC be, and it hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT all responses to the specifications in the Civil Investigative Demand to SLAC must now be produced on or before March 6, 2018.

By the Commission.

Donald S. Clark
Secretary

SEAL:

Issued: February 13, 2018

³⁰ Pet. at 2-3.

³¹ *Id.*

³² *Brock*, 860 F.2d at 349.