

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

AMERICA’S COLLECTIBLES NETWORK, INC.,
d/b/a JEWELRY TELEVISION,)

Plaintiff,)

No. 3:09-CV-143
(JORDAN/GUYTON)

V.)

STERLING COMMERCE (AMERICA) INC.,)

Defendant.)

MEMORANDUM AND ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and Standing Order 13-02. Now before the Court is a Motion to Compel the Production of Documents from Defendant and Serve Rule 45 Subpoenas on Certain Non-Parties [Doc. 146], filed by America’s Collectibles Network, Inc., d/b/a Jewelry Television (“JTV”). The parties appeared before the undersigned on May 21, 2013, to address this motion and other pending motions.

In its Motion to Compel, JTV moves the Court for an Order: (1) compelling Sterling Commerce (America), Inc., (“Sterling”), to produce documents responsive to Requests for Production # 1, 2, 3, 4, 5, and 6 from JTV’s Second Set of Requests for Production and (2) allowing JTV to serve Rule 45 document subpoenas on Sterling customers. JTV states that the requests for production and proposed subpoenas are meant to obtain relevant information about products Sterling sold to other companies that were similar to those sold the JTV. JTV alleges that “Sterling has improperly blocked JTV from [issuing such subpoenas] by contending that to do so would be in violation of the parties’ Consent Protective Order.” [Doc. 146 at 1-2].

In its response [Doc. 165], Sterling argues that documents relating to products sold to other customers are not relevant to the instant case. Sterling argues that JTV's document request would impose an undue burden on it and its customers, and Sterling states it is required "to obtain advanced written authorization before any disclosure of client confidential information." [Id. at 3-4]. Sterling also submits that it "is generally required to cooperate with the customer's efforts to contest any court-ordered disclosure." [Id.]. At the hearing, however, Sterling conceded that it had some documents in its possession that are responsive to JTV's inquires.

In its reply [Doc. 174], JTV maintains that misrepresentations related to the supposed functionality of its products and its implementing software in similarly-situated companies are relevant to this case and are discoverable.

The Court has considered the parties' lengthy filings and oral arguments. The Court has considered the parameters of Rules 26 and 45 of the Federal Rules of Civil Procedure, and the Court finds that the Motion to Compel is well-taken in part. It is **ORDERED**:

1. Sterling must produce the documents, which are responsive to four of the eight categories of "Other Project Documents." Sterling has represented that these documents are in its possession and to whose production Sterling does not object. Sterling **SHALL PRODUCE** these documents on or before **July 8, 2013**.
2. Additionally, Sterling **SHALL PRODUCE** the following additional categories of documents, which have been identified as being in Sterling's possession: "Requests for Proposals, Responses to Requests for Proposals, Solution Definition documents, and Business Requirement documents." This production must be completed on or before **July 15, 2013**.

3. The issue of subpoenaing Sterling's customers is **HELD IN ABEYANCE**. During the period of abeyance, JTV shall consider whether the documents provided by Sterling eliminate the need to subpoena the third-party customers. JTV shall file notice on or before **August 15, 2013**, advising the Court whether it intends to continue to pursue the Motion to Compel.¹

IT IS SO ORDERED.

ENTER:

/s H. Bruce Guyton
United States Magistrate Judge

¹ This notice should not include additional briefing on the issue, and neither party should interpret this filing as inviting additional briefing on this issue.