

EXHIBIT 7



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

MICHAEL A. OAKES
DIRECT DIAL: 202 • 419 • 2172
EMAIL: moakes@hunton.com

FILE NO: 74395.000003

December 7, 2010

VIA E-MAIL

Mr. Alain Sheer
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission Division
Mail Stop NJ-3137
600 Pennsylvania Avenue
Washington, DC 20580

Re: Hannaford Bros. Co.

Dear Alain:

We appreciate the time you took to meet and confer regarding issues related to the Division's two CIDs to Hannaford Bros. Co. ("Hannaford") and the one CID issued to Kash n' Karry Food Stores, Inc. ("Sweetbay").¹ During that meeting you stated that the FTC would consider Hannaford and Sweetbay's request to narrow certain of the CIDs' definitions, instructions, and specifications, and in a letter dated November 23, 2010, from Maneesha Mithal (the "November 23rd Letter"), you revised a few of these definitions, instructions, and specifications. However, the November 23rd Letter failed to address numerous issues we raised. Indeed, the November 23rd Letter does not address most of the concerns raised at the November 16, 2010 meet and confer. Thus, Hannaford and Sweetbay assume that you have rejected their requests to narrow other specifications, although you have not provided any reasons for doing so. Moreover, the November 23rd Letter creates confusion in that there are now inconsistencies between the various CIDs.

¹ We assume that the CID issued to Kash n' Karry Food Stores, Inc., on December 6, 2010, was intended to replace the CID issued to Sweetbay Supermarkets, and that the Sweetbay Supermarkets CID is withdrawn. If that is not correct, please let us know immediately.



Mr. Alain Sheer
December 7, 2010
Page 2

In light of the fact that the CIDs still contain a combination of unclear definitions and overbroad requests that will make compliance difficult and costly for Hannaford and Sweetbay, we thought it would be useful to provide this letter before Hannaford and Sweetbay are required to file their Petition to Quash the CIDs. In this letter, we address various discrete issues regarding the definitions, instructions and specifications, but we will not repeat some of the broader legal problems that we discussed with you during the meet and confer. However, we note that because the relevance of any specification can only be assessed against the purpose and scope of the investigation, the FTC's failure to provide a resolution or CID that sufficiently explains the purpose and scope of the investigation presents significant concerns.

Hannaford and Sweetbay do not address below every objection we have to the CIDs, but will provide written objections at the appropriate time. The purpose of this document is to highlight what we believe to be the more problematic aspects of the CIDs in the hope that further discussion will result in the narrowing of the CIDs.

I. First Civil Investigative Demand to Hannaford

A. Definitions

(1) **Electronically Stored Information or ESI (Definition G):** The definition of ESI is problematic to the extent it purports to require Hannaford to collect and recover, restore, or produce ESI that exists on backup media. This type of ESI is not in a reasonably accessible format, and any requirement that Hannaford recover and restore this backup media would impose extraordinary and undue costs on the Company. *See Fed. R. Civ. P. 26(b)(2)(B)*. Therefore, the definition should be changed as follows: "ESI shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any reasonably accessible electronically created or stored information . . ."

(2) **Hannaford or the Company (Definition J):** Even as modified by the November 23rd Letter, this definition is still vague, overbroad, and confusing. For example, the definition includes all "affiliates," which includes Sweetbay, but Sweetbay is a separately defined term and a recipient of its own CID. The definition also results in significant overbreadth problems. For example, Specification 8 seeks information for "Hannaford, Sweetbay, Shop 'n Save" identifying and describing changes in customer purchasing practices. However, application of the definition of Hannaford makes it appear that the FTC



Mr. Alain Sheer
December 7, 2010
Page 3

is seeking information about customers from all Delhaize-owned supermarkets because they are "affiliates" of Hannaford Bros. Co. Finally, the term "agents" is vague and confusing.

We believe that a more appropriate definition of "Hannaford" would be "'Hannaford' or the 'Company' means Hannaford Bros. Co."

(3) **Personal Information (Definition M):** The last sentence of this definition, which purports to define an "employee" as a "consumer," is an inappropriate effort to expand the Commission's jurisdiction. An unfairness claim under Section 5 of the FTC Act requires "substantial *consumer* injury," and personal information related to Hannaford's employees is irrelevant to any issues in this investigation.

The definition is also vague, confusing and overbroad in that it lists sixteen (16) different items, any of which standing alone constitutes "personal information." Hannaford does not believe that a "first and last name" or "a date of birth," standing alone, is "personal information."

B. Instructions

(1) **Claims of Privilege (Instruction D):** As we discussed, because this investigation has been ongoing for three years and because of the significant privileged work undertaken by Hannaford at the request of the Department of Justice, the potential volume of privileged documents will be enormous. Indeed, it is our belief at this time that preparation of a privilege log alone could require the Company to spend \$500,000 or more. We believe this is patently unreasonable and therefore believe that the issue warrants further discussion.

(2) **Scope of Search (Instruction I):** We do not understand the intent of your modification of this instruction. Is it your intent that the types of documents and information described after the "including, but not limited to" language in the original instruction are not deemed to be in the constructive custody of Hannaford? We believe that further discussion may be necessary to clarify this point.

(3) **Submission of Electronic Data/Forms of Production (Instruction M):** While we do not state a specific objection at this point, we note that your instructions are extremely detailed. If we cannot meet all these requirements or determine at a time closer to any actual production that compliance with the instructions would be difficult or burdensome, we will work in good faith to produce the materials in a reasonable and appropriate manner.

Mr. Alain Sheer
December 7, 2010
Page 4

C. Interrogatories

(1) **Interrogatory No. 1:** This interrogatory is overbroad, vague, and unduly burdensome in that Hannaford has numerous "security practices." It is also unclear whether this interrogatory is limited to electronic "security practices" or also includes physical security that is intended, at least in part, to prevent access to computers and computer systems (e.g., a card reader to limit entry to a building). This concerns also applies to Interrogatories 2, 3, and 6, and Document Request 1.

(2) **Interrogatory Nos. 14-24:** These eleven (11) interrogatories all ask for Hannaford's "contentions" as to various matters. We noted during the meet and confer that the FTC has previously expressed the view that contention interrogatories are generally inappropriate and "seek[] information that is more properly sought after the completion of fact discovery, if at all." FTC's Objections to Respondent's First Set of Interrogatories, p. 2, *In the Matter of North Texas Specialty Physicians*, Docket No. 9312. We generally agree with that view. See also, e.g., *Poulos v. Summit Hotel Props., LLC*, Civil Action No. 09-4062-RAL, 2010 WL 2640394, at *2 (D.S.D. Jul. 1, 2010) (finding that the defendant's contention interrogatories were burdensome because they compelled the plaintiff to assist the defendant in preparing its case); *Miles v. Shanghai Zhenhua Port of Machinery Co., LTS.*, Civil Action No. C08-5743 FDB, 2009 WL 3837523, at *1 (W.D. Wash. 2009); *Vishay Dale Elecs., Inc. v. Cynotec Co.*, Civil Action No. 8:07CV191, 2008 WL 4868772, at *5 (D. Neb. Nov. 6, 2008) (denying motion to compel answers to contention interrogatories until the end of discovery); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("[T]here is considerable support for deferring answers to contention interrogatories until after a substantial amount of discovery has been completed."). We therefore believe that these contention interrogatories should be withdrawn. Indeed, withdrawal of these interrogatories would go a long way toward curing the overbreadth and undue burden and expense created by the forty-six (46) interrogatory requests -- 89 including discrete subparts -- served on Hannaford. Cf. Fed. R. Civ. P. 33(a)(1) (limiting a party to 25 written interrogatories, "including all discrete subparts").

D. Document Requests

(1) **General Objection:** As discussed, we do not believe that requests to produce "all documents" are appropriate or useful. Hannaford has thousands of employees, and it is not possible or reasonable to search all of them for responsive documents. Rather, Hannaford



Mr. Alain Sheer
December 7, 2010
Page 5

will identify in good faith, and working with the FTC if it is willing to work with Hannaford, those employees and areas of the business where documents of the type being sought are most likely to exist.

(2) **Document Request No. 4:** We reiterate our request that you withdraw this request. We believe the phrasing is pejorative, and it requests documents that are encompassed by Document Request No. 1.

(3) **Document Request No. 5:** This request is overbroad, unduly burdensome, and seeks documents that are wholly irrelevant to anything the Commission might be investigating. As we told you during the meet and confer, all documents relating to "purchasing practices" is too broad and could result in a very large volume of irrelevant documents. You modified Interrogatory No. 8 in response to this concern, but for some reason did not address the identical concern related to this document request.

(4) **Document Request No. 7:** While we have made clear that we believe the entire subject of payment card transaction fees is irrelevant, at the very least this request is overbroad and unduly burdensome in that it would appear to require the production of documents relating to the actual transfer of any such payments, including documents related to the mechanics of those payments. Therefore, we ask that you clarify this request.

II. Second Civil Investigative Demand to Hannaford

As an initial matter, we note that you have stated orally, and Ms. Mithal repeats in the November 23rd Letter, that the purpose of this CID was simply to repeat the requests previously made to Hannaford in the voluntary access letters so that Hannaford can certify "completeness." However, this is not wholly accurate. Interrogatory No. 14 is new. Moreover, the applicable time period of January 1, 2007 until December 23, 2009, expands Hannaford's burden considerably since many of its searches were completed and documents produced long before then.

On December 3, 2010, we sent you a letter explaining the process by which documents were searched for, reviewed, and produced in response to the voluntary access letters. See Letter from John Woods to Alain Sheer, dated December 3, 2010. That letter describes a robust and diligent process that Hannaford would certify was followed. Hannaford believes that it has more than adequately responded to the access letters, and we



Mr. Alain Sheer
December 7, 2010
Page 6

are hopeful that upon your review of that letter, you will accept the certification to that process and withdraw this second CID in its entirety pursuant to Instruction A.

A. Definitions

We have the same objections to the definitions as described above with respect to the first CID, except for the objection to the definition of "personal information," which, in the second CID, does not include the language purporting to define "employees" as "consumers."²

B. Instructions

We again refer you to the discussion above with respect to the instructions related to the first CID.

In addition, we believe the time period, even as modified, is inappropriate because it includes a time period beyond Hannaford's response to the access letters. Requiring Hannaford to repeat its search for and production of documents, and to update its responses to written questions, would impose an undue and inappropriate burden on Hannaford.

III. First Civil Investigative Demand to Sweetbay Supermarkets

A. Definitions

The same concerns with the definitions described above exist with respect to Sweetbay as well. In addition, we add that the definitions of "Hannaford" and "Sweetbay" are problematic in this CID for additional reasons. First, the definition of "Hannaford" is different in the two Hannaford CIDs than it is in the "Sweetbay" CID. Second, the definition of "Sweetbay" contains the same language that was eliminated from the definition of "Hannaford" in the first Hannaford CID (and never existed in the second Hannaford CID). Third, the definition of "Sweetbay," even if otherwise made similar to the definition of "Hannaford," suffers from the same flaws. Fourth, even if modified, the definitions lead to confusion, as Sweetbay is included in *both* the Hannaford and Sweetbay definitions.

² We note that the lettering of the definitions differs slightly between the CIDs.

Mr. Alain Sheer
December 7, 2010
Page 7

We also note that although you modified the definition of "security practice" in the first Hannaford CID, you did not modify the identical definition in the Sweetbay CID. Thus, the definitions are different, and the Sweetbay CID includes a definition that you apparently have concluded should be modified. At the very least, a similar modification should be made to the Sweetbay CID.

B. Instructions

Sweetbay has the same concerns about the instructions expressed with respect to the Hannaford CID. However, as a third party to this investigation, Sweetbay does not believe that the costs of any privilege log would be prohibitive, except, of course, to the extent that the definition of Sweetbay includes Hannaford (although documents that are in the possession of Hannaford are not in the actual possession, custody, or control of Sweetbay).

C. Interrogatories

As an initial matter, we believe that the sheer number of interrogatories creates a problem. Sweetbay is a third party to this investigation, and requiring it to respond to twenty-three (23) interrogatories, 46 if all subparts are included, is unreasonable, creates an undue burden, and imposes excessive costs on Sweetbay. This is particularly true given the content of the requests.

We also believe that the interrogatories are overbroad, unduly burdensome and irrelevant because at least nine of the twenty-three requests interrogatories relate exclusively to pharmacy information. You are well aware that there was no compromise of pharmacy information at Sweetbay.

Below are some issues we would like to discuss further regarding specific interrogatories.

(1) **Interrogatory No. 11:** This interrogatory is the same as Interrogatory No. 1 in the first Hannaford CID. Please refer to the discussion above regarding that interrogatory.

(2) **Interrogatory No. 20:** This interrogatory is identical to Interrogatory No. 8 in the first Hannaford CID. However, while you have agreed to modify that interrogatory, the interrogatory in the Sweetbay CID remains unmodified, and is overbroad, unduly burdensome



Mr. Alain Sheer
December 7, 2010
Page 8

and seeks irrelevant information because it requires information regarding every conceivable customer purchasing practice.

(3) **Interrogatories No. 21-22:** As discussed above, contention interrogatories are not appropriate at this time. Such requests are particularly inappropriate when directed at a third party. We believe, therefore, that these requests should be withdrawn.

D. Document Requests

Please refer to the General Objection and discussion of Document Request No. 5 (identical to Sweetbay Document Request No. 12) in the section addressing the first Hannaford CID.

Given the significant issues raised herein, the broader issues concerning the CIDs we have discussed, and your service of a CID on an entity that does not exist, it is apparent that we will be left with no choice but to file a Petition to Quash on December 13, 2010. However, we believe that continued discussions would be helpful even after the filing in an attempt to narrow and clarify the CIDs. While a meeting this week would be difficult for obvious reasons, we are available before the holidays to continue the discussions.

Regards

A handwritten signature in black ink, appearing to read "M. A. Oakes", written in a cursive style.

Michael A. Oakes