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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>VRINGO, INC., and VRINGO INFRASTRUCTURE, INC.</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>ZTE CORPORATION, and ZTE USA Inc.,</p> <p style="text-align: right;">Defendants</p>	<p>Civ. No. 14-cv-4988 (LAK)</p>
<p>ZTE CORPORATION,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>VRINGO, INC., et ano.</p> <p style="text-align: right;">Defendants</p>	<p>Civ. No. 15-cv-0986 (LAK)</p>

MOTION TO EXTEND DEADLINES FOR LIMITED THIRD PARTY DISCOVERY

INTRODUCTION

The two cases before this court have two central issues: First, did ZTE distribute material protected by the NDA and, if so, what was done with that information? Second, has ZTE complied with its FRAND licensing obligations, including negotiating in good faith as a willing licensee? Vringo has served Rule 45 subpoenas on third parties to obtain documents and 30(b)(6) testimony relevant to both issues. While some third parties have produced responsive information, there are three others who will not be able to comply fully with the subpoenas before the close of fact discovery: Edelman, Graying, and Google.

All three have agreed to produce documents in response to their respective subpoenas, but those productions are not expected to be complete by the close of fact discovery. Additionally, while Vringo is hopeful that the respective document productions will provide the necessary information, it recognizes that those document productions may require additional follow-up, including taking 30(b)(6) depositions on topics noticed in the subpoenas or judicial enforcement of the subpoenas. Accordingly, Vringo moves the Court for an order extending the discovery period for those third parties to produce documents until September 24 and for the completion of any necessary follow-up, including 30(b)(6) depositions or motions for judicial enforcement, by October 2. Vringo has conferred with the third parties none of them object to the relief sought by this motion. Vringo has asked for ZTE's position, but they have not provided it.

FACTS

Edelman Subpoena

Edelman is a public relations firm used by ZTE as part of its countermeasures against Vringo. It prepared and released press releases and other media statements on ZTE's behalf

specifically relating to Vringo. These efforts were done with the specific purpose to impact and harm Vringo's share price.¹

On June 23, 2015 Vringo served a subpoena on Edelman seeking information about communications between ZTE and Edelman and between Edelman and third parties. Edelman initially objected to producing any documents other than press releases. Edelman and Vringo then met and conferred about the scope and timing of Edelman's productions. Later, on August 7, 2015, ZTE's counsel filed a notice that admitted ZTE sent materials protected by the NDA to Edelman in violation of the Court's TRO (*see* August 7, 2015 Letter, Docket Item 204 in 1:14-cv-04988). After that notice, Vringo and Edelman had further meet and confers and Vringo served a supplemental subpoena on Edelman on August 18, 2015. Edelman has subsequently agreed to search for and produce responsive documents, but will not be able to produce those documents before the close of fact discovery on September 3. Rather, Edelman expects to complete its internal review of responsive documents by September 18, but will then provide the documents to ZTE's counsel to do an additional layer of privilege review.

Grayling Subpoena

Grayling is another public relations firm used by ZTE as part of its countermeasures against Vringo. After documents produced by ZTE in July and August 2015 revealed that ZTE had retained Grayling, Vringo served a subpoena on Grayling on August 11, 2015. After briefly meeting and conferring, Grayling agreed to produce responsive documents and expects to begin its production this week and is hopeful that it can complete it next week (the week of September 7).

¹ *See generally* Second Amended Complaint in Case No. 1:14-cv-04988 at ¶¶ 99-103.

Google Subpoena

Vringo served a subpoena on Google on June 26, 2015. This subpoena sought communications between ZTE and Google, including license negotiations. Subsequent to that subpoena on July 29, 2015, ZTE provided supplemental interrogatory responses that admitted that ZTE sent materials to Google in breach of the NDA.² On August 5, 2015 and August 12, 2015, Vringo served supplemental subpoenas on Google that newly sought documents and 30(b)(6) testimony relating to Google and ZTE's communications regarding Vringo. Vringo and Google have met and conferred. Google has agreed to search for and produce responsive documents, but, in response to Vringo's requests, is not able to give a firm date for its production.

Accordingly, Vringo seeks an order extending fact discovery for these third parties to complete their production of documents by September 24, 2015 and for any necessary follow-up, whether 30(b)(6) depositions or filing motions to enforce the subpoenas, to be completed by October 2, 2015.

ARGUMENT

The material sought by the subpoenas is relevant and responsive. They seek information about whether Edelman and Google saw NDA materials and, if so, what was done with that information. They also seek information about the countermeasures ZTE employed against Vringo in lieu of negotiating a FRAND license.

Additionally, extending the fact discovery deadline for these parties will not delay the overall case. Under the current schedule, the initial round of expert reports are due on November 5. Even if discovery from these three third-parties was not complete until October

² See Exh. A, ZTE's 4th Supplemental Responses to Vringo's Interrogatories.

2, there remains sufficient time to incorporate that information without delaying the parties' expert reports.

CONCLUSION

Vringo respectfully requests a ruling extending the fact discovery schedule for Google, Edelman, and Grayling to produce documents by September 24, 2015 and for any necessary follow-up, including 30(b)(6) depositions or filing a motion to enforce the subpoenas, to be completed by October 2, 2015.

Dated: September 2, 2015



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