

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MULTIFEEDER TECHNOLOGY, INC.
A MINNESOTA CORPORATION,
PLAINTIFF,
V.
BRITISH CONFECTIONERY COMPANY LIMITED
a duly incorporated under the laws of Province
of Newfoundland, DOMINO AMJET, INC.
DEFENDANTS.

CIVIL No. 09-1090 (JRT/AJB)
The Honorable John R. Tunheim

**AFFIDAVIT OF MARK LANTERMAN
IN SUPPORT OF PLAINTIFFS'
PROPOSAL FOR COLLECTION OF
ELECTRONIC DISCOVERY FROM
BRITISH CONFECTIONERY
COMPANY LIMITED**

STATE OF MINNESOTA)
 : ss
COUNTY OF HENNEPIN)

Mark Lanterman, being first duly sworn under oath, states as follows:

1. I am the Chief Technology Officer of Computer Forensic Services, Inc. (“CFS”), and I submit this affidavit in support of the Proposal for Collection of Electronic Discovery from Defendant British Confectionery Company Limited (“British”) submitted by Multifeeder Technology Inc. (“MFT”) in this matter. I incorporate by reference my Affidavit dated March 9, 2011 [ECF Docket No. 69].

2. I understand that the parties have endured to agree upon an e-discovery protocol regarding the electronic evidence that is believed to be stored in British’s computers and email mailboxes. I have participated in some of the meet and confer telephonic conferencing. During one telephone conference between the parties, counsel for British stated British did not have email servers, and proffered explanations of email transmittal to and from British, and email storage by British.

3. I have learned from my participation in the parties' meet and confer process that British does not, on one hand, object to imaging in principle, except for its cost, yet on the other hand they assert imaging is not necessary. British states they should perform searches on their own computers and devices, and that they could also create an email file containing the relevant email for each identified custodian. British would then provide these email files to CFS to perform searches. I am concerned that this proposed method of collection is inadequate because of the information I have learned in the meet and confer conferencing about British's email, and my review of their current history of production that is present in the record.

4. British represents that they use Microsoft Outlook as their email client. Outlook is program an individual computer user operates to receive, read, write, and send email. As an email client, Outlook must be operated in conjunction with an email server to receive and send email. An Outlook user can also perform various calendar and task management tools, depending on the version. Outlook may be configured in one of two ways: 1) to synchronize with a Microsoft Exchange server, and 2) to synchronize with an email server that is not a Microsoft Exchange server. An Exchange server is designed for use by organizations with a large number of email mailboxes, but it may also be used by an organization with a smaller number of email mailboxes. When Outlook is used in conjunction with a non-Exchange email server, the way a user connects to their email, and the type and amount of email stored, is limited. Email service vendors, such as a cable and Internet service provider, often rely on non-Exchange email servers to host email services. An Outlook user may or may not know they are using Outlook with an email server, but not knowing this fact implies incomplete knowledge about the condition and location of all email data associated with an individual user. Based on

the representations made by British about how their email system operates, I believe they do not possess the knowledge or skill to competently self-collect all relevant email.

5. British's proposed method of collection and production of email confirms this conclusion for the following reason. The type of email file British proposes to create and produce for CFS to review is called a Personal Storage file, which is better known as a "PST" file. A PST is an email storage archive that can be created from either the Outlook program installed on an individual computer, or from a special file on an Exchange server, called an "EDB" file. A PST created from Outlook on an individual computer is an incomplete record of email associated with the person who used that computer. It will contain only what the creator of the PST file wants it to contain. A PST created from an EDB file will contain a complete record of email associated with the email user, including deleted emails. British's proposed method will at best only create an incomplete record of email for relevant computer users.

6. I have reviewed British's history of document production in this matter based on affidavits supplied by counsel for MFT. This record shows that British did not perform adequate and consistent searches for relevant documentation in electronic format, nor were relevant custodians reasonably identified to reasonably assist MFT's discovery effort. This record indicates reliable searches were not performed in a reasonable amount of time. This record documents that British's assurance to the Court, and counsel for MFT, about complete production of all relevant information is factually unreliable. The affidavit of British's representative, Blair Connolly, which was submitted over three weeks ago, states the search for relevant documentation continues yet I am informed no additional documentation has been produced. This history of production appears ineffective and unpredictable. CFS not only preserves electronic data through the imaging process, but also searches for and produces

relevant documentation present on computers and devices. The techniques and tools used by CFS permit the identification and recovery of active and deleted files, which British is incapable of performing. CFS' processes are accurate and reliable, and will identify for production all relevant documentation present on British's computers and devices. The process for imaging computers and devices that I described in my prior affidavit [ECF Doc. No. 69] should be adopted by the Court so that the preservation of all electronic evidence in this matter is assured.

7. British's production history regarding the Atlantic Lottery Commission ("ALC") confirms my conclusion that CFS is better suited to accurately and reliably preserve and locate the electronic evidence present on British's computers and devices. Counsel for MFT has informed me that British has represented an inability to locate additional communications with the ALC beyond what has already been produced. MFT has attempted to obtain this information directly from the ALC through a Letters Rogatory process. MFT has informed me of their discovery that the ALC believes this requested information is actually in British's possession – contrary to British's document production and representations. If the ALC's information is accurate, then the only way to not only preserve this information, but also to have it produced, is for CFS to image British's computers and devices and then search them for such documentation. MFT has informed me that they have argued that this variety of information directly bears on the claims in this litigation.

8. British has proposed to save costs for imaging by using a computer technician in St. John's, Newfoundland to image the computers and devices instead of having CFS travel to there and perform the work. I am unaware of any individual in Newfoundland who is qualified to perform this imaging. Such qualifications are important because they offer assurance that holder is knowledgeable of and uses the correct tools and processes to perform this important

work. If imaging is performed incorrectly and without the required tools, then the collected evidence will be unreliable for all future analysis. It is important that the person who performs the imaging is qualified in computer forensics, and understands that the improper handling of electronic evidence can create a fatal flaw in the data. Most 'computer technicians' who can be found anywhere are not familiar with computer forensics, and lack the experience and tools required to perform imaging correctly. Collecting electronic evidence outside of the imaging process, or through an improper process, runs the risk of evidence spoliation and could also cause physical harm to the computer or device. If an individual in Canada is to be appointed to perform imaging, and CFS is still to search and analyze the data, then CFS should review that proposed person's qualifications before their appointment, and then also direct their work.

9. I have been informed by counsel for MFT that MFT has offered to front the travel expenses for CFS's staff to travel to British's facilities and complete the necessary imaging. Although MFT would reserve its rights to seek reimbursement of these costs at a later time, if warranted, CFS is amenable to such an arrangement. Time is of the essence when preserving electronic evidence is at issue. Electronic evidence present on computers and devices is ephemeral and continued usage before preservation permits the overwriting of possibly relevant data.

s/ Mark Lanterman
Mark Lanterman

Subscribed and sworn to before me
this 14th day of April, 2011.

/s Benjamin T. Green
Notary Public – Minnesota
My Commission Expires: Jan. 31, 2014