

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

IN RE)
INVESTIGATION OF TIKTOK, INC.)

Case No. 23-0298-IV

2023 MAR -6 AM 8:13
CLERK OF COURT
DAVIDSON COUNTY
NASHVILLE
TENN.

**MOTION FOR AN ORDER COMPELLING TIKTOK, INC. TO COMPLY
WITH THE ATTORNEY GENERAL'S REQUEST FOR INFORMATION**

1. Through this Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information ("Motion to Compel"), the State of Tennessee, Office of the Attorney General and Reporter (the "State" or "Attorney General"), moves this Court to enforce a Request for Information ("RFI") the Attorney General served on TikTok, Inc. ("TikTok") on March 2, 2022.

2. The Attorney General has reason to believe that TikTok engages in unfair and deceptive business acts and practices in connection with the social media platform it makes available to consumers in Tennessee and elsewhere.

3. The Attorney General is investigating TikTok pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA").

4. As part of his investigation into that potential unlawful conduct, the Attorney General served a Request for Information ("RFI") on TikTok on March 2, 2022, as authorized by Tenn. Code Ann. § 47-18-106(a).

5. As explained below and in more detail in the Memorandum in Support of the Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information, TikTok has failed to comply with the RFI.

6. The Attorney General now moves this Court for an order compelling TikTok to fully respond to the RFI and to fulfill its document preservation obligations.

PARTIES

7. Petitioner/movant is the Attorney General and Reporter for the State of Tennessee, Jonathan Skrmetti.

8. The Attorney General is the chief law enforcement officer of the State of Tennessee and is authorized to investigate and bring civil law enforcement proceedings on behalf of the State. *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1990).

9. The Attorney General brings this motion pursuant to his investigative authority under the TCPA. *See* Tenn. Code Ann. §47-18-106(c).

10. Respondent TikTok is a California corporation that is registered with the Secretary of State to do business in Tennessee and does business in and from Tennessee at various locations across the State.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Tenn. Code Ann. § 47-18-106(c).

12. Venue is proper in Davidson County under Tenn. Code Ann. § 47-18-106(c).

BASES FOR MOTION

13. The Attorney General is conducting a confidential investigation into the business practices of TikTok.

14. TikTok operates a popular social media platform that it offers to consumers in Tennessee and elsewhere.

15. The Attorney General has reason to believe that TikTok, in the course of offering and providing its services, has engaged in, is engaging in, or is about to engage in unfair or deceptive acts or practices that violate the TCPA.

16. Tennessee Code Annotated § 47-18-106(a) codifies the Attorney General's authority to issue an RFI – a type of investigative subpoena analogous to an administrative subpoena – whenever he has reason to believe that a person is engaging in, has engaged in, or based upon information received from another law enforcement agency, is about to engage in any act or practice that is unlawful under the TCPA.

17. On March 2, 2022, the Attorney General signed an RFI directed to TikTok, which he caused to be served on TikTok pursuant to Tenn. Code Ann. § 47-18-106(a)(1) that same day. The RFI is duly authorized by law, the Attorney General is authorized to issue it, and it was issued in accordance with the law. *See* Tenn. Code Ann. § 14-18-106(a).

18. The RFI seeks documents and information regarding TikTok's business practices and provision of services to consumers in Tennessee and elsewhere.

19. TikTok has failed to comply with the RFI in multiple respects.

20. First, TikTok has refused to comply with the RFI's clear directive that it preserve documents that are potentially relevant to the Attorney General's investigation.

21. Specifically, nearly a year after the Attorney General served the RFI, TikTok employees retain the ability to delete and permanently destroy internal messages on TikTok's internal Lark platform.

22. As is explained in more detail in the accompanying Memorandum, TikTok's failure to preserve documents violates both the RFI's plain language and well-established legal principles.

23. Through this Motion to Compel, the State asks the Court to order TikTok to preserve documents, disable any relevant document deletion features or capabilities, and to take measures to recover any potentially relevant documents that have been deleted since TikTok had an obligation to preserve documents related to this investigation.

24. Separately, TikTok has also failed to comply with the RFI by not producing internal messages sent on its Lark platform in an appropriate and reasonably useable format.

25. Indeed, the manner in which TikTok has produced messages from its Lark platform render them unrecognizable and nearly incomprehensible. This hampers the Attorney General's ability to use these communications in several respects, such as in the context of TikTok witness interviews or a judicial proceeding.

26. This Motion to Compel requests that the Court order TikTok to come into compliance with the RFI by producing internal Lark messages in a more reasonably useable format.

27. As additional relief, the Attorney General requests that the Court order TikTok to produce a corporate representative for examination on issues relating to document retention and integrity, the Lark platform, and the company's communications policies and practices. This will allow the Attorney General to assess the impact that TikTok's adoption and use of its Lark platform may have had on its ability to respond fully to this government investigation.

28. Additionally, while the parties are continuing to work collaboratively to resolve issues that are not yet ripe, the Attorney General is concerned with the pace of TikTok's efforts and the completeness of TikTok's production.

29. The Attorney General therefore requests that this Court (or a Court-appointed special master) convene regularly scheduled status conferences regarding TikTok's compliance with the RFI until TikTok fully discharges its obligations under Tennessee law.

30. Finally, the State moves the Court to permit the State to file certain documents under seal that TikTok has designated as confidential.

31. The State's Memorandum of Law in support of this Motion cites certain documents that TikTok has designated as "confidential" under the Parties' Confidentiality Agreement (the "Designated Documents"). Without taking a position as to whether those documents are, in fact, confidential, the State moves for permission to file the Designated Documents and all quotations thereof under a conditional seal, so the Court can consider those materials *in camera* prior to the hearing on this Motion. Once the conditional seal is in place, the burden would be on TikTok to show that its interest in maintaining the Designated Documents' confidentiality "overcome[s] the presumption in favor of disclosure." Davidson County Local Rule 7.02 (citing *Ballard v. Herzke*, 925 S.W. 652 (Tenn. 1996)).

32. On March 2, 2023, the Attorney General's Office provided notice to TikTok that it intended to file this Motion under Tenn. Code. Ann. § 47-18-106(c).

33. The bases for the relief the Attorney General seeks through this Motion to Compel are more fully articulated in the accompanying Memorandum of Law, which is being filed concurrently herewith.

34. This investigation should not be delayed further. TikTok should be compelled to fully, completely, and appropriately respond to the RFI at once.

PRAYER FOR RELIEF

For the reasons stated herein and in the Memorandum of Law filed concurrently with this Motion to Compel, Petitioner/Movant, State of Tennessee, pursuant to Tenn. Code Ann. § 47-18-106(c) and this Court's own equitable powers, requests that this Court:

A. Issue an order compelling TikTok to:

1. Preserve potentially relevant internal messages on the Lark platform;
2. Disable any document-deletion features that undermine TikTok's preservation obligations; and
3. Make good faith efforts to recover and produce any relevant materials that may have been deleted from the Lark platform (or otherwise) since TikTok's preservation obligations were triggered.

B. Order TikTok to produce a corporate representative for sworn examination on issues relating to the Lark platform and the company's communications policies and practices.

The issues for which sworn testimony would be appropriate include, without limitation:

1. The company's adoption and implementation of the Lark system that offers users document-destruction functionalities and may limit effective extraction of company communications and documents for purposes of complying with government investigations;
2. The extent to which the company has employed Lark's document-destruction functionalities to delete documents and/or communications relating to this investigation, during the course of this investigation, and potentially to hinder the Attorney General's investigative efforts;

3. The company's ability to produce clear and usable documents and related metadata and information from its Lark platform;

4. The company's policies and instructions relating to communications or collaboration systems and document retention;

5. The implementation of measures to preserve documents in connection with this or any related investigation; and

6. The company's response to any internal audits or reports regarding its policies and practices relating to document preservation and/or document integrity, including any reports or audits regarding risks associated with the company's use of, and reliance, on the Lark platform.

C. Issue an order compelling TikTok to produce its internal Lark messages in a more appropriate and reasonably useable format.


D. Schedule recurring conferences regarding TikTok's compliance with the RFI and Tennessee law, beginning two weeks after an Order is entered.

E. Tax all costs against the TikTok, as no costs may be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116.

F. Grant the State such other and further relief as this Court deems just and proper.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter
B.P.R. No. 031551



MATTHEW JANSSEN, B.P.R. No. 035451

Senior Assistant Attorney General

JEFFREY HILL, B.P.R. No. 016731

Executive Counsel

BRIAN PHELPS, B.P.R. No. 040705

Assistant Attorney General

CHRISTOPHER DUNBAR, B.P.R. No.
37829

Assistant Attorney General

Office of the Tennessee Attorney General

Public Protection Section

Consumer Protection Division

UBS Tower, 20th Floor

315 Deaderick Street

Nashville, Tennessee 37243

615.741.3533, phone

615.532.2590, fax

matthew.janssen@ag.tn.gov

jeff.hill@ag.tn.gov

chris.dunbar@ag.tn.gov

brian.phelps@ag.tn.gov

Attorneys for State of Tennessee

NOTICE OF HEARING

THIS MOTION SHALL BE HEARD ON FRIDAY, THE 24TH DAY OF MARCH 2023, AT 9:00 A.M. IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE, AT NASHVILLE METROPOLITAN COURTHOUSE, 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE TO THE MOTION WILL RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.

CERTIFICATE OF SERVICE

I, Matthew D. Janssen, hereby certify that I caused a copy of the foregoing to be served upon the following by hand delivery or electronic mail:

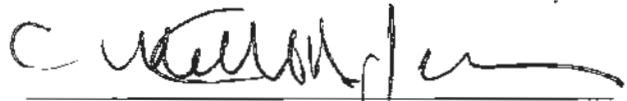
TikTok, Inc.
Corporation Service Company
2908 Poston Avenue
Nashville, Tennessee 37203-1312
Via Hand-Delivery

Ashley Anguas Nyquist, Esq.
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
Via E-Mail: anyquist@cov.com

Daniel R. Suvor, Esq.
Jonathan P. Schneller, Esq.
Jonathan C. Le, Esq.
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071
*Via E-Mail: dsuvor@omm.com
jschneller@omm.com
jle@omm.com*

Jeffrey A. N. Kopczynski, Esq.
O'Melveny & Myers LLP
Times Square Tower
7 Times Square
New York, New York 10036
Via E-Mail: jkopczynski@omm.com

This the 6th day of March 2023.



MATTHEW D. JANSSEN B.P.R. No. 035451
Senior Assistant Attorney General