

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BAKHTIARI CORPORATION, et. al.,)	Case No.: 12-5183 LHK (PSG)
)	
Plaintiffs,)	ORDER GRANTING-IN-PART MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE
v.)	
REGISTER TAPES UNLIMITED INC., et. al.)	
)	
Defendants.)	(Re: Docket No. 15)

Plaintiff Bakhtiari Corporation, et. al. (“Bakhtiari”) moves to compel further responses to their first set of requests for productions (“RFPs”). Defendant Register Tapes Unlimited, Inc., et. al. (“RTU”) opposes. On May 7, 2013, the parties appeared for hearing. Having considered the arguments of counsel, the court GRANTS-IN-PART Bakhtiari’s motion to compel. The court sets forth its specific rulings and reasoning below.

The parties are familiar with the factual background, and so the court provides only a brief account of the facts relevant to the instant motion.

A division of RTU known as “Cartvertising” contracts with grocery store chains in California to place advertisements on their grocery carts. Cartvertising then sells the advertising to local businesses. Cartvertising often uses third-party contractors to install the advertisements in stores.

1 Bakhtiari is an automobile dealership sales group. RTU approached Bakhtiari to purchase
2 grocery store shopping cart advertising through Cartvertising. RTU allegedly represented to
3 Bakhtiari that it would have exclusive advertising in any store chosen, and that shopping cart
4 advertising generally increased average sales of the marketed product by 12.6%. Bakhtiari agreed
5 to purchase advertising from RTU in a number of stores in the general geographic area of the
6 automobile dealerships.

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8 Bakhtiari eventually became dissatisfied with the results, alleging RTU did not install
9 purchased advertising in a reasonable and timely fashion, did not actually install advertising in the
10 stores chosen by Bakhtiari, and did not provide exclusive coverage in the stores where advertising
11 was placed. Bakhtiari sued RTU for breach of contract, fraud, negligent misrepresentation, and
12 restitution based on unjust enrichment.¹

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14 On September 24, 2012, Bakhtiari served its first set of RFPs. On November 26, 2012,
15 RTU served its responses. The parties met and conferred regarding the adequacy of the responses
16 well into December 2012. Bakhtiari then decided to try to obtain certain requested documents by
17 subpoenaing the installers hired by RTU instead. Of the four installers, only one has forwarded
18 documents through RTU, one has passed away, one stated he lost his computer records associated
19 with the proceeding, and one has not responded at all. Bakhtiari now seeks to compel further
20 responses to the first set of RFPs.

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22 As a preliminary matter, the court notes that RTU asserted attorney-client privilege and the
23 work-product doctrine in response to several RFPs, including several that do not appear to be
24 related to documents or communications involving an attorney. Although RTU has since
25 acknowledged that the attorney-client privilege only applies to communications between an
26 attorney and his client, RTU should take care not to overclaim these privileges and adhere to

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¹ See Docket No. 1.

1 Federal Rules of Evidence 502, which defines “attorney-client privilege” as pertaining to
2 “confidential attorney-client communications,” and “work-product” as “tangible material (or its
3 intangible equivalent) prepared in anticipation of litigation for trial.” If RTU claims privilege, it
4 must provide a privilege log documenting which documents are withheld and describing “the
5 nature of the documents, communications, or tangible things not produced or disclosed—and do so
6 in a manner that, without revealing information itself privileged or protected, will enable other
7 parties to assess the claim.”²

8
9 In general, Bakhtiari argues that relevant documents have not yet been produced, while
10 RTU counters that it has provided all responsive documents in its possession, excluding certain
11 privileged or irrelevant documents. The court cannot compel documents that RTU does not have.
12 However, if RTU maintains that it does not have further responsive documents for any of the
13 categories of documents, it shall verify that it has conducted a diligent search and is unable to
14 locate further responsive documents as defined in this order. The court further elaborates on each
15 category of documents below.³

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17 **A. RFPs 5-8: Attachments and exhibits to the contract between RTU and Plaintiffs**

18 RTU maintains that all responsive documents have been produced, so it shall verify that
19 this is true.
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25 ² Fed. Civ. R. P. 26(b)(5)(A)(ii).

26 ³ The court considers only the RFPs specifically discussed in the briefs. Although Bakhtiari asserts
27 that RTU promised to produce the remaining RFPs, and should be held to that promise, the court
28 does not have the necessary information to determine if RTU has complied or if the RFPs are
proper. These RFPs therefore will not be considered in the instant motion. Nevertheless, RTU
should respond to these RFPs with diligence and the parties are encouraged to cooperate in
coordinating the production.

1 **E. RFPs 52-54, 59: Employee handbooks, training manuals, or instructional material**
2 **provided to employees charged with advertising sales, installation of advertising, or**
3 **Order and Entry and Deal Processing Procedures**

4 These documents are relevant because they are direct evidence of the instructions given to
5 installing agents and the practice of those agents. RTU argues the request is overbroad because
6 there are no limitations as to scope. RTU is correct. Therefore, the scope shall be limited to
7 grocery cart advertising in California only.

8 **F. RFP 80: Contracts, reports, correspondence, installation reports, and documents**
9 **between RTU and any other third-party car dealership relating to grocery cart**
10 **advertising services sold between September 2010 and February 2011**

11 Documents of this nature relating to the stores that Bakhtiari contracted for would certainly
12 be relevant, but documents regarding other stores would not. The court finds it appropriate to
13 limit this request to the stores covered by the contract between Bakhtiari and RTU only.

14 **G. RFPs 82-83: Better Business Bureau rating and communications between RTU and**
15 **Better Business Bureau; RFP 84: All emails or correspondence with third parties**
16 **regarding RTU's failure to comply with contracts for grocery cart advertising**

17 This information is relevant to the issue of RTU's knowledge of complaints regarding
18 similar claims of not adhering to contracts for grocery cart advertising, which Bakhtiari plans to
19 use to rebut RTU's claim of a "good faith mistake." The documents shall be produced.

20 **H. RFPs 85-86: Profits and loss and supporting documents of Cartvertising for fiscal year**
21 **2010**

22 This is relevant to the issue of punitive damages, which Bakhtiari seeks in its complaint, so
23 it must be produced. The attorney-client privilege and work-product doctrine claimed by RTU do
24 not apply.

25 **I. RFPs 87-90: Any documents establishing advertising was sold to other third parties at**
26 **the same time and location as for Plaintiffs**

27 These documents are relevant to the issue of RTU's alleged breach of contract. The
28 attorney-client privilege and work-product doctrine claimed by RTU do not apply.

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J. RFP 92: Document Retention Policy for 2011

There is good cause to compel production of RTU’s 2011 document retention policy because of RTU’s alleged failure to locate several sets of documents, which is the subject of the instant motion to compel. The attorney-client privilege and/or work-product doctrine claimed by RTU do not apply.

K. RFPs 104-106: Documents showing all ownership interests in RTU, Avenue Advertising, and Cartvertising

Bakhtiari has sued RTU, a corporation, and Avenue Advertising dba Cartvertising, which it alleges is a wholly-owned subsidiary of RTU. No individuals have been named. The fact that RTU is sued as a corporation ordinarily shields its shareholders from liability, and so the ownership interests are ordinarily irrelevant. Bakhtiari alleges no theory in its complaint as to why individual owners would be liable. Although Bakhtiari now argues that the owners may have acted fraudulently on behalf of the corporation, Bakhtiari’s unsupported speculation that shareholders not named in the suit may also be individually liable as agents is not enough to expose the identity of all shareholders of the corporation.

RTU shall comply with this order no later than June 7, 2013.

IT IS SO ORDERED.

Dated: May 22, 2013



PAUL S. GREWAL
United States Magistrate Judge