

The Honorable Chief Judge Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

COINLAB, INC., a Delaware Corporation

Plaintiff,

v.

MT. GOX KK, a Japanese corporation and
TIBANNE KK, a Japanese corporation.

Defendants.

Case No. 2:13-cv-00777-MJP

MOTION TO COMPEL

NOTE FOR MOTION:
April 4, 2014

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Plaintiff Coinlab, Inc. (“Coinlab”) moves this Court to compel Defendant Tibanne KK (“Tibanne”) to produce its CEO and sole owner, Mark Karpeles, for his previously noted deposition and to produce documents received pursuant to subpoenas to certain third parties.

FACTS

This case is a breach of contract dispute arising out of Defendants’ agreement that Plaintiff CoinLab would be the exclusive licensee for Defendants’ bitcoin-exchange services in North America. See Exhibit A to First Amended Complaint (Dkt. # 29-01). On March 10, Defendant Mt. Gox KK (“Mt. Gox”) filed for recognition and relief and under Chapter 15 of the United States Bankruptcy Code in the United States Bankruptcy Court for the

1 Northern District of Texas. Accordingly, this action is stayed against Mt. Gox. *See* Dkt.
2 No. 35. In the United States Bankruptcy Court for the Northern District of Texas, Mt. Gox
3 requested that the Court stay litigation against Tibanne, which was denied. Declaration of
4 Roger Townsend at ¶ 2. Similarly, in litigation against Mt. Gox and Tibanne in the Northern
5 District of Illinois, Defendants' request for a bankruptcy stay of the litigation against
6 Tibanne (and Mark Karpeles personally) was denied. *See* Exhibit 1 to Townsend
7 Declaration. Despite consistently losing the argument, counsel for Plaintiffs and Defendants
8 met and conferred regarding the deposition of Mr. Karpeles and outstanding discovery
9 requests on Friday, March 14, and counsel for Defendants again took the position that the
10 litigation against Tibanne in this district should be stayed. Declaration of Roger Townsend
11 at ¶ 3; *see also* Dkt #37. To the contrary, this Court should follow the precedent of the
12 Northern District of Illinois and the Northern District of Texas and rule that the suit is
13 ongoing with respect to Tibanne, Mt. Gox's parent company, and the deposition of Mr.
14 Karpeles should go forward.

15 **1. Tibanne has acknowledged it will not produce Mr. Karpeles at the agreed**
16 **time and location of his deposition.**

17 On February 28, 2014, Coinlab issued a notice of deposition for Mark Karpeles. *See*
18 Exhibit 2 to Townsend Declaration. Mr. Karpeles is the founder, CEO, and sole owner of
19 Defendant Tibanne. Pursuant to an agreement between the parties, Mr. Karpeles'
20 individual deposition was scheduled for March 25 and 26, 2014 in Taipei, Taiwan at the
21 offices of defense counsel. On February 28, following service of the deposition notice,
22 Plaintiff's counsel contacted counsel for Mt. Gox and Tibanne to confirm the previously-
23 agreed deposition schedule.

24 Defendants' counsel stated he would respond the following week. On Tuesday,
25 March 4, having received no response, Plaintiff's counsel again sought an update confirming
26 that the deposition would proceed. Defendants' counsel again delayed, attributing the delay
27 to Mt. Gox's Japanese bankruptcy proceedings and stating that counsel would endeavor to
respond to this simple inquiry "in the next day or 2." On March 7, following yet another

1 request for update from Plaintiff's counsel, Defendants' counsel stated, "I think it is highly
2 unlikely that the [sic] Mark's depo will go forward in light of the bankruptcy. I would not
3 make plane reservations. I expect to have more info on Monday [March 10]." Apologizing
4 for the delay, counsel added "as you can hopefully understand, there is now a new layer of
5 complexity in light of the bankruptcy." This email exchange is attached hereto as Exhibit 3
6 to the Declaration of Roger Townsend.

7 On March 10, having received no update from Defendants' counsel, Plaintiff's
8 counsel again attempted to get an update on the deposition, this time calling to confirm that
9 discovery is proceeding against Tibanne in light of the rulings which explicitly declined to
10 stay the litigation against either Tibanne or Mr. Karpeles. Defendants' counsel did not
11 return the call nor respond to the voicemail left by Plaintiff's counsel. The following day,
12 Plaintiff's counsel followed up on that voicemail with an email reiterating Plaintiff's desire
13 and need to move forward with discovery and requesting a meet-and-confer pursuant to Rule
14 37. See Exhibit 4 to Townsend Declaration. That message received no response, and the
15 following day, Plaintiff's counsel sent an email confirming the March 25 and 26 deposition
16 dates. See Exhibit 5 to Townsend Declaration. Counsel met and conferred on March 14
17 and were unable to reach an agreement regarding the deposition of Mr. Karpeles.

18 **2. Tibanne has failed to produce documents as required by Coinlab's Request
19 for Production No. 2.**

20 Pursuant to Request No. 2 of Coinlab's First Request for Production of Documents,
21 Tibanne is required to forward all documents received in response to any third-party
22 subpoena. On March 6, Defendants' counsel confirmed that it received documents from
23 ProCo Global, Inc. d/b/a Chartwell Compliance and from Meracord LLC. In spite of two
24 pointed requests from Plaintiff's counsel, Tibanne has not produced these documents, nor
25 has it provided any response or update since March 6, 2014. See Exhibit 6 to Townsend
26 Declaration.

27 **CONCLUSION**

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Based on the facts set forth above, Coinlab respectfully requests an order compelling Tibanne to:

- (1) Present Mark Karpeles for his deposition in Taipei, Taiwan within ten (10) business days of the Court's order; and
- (2) Produce any and all documents received in response to third-party subpoenas, including but not limited to documents received from ProCo Global, Inc. d/b/a Chartwell Compliance and from Meracord LLC.

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Dated: March 20, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who have registered for electronic notifications, and I caused the foregoing to be served upon the following by email:

Dated: March 20, 2014

By: /s/ Kristin M. Malone