

Travelsavers Enters., Inc. v Analog Analytics, Inc.

2015 NY Slip Op 32699(U)

November 30, 2015

Supreme Court, Nassau County

Docket Number: 602696-13

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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**TRAVELSAVERS ENTERPRISES, INC. d/b/a
TRAVELSAVERS PARTNER SERVICES,**

Plaintiff,

-against-

**ANALOG ANALYTICS, INC., KENNETH KALB,
BARCLAYCARD UK, BARCLAYS BANK
DELAWARE, and BARCLAYS PLC,**

Defendants.
-----X

**TRIAL/IAS PART: 14
NASSAU COUNTY**

**Index No. 602696-13
Motion Seq. Nos. 4 and 5
Submission Date: 10/1/15**

Papers Read on these motions:

- Notice of Motion.....X
- Affirmation of Good Faith Efforts.....X
- Gottridge Affirmation in Support and Exhibits.....X
- Rubenson Affirmation in Support.....X
- Memorandum of Law in Support.....X
- Notice of Cross Motion.....X
- Affirmation of Good Faith Efforts and Exhibit.....X
- Affirmation in Opposition/Support and Exhibits.....X
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- Reply Memorandum of Law in Further Support/Opposition.....X

This matter is before the court on 1) the motion filed by Defendants Analog Analytics, Inc. (“AA” or “Analog”), Barclays Bank Delaware and Barclays PLC (“Defendants”) on September 8, 2015,¹ and 2) the cross motion filed by Plaintiff Travelsavers Enterprises, Inc. d/b/a Travelsavers Partner Services (“Travelsavers” or “Plaintiff”) on September 25, 2015, both of which were submitted on October 1, 2015.

¹ The Court previously dismissed the action as asserted against Defendant Kenneth Kalb.

For the reasons set forth below, the Court, 1) with respect to Defendants' motion, a) directs that Defendants need not provide additional responses to Plaintiff's document demands; and b) grants Defendants' motion to compel to the limited extent that the Court directs Plaintiff, on or before December 18, 2015, to the extent that it has not already done so, to provide Defendants with all documents or communications concerning or reflecting any expression by any travel supplier of unhappiness/dissatisfaction with Travelsavers over Analog or the Bigger Better Deal Program and/or reflecting that travel supplier's decision to terminate its relationship with Travelsavers as a result of that unhappiness/dissatisfaction; and 2) denies Plaintiff's cross motion.

BACKGROUND

A. Relief Sought

Defendants move for an Order 1) pursuant to CPLR § 3103(a), denying in their entirety all outstanding requests for the production of documents made by Plaintiff or, in the alternative, requiring Travelsavers to reimburse all costs and expenses sustained by Defendants in connection with searching for, reviewing and producing any additional documents that the Court determines that Defendants should produce to Travelsavers in response to its outstanding requests, including, without limitation, Defendants' attorney's fees; and 2) pursuant to CPLR § 3124, compelling Travelsavers to produce all documents requested by Defendants in their outstanding requests for the production of documents, as set forth in Exhibits 13 and 14 to the Gottridge Affirmation in Support.

Plaintiff cross moves for an Order compelling the production of documents by Defendants.²

B. The Parties' History

The parties' history is set forth in a prior Order ("Prior Order") of the Court dated April 16, 2014 and prior decisions ("Prior Decisions") of the Court and the Court incorporates the Prior Order and Prior Decisions by reference as if set forth in full herein. As noted in the Prior Order, the Complaint alleges that in January 2012 Travelsavers entered into an exclusive ten-year contract with AA ("Agreement"), pursuant to which the parties agreed to work together

² Pursuant to so-ordered Stipulation and Order Authorizing Filing of Confidential Materials Under Seal dated August 25, 2015, September 21, 2015 and September 29, 2015, certain documents filed in connection with this motion and cross motion were filed under seal. The parties have electronically filed their motion and cross motion so that documents that have not been sealed are publicly available.

to advertise and market brand-named travel deals, including luxury ocean cruises and vacation resorts, through electronic and other media directly to consumers. Plaintiff alleges that AA and Kalb, its founder and chief executive, breached the Agreement and, instead of performing, misappropriated Travelsavers' know-how and technology to launch a rival electronic travel offer service through Barclaycard UK which competes with, and undermines the value of, the Travelsavers contract and benefits Barclaycard UK, Barclays Bank Delaware and Barclays PLC (collectively "Barclays").

As noted in the Prior Order, the Complaint contains eight (8) causes of action: 1) against AA for breach of the Agreement by virtue, *inter alia*, of its failure to cooperate to develop direct reservation capability, delay in launching the Agreement and failure to promote and distribute travel offers submitted to the Syndication Network online portal by Travelsavers, 2) against AA for the breach of good faith and fair dealing by making false representations and entering into a long-term exclusive joint venture when it knew that it did not have the ability or intention to abide by the Agreement, 3) against Barclays for tortious interference with contract by causing AA to divert its resources and personnel away from implementation and execution of the Agreement to develop Bespoke Offers, a competing platform, 4) against AA and Kalb for fraudulent inducement by making material representations to Plaintiff during the negotiations leading to the execution of the Agreement, 5) against Barclays under the theory of unjust enrichment by virtue of Barclays diverting AA personnel and resources, and obtaining Plaintiffs' trade secret proprietary information that Plaintiff had shared with AA, 6) against all Defendants for misappropriation of Plaintiff's trade secrets, which AA improperly induced Plaintiff to share under the false pretense that AA was bound by the Agreement, 7) against AA for unfair competition, and 8) against all Defendants for punitive damages and attorney's fees. Pursuant to the Prior Order and the Prior Decision dated July 18, 2014, the Court 1) dismissed the Complaint as asserted against Kenneth Kalb; and 2) dismissed the second, fourth, fifth, sixth, seventh and eighth causes of action in the Complaint as asserted against the Company Defendants, and held that, with respect to the first cause of action alleging breach of the Agreement, Plaintiff's claim for damages is limited, pursuant to the Agreement's limitation of liability clause, to what AA was actually paid under the Agreement.

In support of Defendants' motion now before the Court, counsel for Defendants ("Defendants' Counsel") affirms that 1) the Company Defendants' motion for a protective order concerns Travelsavers' requests for a) documents and communications created between July 1, 2012 and October 1, 2013 "that concerned Barclays' valuation and use of" AA (*see* August 12, 2015 letter, Ex. 8 to Gottridge Aff. in Supp.), and b) documents and communications, from the period July 1, 2011 through October 1, 2013, concerning "Barclays' contracts and other efforts to source travel offers for its Bespoke system and/or other digital offers system[s]" (*see* Ex. 8 to Gottridge Aff. in Supp. and August 11, 2015 letter, Ex. 7 to Gottridge Aff. in Supp. at ¶¶ 6-9); and 2) the Company Defendants' motion to compel the production of documents concerning Defendants' requests for the documents specified in the July 28 and August 7, 2015 letters from Defendants' Counsel to counsel for Plaintiff ("Plaintiff's Counsel") (Exs. 13 and 14 to Gottridge Aff. in Supp.).

Defendants' Counsel affirms that discovery in this action is almost completed. He affirms that, subject to the issues raised in these motions, all document production has been completed in this case; Plaintiff has deposed six (6) witnesses and the depositions of the remaining two (2) depositions have been scheduled; Defendants have examined seven (7) witnesses and will conclude the deposition of one of those witnesses shortly; and Defendants have scheduled the depositions of two (2) non-party witnesses. In response to Travelsavers' CPLR § 3120 requests, served or on about August 20, 2014, as well as a series of follow-up letters, Defendants have produced over 23,000 documents, comprising over 128,000 pages. That production has included numerous documents from AA which is based in California, Barclays Bank Delaware and subsidiaries of Barclays PLC in the United Kingdom ("UK"). Defendants' Counsel affirms that most of Defendants' production was completed by the end of March 2015, by which time Defendants had produced over 100,000 pages of documents, "including all responsive, non-privileged documents in Defendants' possession, custody or control relating to Travelsavers or the Agreement that could be located after diligent search" (Gottridge Aff. in Supp. at ¶ 28).

Defendants' Counsel affirms that, following a June 9, 2015 conference before the Court, he and Plaintiff's Counsel discussed, but could not agree on, a narrowed list of search terms that

might be applied to the database of Barclays' documents to locate documents potentially relevant to the issue of Barclays' intent with respect to the ongoing U.S. "daily deal" business of AA (Gottridge Aff. in Supp. at ¶ 29), which Barclays Bank Delaware acquired on May 22, 2012. Notwithstanding counsel's inability to reach an agreement, Defendants' Counsel applied 32 search term strings, including five (5) suggested by Plaintiff's Counsel, to a database of Barclays documents for the period through May 2012. As a result, Defendants produced to Plaintiff an additional 2,600 documents, comprising over 16,000 pages, including documents "illuminating Barclays' plans and intent in acquiring Analog and what Barclays intended to do with that business post-acquisition" (Gottridge Aff. in Supp. at ¶ 29). Defendants provide copies of three (3) of the documents produced (Exs. 30-32 to Gottridge Aff. in Supp.) which are: 1) a December 1, 2011 email from Eduardo Vergara ("Vergara"), then-CEO of Barclays Business Solutions, answering questions regarding the acquisition and plans for Analog's existing U.S. business after the acquisition, 2) a valuation of Analog prepared by a member of the Barclaycard acquisition team that includes projected increases in Analog's existing U.S. business after the acquisition, and 3) a March 26, 2012 email from Nikki Edwards, Barclaycard Senior Internal Communications Manager, to Ken Kalb, then-CEO of Analog and copying Vergara, listing key messages for an upcoming call with Analog employees regarding the acquisition, including in relation to Analog's existing U.S. business after the acquisition. Defendants' Counsel affirms that Defendants recently extended the time period for which they are running such searches through June 20, 2012.

Defendants' Counsel submits that these documents reflect that the Agreement was placed in the electronic "deal room" (Gottridge Aff. in Supp. at ¶ 30) for Barclays Bank Delaware's acquisition of Analog no later than January 27, 2012. In support, Defendants provide a copy of an email dated January 28, 2012 (Ex. 33 to Gottridge Aff. in Supp.) reflecting that the signed Agreement had been placed in the electronic deal room by January 27, 2012. Defendants submit that there is no evidence in the documents, and has been no testimony at any depositions, that anyone at Barclays had the intent to cause a breach of, or interfere with, the Agreement. Moreover, in the period between execution of the agreement for Barclays Bank Delaware to acquire Analog and the closing of that transaction, members of the Barclays acquisition team approved an amendment to the Agreement, which is reflected in an April 17, 2012 email

provided (Ex. 34 to Gottridge Aff. in Supp.). Documents produced by Defendants also establish that the Analog “daily deals” business in the U.S. continued to operate long after the acquisition of Analog (*see, e.g.*, Exs. 35 and 36 to Gottridge Aff. in Supp.). In addition, minutes of the December 18, 2013 meeting of the Barclays Bank Delaware Board of Director (Ex. 37 to Gottridge Aff. in Supp.) reflect that the Board of Directors only decided to close the ongoing U.S. daily deals business of Analog in December 2013.

Defendants’ Counsel affirms that requiring Defendants to produce additional electronic discovery, in response to Travelsavers’ requests that are the subject of Defendants’ motion for a protective order, would result in Defendants incurring a significant additional burden and expense. Defendants estimate that, applying the 32 search term strings that Defendants previously agreed to run on data for approximately 16 custodians for the period July 1, 2012 through October 1, 2013 would require review of approximately 36,000 additional documents. In addition, complying with Travelsavers’ separate requests for documents and communications regarding Barclaycard’s efforts to source travel offers over the period July 1, 2011 through October 1, 2013 using “travel-related” search terms previously suggested by Plaintiff (Gottridge Aff. in Supp. at ¶ 33) would require review of an estimated 54,000 more documents of 12 custodians. In all, an estimated 90,000 additional documents would have to be reviewed to comply with Plaintiff’s outstanding requests.

With respect to Defendants’ motion to compel, Defendants’ Counsel affirms that Plaintiff has failed to produce documents “critical to the defense of this action” (Gottridge Aff. in Supp. at ¶ 34) and requests an Order requiring Travelsavers to produce documents specified in Defendants’ July 28 and August 7, 2015 letters to Plaintiff’s Counsel (Exs. 13 and 14 to Gottridge Aff. in Supp.), which Defendants requested nearly one year ago. On September 24, 2014, Defendants served their First Request for Production of Documents (Ex. 10 to Gottridge Aff. in Supp.) which included Request Numbers 7, and 18-22 which requested: 1) documents and communications between Travelsavers and any of its travel suppliers concerning Analog, the TS Agreement, or any Deal or Offer, 2) documents and communications concerning the “direct out-of-pocket reliance costs” referred to in paragraph 61 of the Complaint, 3) documents and communications concerning any “disrupt[ion] of Travelsavers’ business relationships” with “licensee travel agents and travel providers” as referred to in paragraph 62 of the Complaint, 4) documents and communications concerning the “lost opportunity costs” referred to in paragraph

63 of the Complaint, and 5) documents and communications concerning any type, category or amount of damages sustained by Travelsavers as a result of Analog's alleged breach of the Agreement or Barclays' alleged tortious interference with Analog's performance of the Agreement.

Defendants' Counsel affirms that Plaintiff has produced some documents in response to Defendants' requests, but those documents consist mainly of supplier contracts, financial statements and "made-for litigation documents containing Travelsavers' self-serving damages figures" (Gottridge Aff. in Supp. at ¶ 36). Defendants submit that Plaintiff has failed to produce documents including, but not limited to, 1) supplier production reports, supplier reports and supplier remittance reports provided to Plaintiff by its travel providers in the ordinary course of business, 2) internal reports or analyses of information contained in such reports, and 3) contracts with travel providers relating to commissions and marketing funds, other than with the six providers "cherry-picked" by Travelsavers (Gottridge Aff. in Supp. at ¶ 36). Defendants set forth Plaintiff's production deficiencies in correspondence dated March 24, 2015 (Ex. 15 to Gottridge Aff. in Supp.) and Plaintiff provided a responsive letter dated May 4, 2015 (Ex. 17 to Gottridge Aff. in Supp.) stating, *inter alia*, that Plaintiff had already agreed to produce, and would produce shortly, 1) documents sufficient to show, quarterly and annually, the commission income and marketing funds payable or paid to Travelsavers by its travel providers for 2011-2014, and 2) Travelsavers' annual financial statements for 2011-2014, including income statements. Defendants' Counsel affirms that Travelsavers still has not produced all responsive documents.

Defendants submit that the deposition testimony of Travelsavers executives establishes that Travelsavers maintains several categories of responsive documents that have not been produced, including but not limited to 1) reports regularly received by Travelsavers from its travel suppliers reflecting commissions and/or marketing funds paid to Travelsavers and 2) Travelsavers' agreements with all travel providers whose business relationships with Travelsavers were allegedly disrupted as a result of the breach of contract and/or tortious interference with contract alleged by Plaintiff. Following the depositions of Travelsavers Chief Financial Officer Curtis Peritz and Chief Marketing Officer Nicole Nazza (transcripts at Exs. 20 and 21 to Gottridge Aff. in Supp.), Defendants sent the July and August 2015 letters to Plaintiff's Counsel, outlining the alleged deficiencies, but Plaintiff have not produced the requested documents. On August 20, 2015, Defendants' Counsel conducted a conference with Plaintiff's

Counsel in an effort to resolve the parties' discovery disputes, at which time Plaintiff's Counsel advised Defendants' Counsel that Plaintiff would make a rolling production of certain documents requested by Defendants, but that production has not yet occurred.

In his Affirmation of Good Faith Efforts, Defendants' Counsel affirms that, following conferences between counsel to try to resolve the disputes, Plaintiff maintained its position that 1) documents relating to Barclays for the period July 1, 2012 through October 1, 2013, the date of the filing of the Complaint, were relevant to Plaintiff's causes of action for breach of contract and tortious interference, even though the Complaint alleges that the breach and tortious interference had taken place by June 30, 2012; and 2) documents concerning the sourcing and marketing of travel offers for Barclays' Bespoke Offers platform were relevant to the tortious interference cause of action, which Defendants dispute.³ In addition, Defendants' Counsel affirms, Plaintiff did not adequately appreciate Defendants' concerns about the burden and expense involved in the further document production demanded by Plaintiff.

In further support of Defendants' motion for a protective order, Rachel Rubenson ("Rubenson"), an attorney, affirms that she is the Vice President-Global e-Discovery Counsel of a subsidiary of Defendant Barclays PLC, based in New York. Rubenson affirms that she has been a member of the e-Discovery Team at Barclays since September 2012 and is responsible for advising the company on legal issues related to electronic data, including but not limited to the company's obligations with regard to discovery in litigation matters and the market for ediscovery services. In this role, Rubenson participates in the selection and management of vendors who provide processing, hosting and document review services to Barclays. Rubenson, along with other members of Barclays eDiscovery team under her supervision, has overseen the process of collecting, reviewing and producing electronically store information ("ESI") in this action.

Rubenson affirms that Defendants' Counsel has requested collection of the electronic communications data of a number of custodians, as well as collection of non-custodial data sources. As a result, data were collected from servers and hard drives at a number of locations in the U.S. and UK for data ranges specified by Defendants' Counsel. Following collection of data,

³ As noted in a Prior Decision, Plaintiff alleges that Barclays acquired 100% of AA's shares and entered into a license agreement to obtain AA's technology and proprietary information for use in building a competing platform and distribution system by Barclaycard called "Bespoke Offers" (Compl. at ¶ 53).

a number of searches, using search terms devised in conjunction with Defendants' Counsel, were then performed electronically on these data. Documents identified through this process were processed and loaded in an electronic review platform. For documents hosted by a third party eDiscovery provider, Barclays has incurred charges for the processing of these data and continues to incur monthly charges for the hosting of data and licenses for users to access the electronic review platform. Barclays has also incurred expenses for the time spent by the vendor's technical experts setting up the database according to counsel's specifications, managing document workflow and assisting with use of the electronic review platform. Once documents had been loaded into the review platform, the documents were then reviewed for relevance and privilege.

Rubenson affirms that contract attorneys, retained through a third party managed review provider, conducted the initial review of ESI, under the supervision of an associate of Defendants' Counsel. The third party provider billed Defendants hourly for the work of those contract attorneys, as well as a project manager who supervises the review team and provides workflow support to the document review process. The vendor project manager and associates of Defendants' Counsel conducted subsequent levels of review, and Defendants' Counsel has conducted all privilege review. To date, Defendants have reviewed over 150,000 documents for possible production to Plaintiff, and have produced more than 23,000 documents comprising approximately 128,000 pages. The contract attorneys and associates of Defendants' Counsel have spent over 4,000 hours reviewing documents, which does not include time spent by Defendants' Counsel investigating the identity of potentially relevant custodians or testing search terms and negotiating them with Plaintiff's Counsel.

Rubenson affirms that, by the June 9, 2015 conference held before the Court, Defendants had sustained costs of approximately \$350,000 in connection with document review and production. The supplementation of previous productions, using the 32 search term strings referred to in Defendants' Counsel's affirmation in support, involved the review of approximately 10,400 additional documents and the production of approximately 2,600 documents totaling over 16,000 pages. The costs of this supplemental production exceeded \$100,000 and included the "significant amount of privilege review required for acquisition-related documents" (Rubenson Aff. in Supp. at ¶ 12). Moreover, Rubenson affirms, the cost of production of these documents will rise because Defendants are still completing their privilege

review of those documents to determine what, if anything, can be produced in redacted form. In addition, Defendants recently agreed to run the same 32 search term strings on the data for the relevant custodians through June 2012, which will create an added expense. Rubenson estimates that if Defendants are required to search for and produce relevant documents from a data of approximately 90,000 additional documents, it would cost \$250,000 in charges from the eDiscovery vendors and require 3,000 hours of first-level document review by contract attorneys.

In opposition to the motion and in support of Plaintiff's cross motion, Plaintiff's Counsel submits that Defendants' motion is moot because Plaintiff has already produced, or is producing, the requested documents, and further submits that the remaining demands seek irrelevant documents. Plaintiff's Counsel provides details regarding the manner in which Plaintiff has complied with Defendants' demands (*see* Bowen Aff. in Opp./Supp. at ¶ 5(a) - (i)). Plaintiff suggests that Defendants filed their motion in an effort to divert the Court's attention from Defendants' own failures to comply with their discovery obligations.

Plaintiff submits that Defendants' remaining demands, as set forth in their motion to compel, are objectionable as "irrelevant and vexatious" (Bowen Aff. in Opp./Supp. at ¶ 6). Plaintiff contends that 1) Defendants' demands for supplier production reports, and similar reports, provided to Travelsavers by all of its travel providers for the period 2011-2014 is irrelevant and unduly burdensome to the extent that the request seeks information regarding third-party travel providers that are not included in Travelsavers' theory of damages; and 2) Defendants' demand for all contracts with travel providers relating to commissions or marketing funds is irrelevant and unduly burdensome to the extent that it seeks contracts between Travelsavers and third-party travel providers that are not included in Travelsavers' theory of damages. Plaintiff contends that there is no basis to believe that contracts with third-party providers who had no involvement in the Agreement could be relevant.

In Plaintiff's Affirmation of Good Faith Efforts, Plaintiff's Counsel affirms that, while Defendants produced additional documents following the June 9, 2015 conference, Defendants did not produce categories of documents relevant to Travelsavers' tortious interference claim against Barclays. The attorneys subsequently conferred in an effort to resolve the discovery disputes, and Plaintiff, in an email dated July 10, 2015 (Ex. 1 to Bowen Aff. of Good Faith Efforts) offered to reduce the scope of the documents that it was requesting by approximately half. The attorneys, however, could not reach an agreement on critical issues including the

relevant time frame for production and the production of documents related to Barclays' efforts to obtain travel offers for Bespoke.

Plaintiff's Counsel affirms that on August 11, 2015, Travelsavers sent a letter to Defendants' Counsel requesting that Defendants remedy certain deficiencies in their production, of which Plaintiff became aware during party depositions. Defendants remedied some, but not all, of the defects in response to that letter, and other issues were resolved during a conference call on August 20, 2015. Defendants, however, still refuse to produce documents relating to the "intent" element of Plaintiff's tortious interference claim against Barclays for the period of July 1, 2012 through October 1, 2013, as well as Barclays' efforts to source travel offers for its Bespoke Offers program.

In reply, Defendants' Counsel affirms that, although not mentioned in Plaintiff's motion papers, Defendants produced documents on September 15, 2015 consisting of Barclays "intent" related documents (Gottridge Reply Aff. at ¶ 5) created in 2012 as well as documents produced following a privilege review of intent related documents for earlier periods, through May 31, 2012, which totaled 777 documents.⁴ Defendants submit that all documents that they have been able to locate, following a diligent search, that are responsive to Travelsavers' request for Barclays documents created through June 20, 2012 concerning the "valuation and use" of Analog (Gottridge Reply Aff. at ¶ 5) have been produced.

Defendants submit that Plaintiff, in its cross motion and opposition to Defendants' motion, has presented a "novel theory" (Gottridge Reply Aff. at ¶ 6) regarding the Barclays Defendants' alleged intent to tortiously interfere with the Agreement which focuses on Barclays' alleged concern about the exclusivity provision in the Agreement, Analog's alleged request to renegotiate the Agreement and the Barclays Defendants' alleged desire for that renegotiation and/or conduct causing Analog to seek renegotiation. Defendants' Counsel affirms that Defendants have diligently searched for Barclays documents concerning the Agreement or Travelsavers created from July 2011 through October 1, 2013 which, Defendants submit, necessarily included any documents regarding the exclusivity provision of the Agreement, and that production has been completed. In addition, although Defendants have objected to Travelsavers' request for all of "Barclays' contracts and other efforts to source travel offers for

⁴ Defendants also dispute Travelsavers' representations regarding when Defendants agreed to produce the documents and the reasons for any delay (*see* Gottridge Reply Aff. at n. 1).

its Bespoke Offers system” prior and subsequent to May 2012, Defendants previously produced documents listing all travel-related deals published on the Bespoke Offers platform through October 1, 2013. Defendants’ Counsel disputes Travelsavers’ contention that Defendants have failed to produce reports made to Barclays Bank Delaware about the financial performance of Analog’s business after Analog was acquired and affirms that Defendants have produced documents reflecting Analog’s monthly revenues and profit and loss, as provided to Barclays, for the entire period June 2012-October 2013 (*see* Ex. GG to Gottridge Reply Aff.).

Defendants contend, further, that Travelsavers identified in an interrogatory answer eleven major travel providers with which its business relationships were allegedly disrupted by AA’s breach but has produced no documents as to eight of those eleven. Travelsavers has provided documents regarding six travel providers that it “unilaterally selected” (Gottridge Reply Aff. at ¶ 11), only three of which are among the eleven that it identified in its interrogatory answer. Moreover, Travelsavers has not produced any financial reports for any travel providers and has produced only a few internal documents reflecting the analysis of such reports. In addition, although Travelsavers alleges that two travel providers terminated their relationships with Travelsavers in part as a result of Analog’s conduct, it has not produced any documents concerning those terminations.

C. The Parties’ Positions

Defendants submit that the Court should grant their motion for a protective order because Travelsavers’ outstanding requests seek disclosure of matters that are not relevant to the remaining causes of action, and would impose undue burden and additional expense on Defendants. Defendants contend *inter alia* that 1) Defendants have already produced adequate documentation relevant on the issue of Barclays’ intent to cause Analog to breach the Agreement; 2) the documents recently requested by Travelsavers regarding Barclays’ contracts and other efforts to source travel offers for its Bespoke system and/or other digital offers distribution systems are not relevant to the prosecution of Travelsavers’ claims because they would not logically bear on whether Barclays intended that Analog breach its Agreement with Travelsavers in the U.S. in the spring of 2012; and 3) the Court should deny Travelsavers’ request for further documentation in light of the undue expense that Defendants would incur in connection with such production.

Defendants contend, further, that the Court should grant their motion to compel in light of

Plaintiff's failure to produce requested documents, including documents bearing on Plaintiff's contention that Defendants' conduct adversely affected Plaintiff's relationships with its travel providers and agencies. Plaintiff's alleged deficiencies are outlined, *inter alia*, in correspondence of Defendants' counsel dated July 28, 2015 and August 7, 2015 (Exs. 13 and 14 to Gottridge Aff. in Supp.).

In support of its motion, Plaintiff submits *inter alia* that 1) Defendants has imposed an unreasonably restrictive time frame with respect to its production of documents, and the Court should extend that time frame; 2) Plaintiff is entitled to additional documentation requested but not produced because it bears on the issue of Barclays' intent, including but not limited to AA's reports to Barclays on the state of its financial condition from 2012 through 2013 which are relevant to demonstrate why Barclays decided to terminate the AA business at the end of 2013; and 3) the discovery sought is not unduly burdensome on Defendants.

RULING OF THE COURT

A. Applicable Discovery Principles

CPLR § 3101(a) broadly mandates full disclosure of all matter material and necessary in the prosecution or defense of an action, and this provision is liberally interpreted in favor of disclosure. *Francis v. Securitas Security Services USA, Inc.*, 102 A.D.3d 739, 740 (2d Dept. 2013), citing, *inter alia*, *Kavanaugh v. Ogden Allied Maintenance Corp.*, 92 N.Y.2d 952, 954 (1998) and *Allen v. Crowell-Collier Publ. Co.*, 21 N.Y.2d 403, 406 (1968).

The principle of full disclosure, however, does not give the party the right to uncontrolled and unfettered disclosure, and the trial courts have broad power to regulate discovery to prevent abuse. *Gilman & Ciocia, Inc. v. Walsh*, 45 A.D.3d 531 (2d Dept. 2007), quoting *Barouh Eaton Allen Corp. v. International Bus. Machs. Corp.*, 76 A.D.2d 873, 874 (2d Dept. 1980).

B. Application of these Principles to the Instant Action

The Court concludes that Defendants have satisfactorily responded to Plaintiff's demands and, accordingly, directs that Defendants need not provide additional responses to Plaintiff's demands. The Court grants Defendants' motion to compel to the limited extent that the Court directs Plaintiff, on or before December 18, 2015, to the extent that it has not already done so, to provide Defendants with all documents or communications concerning or reflecting any expression by any travel supplier of unhappiness/dissatisfaction with Travelsavers over Analog or the Bigger Better Deal Program and/or reflecting that travel supplier's decision to terminate its

relationship with Travelsavers as a result of that unhappiness/dissatisfaction. This information is relevant to Plaintiff's allegations, as set forth in paragraph 62 of the Complaint, that Travelsavers' business relationships with its licensee travel agents and travel providers were "disrupted by Defendants' allegedly improper conduct" and that Defendants' conduct has "severely impaired Travelsavers' relationship with major travel providers." The Court denies Plaintiff's cross motion based on its conclusion that Defendants have satisfactorily responded to Plaintiff's demands.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a Certification Conference on December 4, 2015 at 11:00 a.m., at which time the Court will hear oral argument with respect to other motions filed in this action.

ENTER

DATED: Mineola, NY

November 30, 2015



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED
DEC 04 2015
NASSAU COUNTY
COUNTY CLERK'S OFFICE