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Jenner & Block Resists 'Anti-Google Agenda' Subpoenas

By **Lisa Ryan**

Law360, New York (June 16, 2015, 7:16 PM ET) -- Jenner & Block LLP and the Motion Picture Association of America Inc. pushed back Monday against Google Inc.'s move to force production of documents that purportedly show Jenner lawyers supporting the Mississippi attorney general's "anti-Google agenda" on behalf of Hollywood anti-piracy interests.

The law firm and association told a D.C. federal judge on Monday that Google argued in its Mississippi case against state Attorney General Jim Hood that the suit involves primarily legal issues. However, Google is "simultaneously pursuing these motions to enforce the wide-ranging and burdensome subpoenas" on third parties Jenner and the MPAA, according to their opposition to the compel motions.

The opposition said Google has tried to justify its subpoenas by asserting that at the heart of the Mississippi suit are Hood's motives for investigating the tech giant — for possibly enabling the online sale of illegal drugs and pirated movies — and that all the documents in the MPAA's and Jenner's possession that somehow relate to Hood or Google are relevant.

"But even if Attorney General Hood's motives are tangentially relevant to the litigation — and they can hardly be more than that, given Google's repeated representations to the Mississippi court that the case largely presents questions of law — it does not follow that the MPAA and Jenner have to empty their files," the opposition said.

Google's case against Hood, filed in December and triggered by the Sony email hack last year, **stalled in recent weeks as parties grappled** over attempts to get Hood, Jenner lawyers and others to turn over documents that Google claims will detail a "retaliatory" investigation meant to bring the company to heel on Hollywood's anti-piracy agenda.

In recent motions to compel compliance with subpoenas, Google counsel from Wilson Sonsini Goodrich & Rosati PC repeatedly **mined Jenner's own attorney-client privilege handbook** to make the case that the firm can't keep communications between Jenner partner Thomas Perrelli, Hood, and others out of discovery under attorney-client privilege.

Google said that Jenner and other subpoenaed parties — which include Hood, Twenty-First Century Fox Inc., Viacom Inc., NBCUniversal Media Inc., the MPAA and advocacy group Digital Citizens Alliance — have resisted answering March subpoenas under various claims of attorney-client, First Amendment and law-enforcement privilege.

Google on June 1 argued in part that courts have rejected attempts to cloak lobbying efforts under the attorney-client privilege, citing Jenner partner David Greenwald's "Handbook for Analyzing Issues Under the Attorney-Client Privilege and the Work Product Doctrine."

The 387-page handbook, last revised in 2011, is available through the firm's privilege

"resource center." It includes a detailed examination of a number of issues at play in the Google-Hood case, including standards for establishing privileged agents and disclosures to government agencies.

Google declined to comment Tuesday.

Representatives for the MPAA and Jenner & Block did not immediately respond to Tuesday requests for comment.

Google is represented by Morris J. Fodeman, Veronica S. Ascarrunz, David H. Kramer and Michael H. Rubin of Wilson Sonsini Goodrich & Rosati PC.

Digital Citizens Alliance is represented by Jonathan S. Massey and Eli J. Kay-Oliphant of Massey & Gail LLP. Jenner & Block is represented in-house by Christopher Tompkins, Norman M. Hirsch and David A. Handzo, who along with the firm's Jeremy M. Creelan also represent the MPAA.

Hood's counsel includes Carolyn G. Anderson and Patricia A. Bloodgood of Zimmerman Reed PLLP and John W. Kitchens of Kitchens Law Firm PA.

The cases are Google Inc. v. Twenty-First Century Fox Inc. et al., case number 1:15-mc-00150, in the U.S. District Court for the Southern District of New York, Google Inc. v. Jenner & Block LLP et al., case number 1:15-mc-00707, in the U.S. District Court for the District of Columbia, and Google Inc. v. Hood, case number 3:14-cv-00981, in the U.S. District Court for the Southern District of Mississippi.

--Additional reporting by Andrew Strickler. Editing by Edrienne Su.

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