

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO

Case No. 08-K-339

RADIO SHED, INC.,
a Colorado Corporation,

Plaintiff,

v.

AMERICAN ELECTRONICS, Inc.,
a Nevada Corporation,

Defendant.

DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Plaintiff Radio Shed, Incorporated (RSI) by and through its attorney of record, Jeff Howell, DU Law Firm, 2255 E. Evans Avenue, Denver, Colorado 80208.

INSTRUCTIONS

1. Pursuant to Rule 34 of the Federal Rules of Civil Procedure (FRCP), Defendant American Electronics, Incorporated (American) submits the following request for production of documents from Plaintiff RSI.
2. Pursuant to FRCP Rule 34(a), Defendant acknowledges that these requests are limited to the scope of FRCP Rule 26(b), and requests that when Plaintiff is unable to produce certain documents because they fall outside of such scope, Plaintiff will provide a brief explanation as to the reason why the documents fall outside the scope of the request.
3. If certain requests are duplicative of previous requests to which documents have already been produced, Plaintiff need not reproduce such documents but is requested to notify Defendant that such documents are among those already produced.
4. Pursuant to FRCP Rule 34(b)(2)(E), Defendant requests that when Plaintiff does produce the requested documents, including electronically stored information (ESI), Plaintiff will produce such documents or ESI as they are kept in the usual course of business or will organize and label them to correspond to the categories in the request.

5. Defendant requests that Plaintiff make a good faith effort to produce any and all requested documents that are readily ascertainable from Plaintiff RSI.

DEFINITIONS

- A. **“Agreement,” “Agreement in dispute,” and “contract”** means the understanding between RSI and American, whether alleged or actual, oral or written, at the root of this civil action, pursuant to which American would supply RSI with 2,000 transmitters for the April 1, 2007 contract between RSI and UPS for 2,000 GMUs.
- B. The words **“any”** and **“all”** shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. Furthermore, the use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.
- C. **“Communication”** and **“communications”** means any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (e-mail), memoranda, documents, writings, or other forms of communications, including but not limited to both oral and written communications.
- D. **“Copies of”** as set forth in the Instructions to this motion means authentic duplicates of the originals as noted, kept, maintained, and organized by Plaintiff in the ordinary course of business.
- E. **“Defendant”** means any and all employees of Defendant corporation American Electronics, Inc. (American).
- F. **“Discussion,” “discussions,” “discuss,” “discusses,” “mention,” “mentions,” “describe,” “describes,” “analyze” or “analyzes”** means any and all inquiries, conferences, conversations, negotiations, agreements or other forms or methods of oral communication or such dialogue sent via e-mail, facsimile, letter, telegram, or other written communication.
- G. **“Document,” “documents,” “ internal communication,” “internal communications,” “record,” “records,” “written communication,” “written communication,”** and **“written correspondence”** means all data, papers, and books, transcriptions, pictures, drawings or diagrams or every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, including written papers or memoranda which summarize oral conversations, whether in your actual or constructive possession or under your control or not, relating to or pertaining to or in any way to the subject matters in connection which it is used and includes originals, all file copies, all other copies, no matter how prepared and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books; records; reports; contracts; agreements;

video, audio and other electronic recordings; memoranda (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities); minutes; diaries; calendars; desk pads; scrapbooks; notes; notebooks; correspondence; drafts; bulletins; electronic mail (e-mail); facsimiles; circulars; forms; pamphlets; notice; statements; journals; postcards; letters; telegrams; publications; inter- and intra- office communications; photocopies; microfilm; maps; drawings; diagrams; sketches; analyses; transcripts; electronically stored information (ESI) and any other documents within defendant's possession, custody or control from which information can be obtained or translated, if necessary, by detection devices into reasonably usable form, i.e. typed in English.

H. **"Electronically stored information"** and **"ESI"** means any Information on operational systems including accounting, financial, distribution, or manufacturing systems; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; Blackberry data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cell phones; IM tools; or USB drives.

I. The words **"or"** and **"and"** shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

J. **"Request,"** and **"Requests"** mean and are limited to the numerical requests set forth in this motion for production of documents.

K. **"RSI,"** **"You,"** and **"Plaintiff"** mean the Plaintiff corporation Radio Shed, Inc. (RSI) bringing this civil action and any and all of its agents, representatives, employees, servants, consultants, contractors, subcontractors, investigators, attorneys, and any other persons or entities acting or purporting to act on behalf of the Plaintiff corporation.

DOCUMENT REQUESTS

1. Any and all written correspondence between RSI and United Parcel Service (UPS) between March 1, 2007 and the present date that relate directly to the April 1, 2007 contract between said parties for 2,000 GMUs.
2. Any and all records of oral communication between RSI and UPS between March 1, 2007 and the present date that relate directly to the contract described in Request #1.

3. Any and all internal communication between March 1, 2007 and the present date between any of the following parties: Dana Fitzgerald, Terry Cummings, and Dale Jordan, relating to the UPS contract described in Request #1.
4. Any and all internal communication between any of the following parties: Dana Fitzgerald, Terry Cummings, and Dale Jordan, relating to the agreement with American from April 22, 2007 that involved the 2,000 transmitters for the UPS contract described in Request #1, that are not duplicative of those documents produced pursuant to Request #2.
5. Any and all communication between the sales and/or production departments at RSI and the receiving department at RSI that directly relate to the 2,000 transmitters shipped from American to RSI for the UPS contract described in Request #1.
6. Any and all bills of lading, shipping receipts, inventory lists, and documentation by the RSI receiving department and/or production department that reflect the date, time and recipient at RSI of the delivery of the American shipment of 2,000 transmitters that were shipped pursuant to the April 22, 2007 agreement in dispute.
7. RSI production schedules for the months of July, August, September, and October for the division(s) of the RSI production department that handled or would have handled production and/or assembly of the GMUs for the UPS contract described in Request #1.
8. Any and all written communication between RSI and the third party vendor(s) that was/were contracted to supply transmitters to RSI for the UPS contract described in Request #1, that relates directly to the supply of the 2,000 transmitters that RSI required to fulfill the UPS GMU order in the April 1, 2007 contract.
9. Any and all records of oral communication between RSI and the third party vendor(s) that was/were contracted to supply transmitters to RSI for the UPS contract described in Request #1, that relate directly to the supply of the 2,000 transmitters that RSI required to fulfill the UPS GMU order in the April 1, 2007 contract.
10. Any and all written communication or records of oral communication between RSI employees, dated between July 3, 2007 and the date at which RSI shipped the GMUs to UPS pursuant to the contract described in Request #1, that relate directly to the 2,000 transmitters supplied by third party(ies) to replace the transmitters that were originally shipped by American pursuant to the April 22, 2007 agreement in dispute.
11. Any and all modified agreements/amendments/addendums to the contract between RSI and UPS originally dated April 1, 2007.
12. Any internal records of written or oral communication between or among RSI employees dated between May 1, 2007 and the present date that mention or discuss cessation or interruption of future business with or bid solicitation from American.

13. If not already included among the documents produced pursuant to Requests #1 through 11, copies of any and all documents or records dated April 22, 2007 to the present, that mention, discuss, or describe mistakes and/or errors that American and/or RSI may have made between April 3, 2007 and December 15, 2007 that directly relate to the UPS contract described in Request #1.
14. Any documents, records, or communication between UPS and RSI that mention, discuss, or negotiate damages, fees, mitigation of delays, and staggered delivery dates that relate directly to the 2,000 GMUs ordered by UPS pursuant to the contract described in Request #1.
15. Any internal communication records between and among RSI employees that mention, discuss, or analyze production options to mitigate delays and stagger delivery dates, including any cost/benefit analysis of the options.
16. Any documents or written records generated from or summarizing oral discussions with Kelly Curtis and/or any other American employee between the dates of April 1, 2007 and the present date that relate to the UPS contract described in Request #1, the agreement between RSI and American for the 2,000 transmitters in dispute, or any subsequent business dealings.
17. If not already included, the memorandums between Terry Cummings and Dana Fitzgerald dated April 22, 2007, July 3, 2007, and August 27, 2007, all of which were described in Plaintiff's Response Number 12 to Defendants Interrogatories dated September 25, 2008.

Dated: October 1, 2008

Respectfully submitted,

/s/ Blair Henton

Blair Henton, Esq.
Attorney for Defendant
3600 Las Vegas Boulevard South
Las Vegas, Nevada 89109.