Vermont Superior Court
Filed 10/05/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 26-CV-03907

Office of the Attorney General v. The Kraft Heinz Company

ENTRY REGARDING MOTION

Title: Motion to Enforce Civil Investigative Demand (Motion: 1)
Filer: Alexandra J. Spring
Filed Date: July 13, 2026

A motion hearing shall be scheduled

Plaintiff the Vermont Office of the Attorney General (Attorney General) is conducting a pre-suit investigation of Defendant the Kraft Heinz Company (Kraft) under the Vermont Consumer Protection Act (CPA), 9 V.S.A. §§ 2451–2466d, in connection with which it promulgated a second civil investigatory demand (CID) seeking the extensive production of documents. Following at least some conferral with Kraft, the Attorney General remains dissatisfied with Kraft's response and current prospects for more complete production. It has filed a petition to enforce the CID pursuant to 9 V.S.A. § 2460. In opposition, Kraft asserts that the Attorney General has involved the Court prematurely and instead proposes that the Court dispose of the motion by ordering a reasonable meet-and-confer protocol and require the Attorney General to enter a reasonable confidentiality agreement protecting trade secrets or other confidential information to facilitate production.

The filings so far in the record reveal little, but this much is clear. From the Attorney General's perspective, Kraft is neither reasonably cooperating with its requests nor making reasonable and timely efforts at conferring with the Attorney General to clarify or negotiate those requests. From Kraft's perspective, it has been attempting to cooperate, but the requests are vague, amorphous, and extremely broad, and it is unclear what CPA violations the Attorney General is attempting to investigate, hampering its ability to respond reasonably. It is also clear that one point of contention is that Kraft has been attempting to negotiate a general confidentiality agreement, and the Attorney General flatly refuses to enter into any such agreement; it says it is willing to address any such concerns on a document-by-document basis

only.

The Attorney General's petition does not ask the Court to enforce this or that request, accompanied by some more detailed explanation of what is sought, what has been produced so far, and why that is deficient in relation to what has been sought. Instead, it requests a blanket order requiring complete production in response to all requests by a date certain, without consideration of any more nuanced issues. In short, it seeks to turn its entire CID into an order of the Court, punishable by contempt and serious statutory penalties.

Kraft asks the Court to schedule oral argument on the petition. The Court will do so. However, the Court is not persuaded that the parties have crystalized any specific disputes sufficiently for the Court to address them productively at this point. Accordingly, the parties will be ordered to confer again and report on their progress prior to a hearing. To that end, the Court offers the following observations.

The Attorney General has broad discretion to conduct pre-suit investigations, but that discretion is not completely boundless. To warrant any investigation at all, the Attorney General must have "reason to believe" that the person subject to investigation is or was "in violation of section 2453 of this title, or of any rule or regulation made pursuant to section 2453 of this title." 9 V.S.A. § 2460(a)(1). If such reason to believe exists, the Attorney General may seek records or testimony "bearing upon each alleged violation." *Id*. If a person does not respond to such a request reasonably, the Attorney General can petition the Court for "the enforcement of this section." 9 V.S.A. § 2460(c)(1). Violation of any such order "shall be punished for contempt of court and shall be subject to a civil penalty of not more than $25,000.00 and to recovery by the Attorney General's or State's Attorney's office of the reasonable value of its services and expenses in enforcing compliance with this section." 9 V.S.A. § 2460(c)(3).

This language is clear that there must be some reason to believe that a violation exists, and that violation in turn will inform not only what is being sought but the evaluation of the relevance and breadth of any particular investigatory requests. When the CPA first was adopted, an investigation could be launched whenever the Attorney General "believe[d]" that a violation existed. See *Diamond v. Vickrey*, 134 Vt. 585, 589 (1976). The required conviction in that belief was later elevated to "probable cause to believe." *Id*. That language was not amended to its current form—"reason to believe"—until 1998. 1997, No. 161 (Adj. Sess), § 25; see

Consumer Protection and the Law § 7:3 (characterizing Vermont's statute as requiring "reasonable grounds" to believe a violation exists). "Reason to believe" presumably sits somewhere between "believes" and having "probable cause to believe."

No matter which formulation of belief is required, the statute always has required that the object of the belief and ensuing investigation is some kind of articulable CPA violation.

The record here is minimal, but as far as it goes, the Court is unable to discern in a useful manner what suspected CPA violation the Attorney General is attempting to investigate. The requests in the CID, on their own, are insufficient to reveal that. The most the current record discloses is what the Attorney General says in its motion:

> The Attorney General's CID sought information concerning Kraft Heinz's practices related to the research, development, and manufacturing of Kraft Heinz products sold in the United States, including to Vermonters. The Attorney General sought to investigate whether and how Kraft Heinz has developed, manufactured, and sold foods known as "ultra-processed foods" and thus issued requests to learn what research, studies, tests, product development strategies, and manufacturing processes the company has employed in developing and manufacturing its products. News reports, scientific studies, and experts in food science have raised concerns that practices related to the development, manufacturing, and sale of ultra-processed foods may be misleading and harmful to consumers and may omit material information, potentially constituting unfair and deceptive acts and practices in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453.

This description of the investigation does not reveal the suspected violation. The thrust is that Kraft might be doing something that may be misleading in violation of the CPA without any articulation of what it might be.

The Court points this out because Kraft expresses the same frustration. Kraft further objects that "ultra-processed" has no technical, regulatory, or industry meaning so this endeavor is amorphous from the outset. While the Court presumes for present purposes that the Attorney General has reason to believe that articulable CPA violations exist, the failure to more clearly articulate them, particularly in light of the far-reaching breadth of several document requests, may well be its own problem in this case. Kraft has the right to have some idea why it is being

investigated, both so it can fairly evaluate its rights and so it can properly respond to the Attorney General's requests while avoiding the undue burden of irrelevant or overbroad requests.

The Court also fails to understand the Attorney General's reluctance to enter into a reasonable confidentiality agreement with Kraft. As far as the record goes, the Attorney General asserts that there is a statutory right to confidentiality, and it will agree to nothing further—it does not say why.

The civil investigation statute provides:

> Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this State for good cause shown, be disclosed to any person other than the authorized agent or representative of the Attorney General or a State's Attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same.

9 V.S.A. § 2460(a)(4).

While this provision speaks to the right, it is completely silent as to mechanics. The Attorney General presumably is investigating because it intends to resolve any provable violations in the public interest whether by agreement of the parties or by filing suit. In either event, a reasonable confidentiality agreement can provide procedural visibility to both parties as to how confidential records, and any disputes about them, will be handled. That visibility presumably would relax any anxiety Kraft may have related to production of such records, and it does not obviously prejudice the Attorney General. Such an agreement would seem to be in both parties' interests and, in the Court's experience, is routine in this type of situation.

The Court also notes that some of the requests in the CID appear, at least on their face, to have potentially staggering breadth. To the extent that the Attorney General is diligently attempting to avoid missing any relevant evidence, it might more productively consider staging its requests so that it can zero in on the relevant while avoiding the irrelevant.

Accordingly, before this case will be set for a hearing:

(1) Within 30 days, the parties shall meet and confer in an effort at resolving any current

disagreement, disputes, or impediments to reasonably responsive production. At a minimum, the conference shall address any needed clarification of the suspected CPA violations, the relevance and breadth of any specific requests that the Attorney General perceives are unsatisfied in the context of those violations and whether they can be narrowed or staged, staging of any future requests, and whether the parties can agree to the terms of a reasonable confidentiality protocol.

(2) Within 15 days thereafter, the parties shall file with a court a joint report of the progress made at the conference and remaining areas of dispute. Each party may supplement that report with its own perspective on those remaining areas of dispute.

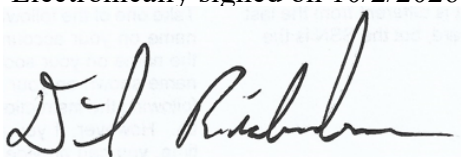
(3) To the extent that the Attorney General continues to seek an enforcement order, within 15 days thereafter, it must specify each document request that remains in issue, why it believes the request is reasonable and how it remains unsatisfied, and the specific terms of the order it seeks to reasonably enforce that request. Kraft may respond within 15 days thereafter.

(4) A hearing then will be set promptly.

(5) The parties may stipulate to more than one such conference and may modify, with agreement, the timing of any of the above requirements.

So Ordered.

Electronically signed on 10/2/2026 12:45 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge