



CASE STUDY

FTI Consulting's Digital Forensics Expertise Exposes Fabricated Evidence, Aids Client in Dismissal of \$280M Counterclaim

Flextronics was countersued by a former business partner and the main evidence for the counter-suit was an email allegedly sent to Flextronics that no one had seen before. Sensing that the key evidence may have been fabricated, Flextronics and their Counsel turned to FTI Consulting's Technology practice for digital forensic expertise.

SITUATION

In 2014, manufacturing company Flextronics International USA Inc., entered into an agreement with at-home beverage system maker Sparkling Drink Systems Innovation Center HK Ltd. (SDS), to partner on the development and manufacture of a pod-based carbonated drink system. Flextronics started work under an initial agreement, with the intention that the parties would sign an interim agreement that would outline more of the terms once progress had been made on the project. In November 2014, an executive at Flextronics sent the interim agreement to SDS via email, while continuing to work under the initial agreement terms until the new contract was finalized. Several months elapsed and the relationship between

Flextronics and SDS soured. In March 2015, an executive at SDS forwarded an email he claimed to have sent to Flextronics in November 2014, with hand-written annotations to the interim agreement. Having no record of receiving the purported email, Flextronics then filed suit against SDS for breach of contract and fraud, among other claims. SDS responded with a \$280M countersuit, and claimed that the email the executive forwarded was authentic.

OUR ROLE

Flextronics faced the burden of proving that the email SDS provided as evidence was in fact falsified. To do this, the company and its counsel from Benesch Friedlander Coplan & Aronoff LLP, engaged FTI to conduct an extensive digital forensic examination of its communications with SDS and demonstrate the resulting complex forensics processes and findings to the court. Given that SDS' primary executive involved was a citizen of Germany, the U.S. courts may not have been able to compel him to turn over his electronic data for forensic examination, limiting FTI's team to evaluation of data from Flextronics and the parties' testimony. During the discovery phase of the case, no parties were able to produce an original copy of the email in question, though, as FTI testified, it should have been discoverable on multiple sources if authentic.

SOLUTION

Flextronics sought help from FTI's digital forensics experts to uncover the communications trail in question between SDS and Flextronics, and leveraged FTI's Trial Services practice to help the experts present the findings and deliver testimony in court. In reviewing the deposition testimony from the SDS executive that claimed to have sent the email, FTI's team found it was impossible for the email to exist in the way the executive claimed it had been created, or in the way the SDS third-party examiner reported that it might have come to be.

Specifically, FTI setup a testing environment comprised of the same email service that the executive had used and then connected numerous different computers, tablets, phones and email applications to the server in order to attempt to recreate a scenario where the email could have been sent. Ultimately, FTI found a smoking gun—in his sworn testimony, the executive explained a series of events that occurred between November 2014, when the alleged email was sent, and March 2015 when he forwarded the email back to Flextronics. These events led the executive to purchase a new computer that used a newer version of Microsoft Office. FTI's testing showed that certain characteristics of the email in question originated from the newer version of Microsoft Office. While some of the characteristics, such as fonts and font colors, could have been manually changed by the executive at the time he sent the message in 2014, FTI found a thread separator between the messages that contained a hexadecimal color code consistent with the newer version of Microsoft Office obtained in 2015. This proved that the executive sent the message from a newer version of Microsoft Office which he did not have at the time the email was alleged to have been sent.

After FTI issued a report calling into question the authenticity of this email, the executive's expert issued a report with a theory that could explain the color difference. FTI rebutted this theory, pointing out inconsistencies between it and the sworn testimony of the executive as well as inconsistencies between the theory and the evidence in question.

FTI's findings and three key conclusions were demonstrated in court, supported by clear and detailed presentations developed in partnership with the Trial Services practice. The joint work across these two groups ensured that FTI's expert witness was fully prepared to deliver complex testimony in an easily understandable way with exhibits demonstrating the findings.

THE RESULTS

Ultimately, FTI's reports and testimony swayed the Judge that the purported email was not authentic. As FTI explained under oath, the email in question should have reached at least eight devices if it was authentic, but it wasn't found on any. Moreover, the formatting of the email was not consistent with the version of Microsoft Office used by the executive at the time the email was purportedly sent in November, 2014—instead, it was consistent with the formatting of the email at the time he forwarded the email in March 2015. Judge Feinerman sanctioned SDS by throwing out their \$280M counterclaim against Flextronics. In his opinion, he stated, "The evidence of fabrication here meets not only the preponderance standard, but also the clear and convincing standard and even the reasonable doubt standard." He also noted that FTI's forensic evidence, "provides unnecessary icing on the cake," and its "well-supported and meticulously reasoned opinions provide extraordinarily compelling technical evidence."

FTI's forensics experts conducted in-depth examination of evidence, issued two forensic reports detailing their findings that the email had been fabricated, rebutted another expert's explanation of the evidence, and provided testimony to the court on how the email was fabricated.

Judge Feinerman ruled in favor of Flextronics, sanctioning the opposition for fabricating evidence by throwing out their \$280M counter-suit.



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