

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MYADVERTISINGPAYS(MAP), LTD.,)	
and Michael E. Deese, individually,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. _____
v.)	
)	Judge _____
TARATALKSTODAY.BLOGSPOT.COM,)	
JANE DOE AND ADDITIONAL)	Magistrate Judge _____
UNKNOWN DEFENDANTS,)	
)	
Defendants.)	

**PLAINTIFF’S MOTION FOR EXPEDITED DISCOVERY IN ADVANCE OF RULE 26
CONFERENCE**

Plaintiffs MYADVERTISINGPAYS (MAP), LTD. (“MAP”) and Michael Deese (“Deese”) (hereinafter collectively referred to as “Plaintiffs”), bring this Motion for Discovery in this action prior to a Rule 26(f) conference, and in support thereof state as follows:

BACKGROUND

This is a diversity action brought in the United States District Court, Northern District of Illinois, Eastern Division, to enjoin the Defendants’, Taratalkstoday.blogspot.com (“TaraTalks”), Jane Doe (“Doe”) and Additional Unknown Defendants (hereinafter collectively referred to as “Doe Defendants”), continuous, defamatory, and libelous statements posted on the blogging website TaraTalks, regarding MAP’s reputation as a company, and Deese’s reputation as a businessman.

MAP functions as an online marketing and advertising company whose business strategy allows website publishers to direct targeted traffic to their respective webpages. In or around April

of 2014, various blogs and unknown online persons, namely the Doe Defendants, began viciously attacking MAP's integrity as a business and the morality of Deese as an executive.

Since April of 2014, the Doe Defendants have continued to defame MAP and Deese, encouraged others to defame MAP and Deese, deterred potential MAP clients and affiliates from joining MAP, and induced existing MAP members to withdraw their affiliation with the company. Because the Defendants hide behind internet user names and blogging sites, it is impossible for the Plaintiffs to know, with certainty, who exactly the Doe Defendants are. Thus, Plaintiffs have been forced to sue these Defendants as TaraTalks, Jane Doe and Additional Unknown Defendants. [The naming of Jane Doe defendants has become common recently, as the rise of electronic commerce has allowed wrongdoers to operate anonymously and to mask their true identity from the victims. *See, e.g., Purzel Video GmbH v. Does 1-108*, 2013 WL 6797369 at *1 (N.D. Ill. 2013).] Plaintiffs bring this Motion for discovery in advance of the discovery conference mandated by Rule 26(d)(1) in order to serve a specific, targeted subpoena on Google, aimed solely at learning the identity of the Doe Defendants. This discovery request is routinely granted in this type of case. *See re FX Audio Software, Inc. v. Does 1-111*, 2013 WL 3867656 at *1 (N.D. Ill. 2013); *Dallas Buyers Club, LLC v. Does 1-28*, 2014 WL 3642163 at *2 (N.D. Ill. 2014).

ARGUMENT

Pursuant to Rule 26(d)(1), except for circumstances not applicable here, absent a court order, a party may not propound discovery in advance of a Rule 26(f) conference. Fed. R. Civ. P. 26(d). A court, however, has the discretion to issue an order allowing pre-conference discovery for good cause shown. *Id.* In cases where the identity of a defendant is unknown absent discovery from a third party, courts have routinely allowed Rule 45 subpoenas to obtain this identifying information when: 1.) the plaintiff makes a prima facie showing of a claim; 2.)

the plaintiff submits a specific discovery request; 3.) there is an absence of alternative means to obtain the subpoenaed information; 4.) there is a central need for the subpoenaed information; and 5.) there is minimal expectation of privacy in the information. *Arista Records, LLC v. Doe* 3, 604 F.3d 110, 119 (2d Cir. 2010); *see also, Hard Drive Prods., Inc. v. Doe*, 892 F. Supp.2d 334, 339 (D.D.C. 2012). All five (5) of these criteria are met in this case.

1. Plaintiffs Have Made a Prima Facie Showing of a Claim

Plaintiffs' Complaint at Law makes a prima facie case for each of the following counts alleged: libel, tortious interference with business relationships, and false light. *See Artista Records, LLC*, 604 F.3d at 119. Under Illinois law, in order for a party to successfully bring a defamation claim they must prove the following: a.) that the Defendant made a false statement about the Plaintiff; b.) that the false statements were published (spoken or written) to a third party; c.) when making the statements, the Defendant either knew the statements were false or had reckless disregard for the truth or falsity of the statements; d.) and the publication damaged the plaintiff's reputation. Plaintiffs' Complaint, along with the attached exhibits, clearly demonstrate that the defamatory statements posted on the TaraTalks blog and Facebook, were published with the intent to damage Plaintiffs' reputations. *See* Plaintiffs' Complaint at Law par. 43-53. The Defendants published the defamatory statements with the knowledge, expectation, and intent that the posts be re-published by the TaraTalks followers. *Id.* Defendants acted maliciously in the publication of the defamatory statements in that such statements were based on false claims of Plaintiff's business practices and morality as a company. *Id.*

In addition to libel claims, Plaintiffs also bring a claim against TaraTalks for tortious interference with business relationships. To successfully plead tortious interference, a Plaintiff must prove: a.) the existence of a valid business relationship or expectancy; b.) knowledge of the

relationship or expectancy on the part of the interferer; c.) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and d.) resultant damage to the party whose relationship or expectancy has been disrupted. Plaintiffs' Complaint clearly explains that TaraTalk's false comments caused MAP affiliates to terminate their relationship with MAP and prevented potential MAP affiliates from becoming members. *See* Plaintiffs' Complaint at Law par. 63-69.

Lastly, because TaraTalks has spread vicious lies about founder and CEO, Michael Deese, he, in his personal capacity, has brought a false light claim against TaraTalks. A claim for false light requires that the Plaintiff show the defendant, acting with reckless disregard, placed the Plaintiff before the public in a false manner that was highly offensive to a reasonable person. *Lovgren*, 534 N.E.2d at 989 (quoting Restatement (Second) of Torts § 652(E)). TaraTalks has made numerous attacks at Michael Deese's character and integrity alleging that he has corrupt morals and has defrauded MAP affiliates. These claims could not be more false. As a Disabled United States Air Force Veteran, Deese spent years looking for an internet income model that can create a secure and reliable income for his affiliates. By establishing MAP, Deese has provided thousands of affiliates with supplemental income. Over the years Deese has created close trusting relationships with his MAP affiliates and takes great pride in the fact that MAP has helped so many men and women of all ages. Alleging that Deese has corrupt morals and questionable character, as TaraTalks has posted on her blog and Facebook accounts, has caused irreparable harm to Deese's reputation in the professional community.

With that said, a complaint should allege facts sufficient to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009). This standard is clearly met in this

case. As the Complaint explains, the Plaintiffs have made out the prima facie case for each count alleged, and accordingly have multiple viable causes of action against the Doe Defendants.

2. Plaintiffs Have Submitted a Particularized Discovery Request

Plaintiffs seek only discrete, limited information from the Defendants. Exhibit A, which is attached hereto, is the draft subpoena that Plaintiffs propose to serve. This subpoena requests only the name and address of the individual registered to the TaraTalks blog, and the IP address for the blog itself. Google, as the owner and operator of blogspot.com, retains this information in the ordinary course of business on its computer systems. Responding to the subpoena would involve nothing more than searching a computer system's information readily available to them.

3. There Are No Alternative Means to Obtain the Identifying Information

Moreover, Google is the only source of the identifying information that Plaintiffs seek. The name and IP address sought by the subpoenas were entered into the blogspot computer system when the TaraTalks blogging site was initiated. A lay person does not have access to such information, nor is that information publically available. In light of these facts, a subpoena to Google is the only way to obtain identifying information. *See Good Man Products., Inc. v. Doe*, 2015 WL 310603 at *1 (M.D. Fla. 2015).

4. There Is a Central Need for The Information

Plaintiffs' need for the subpoenaed information is critical. Without it, Plaintiffs would be unable to serve process on the Doe Defendants or otherwise pursue this lawsuit. *Id.*; *see also Dallas Buyers Club*, 2014 WL 3642163 at *2. Plaintiff's rights under federal law would remain unprotected, and incapable of being vindicated. And, of course, persons violating laws could hide behind a "cloak of invisibility" to shield themselves from the consequences of their actions. Absent this discovery, Plaintiffs would be irreparably harmed.

5. *The Information Plaintiffs Seek Is Not Private*

Finally, the Doe Defendants have little to no expectation of privacy once they choose to participate and publish defamatory statements regarding the integrity and morality of others on the internet. The Doe Defendants chose to publish these statements on the internet, a forum reaching hundreds to thousands of people. In fact, the Doe Defendants' goal in using social media on the internet is to obtain the maximum number of followers and spread an anti-MAP message. Accordingly, under Federal Law, the user of a computer system has no privacy interest in information freely shared with the system operator. *Guest v. Leis*, 225 F.3d 325, 336. The *Guest* court held that "computer users do not have a legitimate expectation of privacy in their subscriber information because they have conveyed it to another person – the system operator." That is especially the case here.

In addition, to the extent the Doe Defendants have an expectation that their identities will not be disclosed to the public, that expectation is outweighed by the policy considerations underlying the investigation of alleged violations of Illinois State Law. The Doe Defendants have no basis to assert that the Plaintiffs should not identify them in response to a subpoena.

6. *The Discovery Is Both Reasonable and Necessary*

In short, the discovery that Plaintiffs request is both reasonable and necessary. *Zambezia Film PTY Ltd., v. Does 1-65*, 2013 WL 4600388 at *2 (N.D. Ill. 2013) ("In deciding a motion for expedited discovery, the Court evaluates 'the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances'") (quoting *Hard Drive Prods., Inc.*, 283 F.R.D. at 410). Plaintiffs seek only information that identifies the Does Defendants and allows them to be served with process. Without this

discovery, Plaintiffs would be unable to prosecute its claims. The burden on the Plaintiff of proving this information is slight, as the information is maintained in Google's computer system, and should be readily obtainable. Moreover, Google is the only source of this information, as they are the owner for blogspot.com, the platform on which TaraTalks is registered. The information sought is not confidential. Accordingly, the Court should grant this Motion and allow the Plaintiff to take the discovery that is proposed.

CONCLUSION

WHEREFORE, the Plaintiffs, MAP and Michael Deese, respectfully request that they be granted leave to serve the attached subpoenas.

Dated: April 4, 2016

Respectfully Submitted,
MyAdvertisingPays(MAP)Ltd.
and Michael Deese

/s/ Jonathan D. Herpy, Sr.
One of Their Attorneys

Jonathan D. Herpy, Sr. (ARDC#6311071)
Hart & David, LLP
360 W. Butterfield Road
Suite 325
Elmhurst, IL 60126
Phone: (630) 395-9496
Fax: (630) 395-9451
j david@h artdavidlaw.com

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

MyAdvertisingPays(MAP), Ltd. and Michael E. Deese,
individually

Plaintiff

TaraTalksToday.blogspot.com, Jane Doe, and
Additional Unknown Defendants

Defendant

Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Google, Inc.
320 N. Morgan, Suite 600
Chicago IL 60607

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

the first and last name, e-mail address, residential address, IP address and and all locational data of the individual registered with the blogging name/handle TaraTalksToday.blogspot.com.

Place: Hart & David, LLP
360 W. Butterfield Road, Suite 325
Elmhurst, IL 60126

Date and Time:

May 3, 2016

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4/ /16

CLERK OF COURT

OR

/s/ Jonathan D. Herpy, Sr.

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) MyAdvertisingPays(MAP), Ltd. and Michael E. Deese, who issues or requests this subpoena, are:

Jonathan D. Herpy, email: j david@hartdavidlaw.com phone: 630.395.9496

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible inspection of premises before trial, a notice and a copy of the subpoena must be served on each party it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT

A