

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MAPLEBEAR INC. DBA INSTACART, a)
Delaware corporation,)
)
Plaintiff,)
)
v.)
)
JOHN DOES 1-2, CONTROLLING AND)
OPERATING A MALICIOUS)
APPLICATION KNOWN AS SHOPPER)
HELPER,)
)
Defendants.)
_____)

Civil Action No. 1:21-cv-474 (AJT/IDD)

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR LIMITED AUTHORITY TO
CONDUCT DISCOVERY NECESSARY TO IDENTIFY AND SERVE DOE DEFENDANTS**

Plaintiff respectfully requests an order authorizing it to conduct limited discovery necessary to identify and serve the Doe Defendants.

On April 20, 2021, the Court granted Plaintiff’s *Ex Parte* Temporary Restraining Order (“TRO”) disabling an IP address, several Internet domains (*i.e.*, websites), and an account with an e-commerce platform through which John Does 1-2 (“Defendants”) host a mobile application available on Apple (iOS) devices known as Shopper Helper that is designed to communicate with and access Instacart’s servers to obtain batch information without authorization.

Shopper Helper is an unauthorized third-party mobile application that runs on top of Instacart’s legitimate Shopper App. Once Shopper Helper is installed on a user’s mobile device, it compromises the underlying code of Instacart’s Shopper App through the creation and operation of a counterfeit, adulterated version of the Shopper App. However, the compromised Shopper App does not appear any different to the user on the mobile device. Anyone viewing the Shopper Helper app, thus, would think that Shopper Helper is developed and distributed by Instacart, despite the fact that it is the operators of Shopper Helper that are compromising the

Instacart Shopper App. Defendants cause substantial harm by reproducing Instacart's trademarks without authorization, to confuse Instacart's legitimate users and the public as to the source of the Shopper Helper application and corresponding illicit infrastructure.

At present, Plaintiff is in possession of preliminary information regarding Defendants obtained from *inter alia* public sources of information provided by ISPs, domain registrars and registries, payment facilities and other service providers whose services Defendants used. While much of the information provided in such records appears to be fictitious, Plaintiff possesses information regarding email addresses, domain names, IP addresses, payment processors and social media accounts that Plaintiff gathered through its own investigation and from third parties that provide leads to be pursued through discovery tailored to identify Defendants.

In order to identify Defendants from information such as email addresses, domain names, IP addresses, payment processors and social media accounts, it will be necessary to send subpoenas to third party domain registrars, Internet service providers (ISPs), hosting companies, payment providers, social media providers and other service providers to obtain account and user information provided by Defendants in association with the foregoing infrastructure. For example, such service providers often maintain billing and account information identifying the purchasers and account holders of such services, and maintain IP address logs reflecting the computers from which Defendants logged into their accounts. Given the account and user information kept by these third-party internet service providers regarding Defendants is generally non-public, the service providers are not likely to provide it to Plaintiff absent a subpoena. The foregoing discrete body of Internet service providers, Internet domains, IP address, payment providers, social media providers and other service providers, including an e-commerce platform, is collectively referred to herein as the "Shopper Helper Infrastructure." A full list of

the Shopper Helper Infrastructure that are the subject of the requested discovery is attached hereto as Exhibit 1.

Plaintiff, accordingly, requests an order granting authority to serve limited subpoenas to third party email service providers, domain name registrars, hosting companies, e-commerce platforms, payment processors and social media providers, to pursue the identities of the Defendants. Given the state of the information currently in Plaintiff's possession, Plaintiff believes that limited discovery is necessary to assist Plaintiff in its endeavor to identify, name, and serve Defendants, as Defendants have not responded to the methods of service required by the Temporary Restraining Order.

I. ARGUMENT

Under Federal Rule of Civil Procedure 26(d), discovery may not normally begin "before the parties have conferred as required by Rule 26(f)." Because John Doe Defendants in this case are unknown to Plaintiff, the conference Rule 26(f) contemplates cannot occur. This limitation on the initiation of discovery, however, can be waived under Rule 26(d) by court order.

Courts recognize that, in certain situations, the identity of the defendant may not be known prior to the filing of a complaint. In such circumstances, courts authorize a plaintiff to undertake discovery to identify the unknown defendants. In *In Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978), the Fourth Circuit explained that, if a plaintiff states a meritorious claim against an unknown defendant, the Court should allow plaintiff to ascertain the identity of the unknown defendant through discovery. Courts in this Circuit have also authorized parties to conduct discovery based on computer IP addresses in order to assist in the identification of John Doe defendants. See *Arista Records LLC v. Does 1-14*, 2008 U.S. Dist. LEXIS 102974 (W.D. Va. 2008) (granting discovery to identify John Does based on IP addresses); *Virgin Records*

America, Inc. v. John Doe, 2009 U.S. Dist. LEXIS 21701 (E.D.N.C. 2009) (same).

This Court has granted John Doe discovery used to identify registrants of Internet domains supporting a botnet in prior cases. In *Microsoft v. John Does* 1-8, Case No. 1:14-cv-00811-LOG/TCB (E.D. Va. 2014), this Court recognized the benefit of such discovery and ordered similar discovery so that plaintiff could investigate the identities of registrants of a number of Internet domains used to perpetuate the harmful “Shylock” Botnet. *See* Dkt. No. 39; *see also* Dkt. No. 40 in *Microsoft v. John Does* 1-27, Case No. 1:10-cv-00156 (Anderson, J.); Dkt. No. 37 in *Microsoft v. John Does* 1-18, Case No. 1:13-cv-139 (LMB/TCB) (E.D. Va. 2013). Likewise, in the instant matter, it is appropriate to grant Plaintiff authority to conduct limited discovery to identify Defendants. Plaintiff seek a limited discovery period of 120 days, during which it may move forward diligently with subpoenas to third-party ISPs, hosting companies, payment providers, social media companies, and other service providers in an attempt to further identify Defendants and/or to obtain additional contact information through which to effect service of process.

In addition, once Plaintiff undertakes third party discovery of the ISPs, email service providers, hosting companies, social media providers, and payment providers identified in Exhibit 1, it anticipates that there will be additional targets for discovery when new points of contact, IP addresses, email addresses, methods of payment, etc. may be identified. For example, after receiving information about email accounts and IP address accounts used by Defendants and listed in Exhibit 1, there may be additional secondary email addresses, login IP addresses, account creation IP addresses and payment information that are identified. All of this information is specifically associated with the Defendants and with the discrete body of the Shopper Helper IP address used by Defendants. Plaintiff requests the ability to send further

subpoenas to third party providers associated with this information, in its effort to more specifically identify Defendants and to obtain further contact information to provide them notice of the case and to serve the pleadings. Even though the requested discovery is iterative, it will always be related to the original body of Shopper Helper Infrastructure identified in the Temporary Restraining Order.

In pursuing downstream discovery, Plaintiff acknowledges the burden such a sustained effort of requesting relief for each additional target of third-party discovery would place on the Court. Plaintiff therefore proposes that if it identifies additional third-party Internet service providers (ISPs), email service providers, hosting companies, payment providers, and other service providers from the discovery above or other publicly-available sources, limited to those flowing from the aforementioned infrastructure, it shall be permitted to send further subpoena requests without seeking additional relief from this Court.

II. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests permission under Rule 26(d) to conduct such discovery for a period of 120 days, as may be necessary, to further identify and serve Defendants.

Dated: May 7, 2021

Respectfully submitted,

/s/ Julia R. Milewski

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EXHIBIT 1

Infrastructure Associated With Shopper Helper:

Domains: shopper-helper.com, shopperhelper.vip and ssqian.vip
e-Commerce account associated with domain shopperhelper.vip
IP Address 167.179.75.11
Developer certificates associated with Shopper Helper
Payment processors utilized to purchase Shopper Helper infrastructure
Social media accounts promoting Shopper Helper

Third-party service providers associated with Shopper Helper Infrastructure And Operations:

GoDaddy
Shopify
Choopa / The Constant Company
Coinbase
Square
Stripe
Apple
Microsoft
Instagram
Twitter
Cloudflare