

However, there are some differences in the mode of distribution, promotion, and hosting of the two bots – further underscoring the need for additional discovery. For example, the LuckyBot application is promoted on TikTok and YouTube, whereas Shopper Helper was not. LuckyBot uses Apple TestFlight software, unlike Shopper Helper, which made its application available for download from a website. See Dkt. 11-1 (Declaration of Adam Gayde in support of Plaintiff’s Motion for TRO) ¶12.

For these reasons, and those provided below, Plaintiff seeks additional discovery. All of the discovery sought is attached to the Declaration of Warrington S. Parker III as Exhibits K-R.

STATEMENT OF FACTS

A. Discovery Sought In Connection With 2021 Preliminary Injunction

In 2021, Instacart issued ten subpoenas to nine infrastructure providers: Facebook, Square, Twitter, Apple, Microsoft, GoDaddy, Coinbase, Shopify, and Stripe. Parker Decl. ¶¶ 3-6, Exs. A-J. Instacart’s discovery efforts yielded various names, addresses, and payment means. *Id.* ¶ 7. However, the names and addresses used by Defendants were fake or stolen. The payment methods employed were anonymous Bitcoin and Alipay payments. *Id.* Ultimately, that discovery did not enable Plaintiff to identify the actors behind Shopper Helper. The failure has allowed the same unidentified actors to continue their illicit activities through a new medium, LuckyBot.

B. Discovery Now Sought

Instacart’s new requests for discovery seek (with two exceptions) discovery from different third-parties.¹

Previously Served Discovery	Current Request
Facebook	YouTube ²

¹ The exceptions are Apple and The Constant Company. LuckyBot uses Apple TestFlight software. Shopper Helper did not. LuckyBot uses backend infrastructure from Vultr Hosting. *See* Dkt. 58 (Declaration of Vincas D. Čižiūnas) ¶¶ 11-18. It, like Choopa, are owned by The Constant Company. Parker Decl. ¶¶ 4, 15.

² LuckyBot promotes itself using TikTok, YouTube, Telegram, and WhatsApp. Dkt. 58 ¶¶ 12-18.

Square	WhatsApp
Twitter	T-Mobile ³
Apple <ul style="list-style-type: none"> Developer Certificates for: Global IPA and vmsju239920sincan 	Apple ⁴ <ul style="list-style-type: none"> Developer Certificates for: LuckyBot and Get Lucky with me! Testflight Account information
Microsoft	Telegram
GoDaddy	Cloudflare ⁵
Coinbase	TikTok
Choopa/The Constant Company <ul style="list-style-type: none"> IP address information and suspension of account associated with IP address 167.179.75.11 Server image 	Vultr/The Constant Company ⁶ <ul style="list-style-type: none"> Account information associated with IP Address 45.76.50.7
Shopify	
Stripe	

The shift in discovery targets reflects the changes in the methods and platforms used by the unidentified actors in their transition from Shopper Helper to LuckyBot. Despite the lack of success in identifying the actors previously, the changes in the actors' modus operandi, coupled with advancements in discovery techniques and tools, provide a renewed opportunity to identify them.

ARGUMENT

The inability to identify the actors behind Shopper Helper in the previous discovery underscores the need for the additional discovery Instacart now seeks. The law favors the grant of Instacart's request. The information is new and needed to halt the ongoing illicit activities of these unidentified actors. *See Amazon.com Inc. v. Sirowl Tech.*, 2021 WL 1516079, at *1 (W.D. Wash. Apr. 16, 2021) (additional expedited discovery was justified when Plaintiff learned of new IP addresses and sought additional third-party discovery of ISPs).

³ T-Mobile is the network carrier associated with the WhatsApp number used. Dkt. 58 ¶ 17.

⁴ LuckyBot uses Apple's TestFlight software to distribute its application. Dkt. 58 ¶ 11.

⁵ LuckyBot uses the Cloudflare content delivery network. Dkt. 58 ¶¶ 10-11.

⁶ LuckyBot uses backend infrastructure from Vultr Hosting at IP 45.76.50.7. *Id.* ¶ 11. ShopperHelper used a different IP through Choopa. *See* Dkt. 11-1 (Declaration of Adam Gayde in

And Defendants are in violation of the injunction. *Tee Turtle, LLC v. ABmask*, 2021 WL 3598861, at *3 (C.D. Cal. May 19, 2021) (granting additional expedited discovery for new information along with finding defendant in contempt of injunction order); *SmartSky Networks, LLC v. Wireless Sys. Sols., LLC*, 630 F. Supp. 3d 718, 731 (M.D.N.C. 2022) (granting leave to take additional limited discovery in order to determine the full extent of any violations of the permanent injunction); *BASF Agro B.V. v. Makhteshim Agan of N. Am., Inc.*, 2014 WL 12651122 (M.D.N.C. Jan. 13, 2014) (granting limited discovery during contempt proceedings); *TracFone Wireless, Inc. v. GCA Elecs., LLC*, 2012 WL 4044864, at *1 (N.D. Ga. Sept. 13, 2012) (holding party in contempt and granting limited expedited discovery.) This reinforces the need for additional discovery to identify the actors behind these applications and hold them accountable. Despite the challenges faced in the previous discovery, Instacart believes that the current discovery efforts, informed by the lessons learned and supported by improved techniques and tools, have the potential to succeed. The Court's approval of this additional discovery is important to ensuring justice and preventing further harm to Instacart.

CONCLUSION

Instacart respectfully requests that the Court grant the expedited discovery as described in Instacart's Proposed Order.

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Respectfully submitted,

/s/ David J. Ervin

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support of Plaintiff's Motion for TRO), Exhibit 2, p. 5.

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