

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Obesity Research Institute, LLC v. Sunrise Selections LLC

Obesity Research Institute · No. 3:25-cv-00877-BJC-AHG · Decided August 6, 2025

SUMMARY

The United States District Court for the Southern District of California granted Obesity Research Institute, LLC’s ex parte application for leave to serve third-party subpoenas before the Rule 26(f) conference. The subpoenas may be served on Amazon, eBay, and Walmart to obtain identifying information for Doe defendants allegedly involved in infringement of the Lipozene trademarks, subject to notice, challenge, preservation, and use restrictions.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Allison H. Goddard
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 6, 2025
DOCKET	3:25-cv-00877-BJC-AHG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought ex parte leave to serve Rule 45 subpoenas on Amazon, eBay, and Walmart before the Rule 26(f) conference to identify Doe defendants allegedly involved in trademark infringement.
STANDARD OF REVIEW	Good cause; the court balanced the need for expedited discovery against potential prejudice to the responding parties.
PRECEDENTIAL VALUE	Unknown; district court order, with source metadata indicating unknown precedential status.

TOPICS

- discovery dispute
- trademark infringement
- trademark law
- personal jurisdiction
- civil procedure

PRACTICE AREAS

- civil procedure
- trademark law
- trademark infringement
- commercial litigation

QUESTIONS PRESENTED

1. Whether Plaintiff demonstrated good cause for expedited discovery before the Rule 26(f) conference.
2. Whether Plaintiff identified the Doe defendants with sufficient specificity to show that they were real persons or entities subject to the court's jurisdiction.
3. Whether Plaintiff made a good-faith effort to identify the Doe defendants through traditional means.
4. Whether Plaintiff's claims could withstand a motion to dismiss and whether the requested discovery would likely yield information permitting service of process.
5. What safeguards should govern disclosure and use of information obtained through the Rule 45 subpoenas.

HOLDINGS

1. A court may permit limited expedited discovery before the Rule 26(f) conference when the requesting party demonstrates good cause, including a need for discovery that outweighs prejudice to the responding party.
2. Plaintiff demonstrated good cause for expedited discovery because it identified the Doe defendants with sufficient specificity, described good-faith efforts to locate them, showed that its claims could withstand a motion to dismiss, and established that the subpoenas would likely yield information permitting service.
3. Plaintiff established for purposes of the early-discovery motion that its trademark-infringement claims could withstand a motion to dismiss.

KEY QUOTATIONS

“A party is generally not permitted to obtain discovery without a court order before the parties have conferred pursuant to Federal Rule of Civil Procedure 26(f).” (at 2)

“A party who requests early or expedited discovery must make a showing of good cause.” (at 3)

“Good cause is established through a balancing test “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.”” (at 3)

“For the reasons set forth above, and for good cause shown, the Court GRANTS Plaintiff’s ex parte application for leave to serve subpoenas prior to a Rule 26(f) conference” (at 7)

FACTUAL BACKGROUND

Plaintiff alleged that defendants were selling health supplements online using marks such as Lipozem, Lipo-zem, Lipozeme, and Lipo-zeme, which allegedly infringed Plaintiff's Lipozene trademarks and caused consumer confusion. Plaintiff identified infringing storefronts on Amazon, eBay, and Walmart but could not identify the persons or entities operating them. Plaintiff sought subpoenas requiring the platforms to disclose the Doe defendants' names, addresses, and contact information so Plaintiff could investigate the alleged infringement and effect service.

PROCEDURAL HISTORY

Plaintiff filed the complaint on April 14, 2025, asserting trademark infringement and unfair competition against Sunrise Selections LLC, Amaz Group LLC, Leoris Holdings LLC, BuyGoods Inc., and Doe defendants. Plaintiff then moved ex parte for leave to conduct early discovery from third-party e-commerce platforms. The court granted the application and authorized service of subpoenas subject to notice, challenge, preservation, and limited-use conditions.

DISPOSITION

other

CASES CITED

- Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577-80 (N.D. Cal. 1999)
- UMG Recordings, Inc. v. Doe, No. C-08-3999-RMW, 2008 WL 4104207, at *2 (N.D. Cal. Aug. 29, 2008)
- Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999)
- Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)
- Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002)
- Instant Checkmate, LLC v. Does, No. 18cv2132-BAS-BGS, 2018 U.S. Dist. LEXIS 208098, at *4 (S.D. Cal. Dec. 7, 2018)
- Herbal Brands, Inc. v. Photoplaza, Inc., 72 F.4th 1085, 1094 (9th Cir. 2023)
- Instant Checkmate LLC v. Does, No. 18cv2132-BAS-BGS, 2019 WL 1170486, at *2 n.2 (S.D. Cal. Mar. 12, 2019)
- Whaleco Inc. v. Arslan, No. CV-23-02549-PHX-DLR, 2024 WL 342459, at *3 (D. Ariz. Jan. 30, 2024)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Network Automation, Inc. v. Advanced Sys. Concepts, 638 F.3d 1137, 1144 (9th Cir. 2011)
- Dep't of Parks & Recreation v. Bazaar Del Mundo, Inc., 448 F.3d 1118, 1124 (9th Cir. 2006)
- Pennymac Loan Servs., LLC v. Doe, No. 2:18-cv-05993-ODW-RAO, 2018 WL 6521577, at *2 (C.D. Cal. Oct. 31, 2018)

OPINION

Obesity Research Institute, LLC v. Sunrise Selections LLC
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 OBESITY RESEARCH INSTITUTE, Case No.: 3:25-cv-00877-BJC-AHG
LLC,

12

ORDER GRANTING PLAINTIFF'S

Plaintiff,

13 EX PARTE APPLICATION FOR

v. LEAVE TO SERVE THIRD-PARTY

14

SUBPOENAS PRIOR TO A RULE

SUNRISE SELECTIONS LLC, et al.,

15 26(f) CONFERENCE

Defendants. 16 [ECF No. 28] 17 18 19 20 Before the Court is Plaintiff Obesity Research Institute, LLC's ("Plaintiff") Ex Parte 21 Application for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference. 22 ECF No. 28. No opposition briefs have been filed. See also ECF No. 28 at 2 ("Defendant 23 BuyGoods's counsel indicated that they took no position with respect to this Application. 24 Defendant Sunrise Selections's counsel has not contacted Plaintiff regarding this 25 Application. Counsel for Defendant Leoris Holdings indicated that Defendant Leoris 26 Holdings would not oppose this Application. Defendant Amaz Group has not contacted 27 Plaintiff regarding this Application."). For the reasons discussed below, the Court 28 GRANTS Plaintiff's ex parte application.

1 I. BACKGROUND

2 On April 14, 2025, Plaintiff filed a Complaint against Defendants Sunrise Selections 3 LLC, Amaz Group LLC, Leoris Holdings LLC, BuyGoods Inc, and Does 1–100 4 (collectively, "Defendants"). ECF No. 1. Plaintiff asserts that Defendants are infringing 5 their trademarks for "Lipozene" and using marks confusingly similar to it and, thus, are 6 engaging in unfair competition. Id. at 2. For example, "Plaintiff became aware that 7 Defendants were selling health supplement products via online platforms using the name 8 Lipozem, Lipo-zem, Lipozeme, and Lipo-zeme, causing consumer confusion and damage 9 to Plaintiff's protected name." ECF No. 15 at 2. 10 In the instant motion, Plaintiff seeks leave to conduct early discovery prior to the 11 mandated Rule 26(f) conference to learn the identities of the Doe defendants. ECF No. 28. 12 Specifically, Plaintiff seeks an order permitting it to serve third-party subpoenas under 13 Federal Rule of Civil Procedure 45 on Amazon, eBay, and Walmart. ECF No. 28-1. 14 Plaintiff alleges that Doe defendants are operating online storefronts through these 15 e-commerce platforms, and are selling goods that infringe on Plaintiff's trademarks. Id. 16 at 5–8, 23; ECF No. 28-2 at 3–4. Plaintiff explains that Amazon, eBay, and Walmart "are 17 the only parties with the information necessary to properly identify these Doe Defendants 18 by correlating the infringing retailers' stores with identifying information that would allow 19 Plaintiff to properly plead the unidentified infringing retailers into this lawsuit." ECF

20 No. 28-2 at 5. With the Rule 45 subpoenas, Plaintiff hopes to "learn the identities of these 21 Doe Defendants, further investigate the Doe Defendants' role in the infringement, and 22 effectuate service upon the Doe Defendants." Id. at 5. Plaintiff represents to the Court that 23 the

subpoenas will demand the true name, addresses, and contact information of the Doe 24 defendants. Id. at 23. Additionally, Plaintiff represents that it “will only use this 25 information to prosecute the claims made in its Complaint.” Id. at 6.

26 II. LEGAL STANDARD

27 A party is generally not permitted to obtain discovery without a court order before 28 the parties have conferred pursuant to Federal Rule of Civil Procedure 26(f). FED. R. CIV. 1 P. 26(d) (1). However, courts make exceptions to allow limited discovery after a complaint 2 is filed to permit the plaintiff to learn the identifying information necessary to serve the 3 defendant. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999); 4 see, e.g., *UMG Recordings, Inc. v. Doe*, No. C-08-3999-RMW, 2008 WL 4104207, at *2 5 (N.D. Cal. Aug. 29, 2008) (noting, in an infringement case, that “a plaintiff cannot have a 6 discovery planning conference with an anonymous defendant[,]” thus, limited expedited 7 discovery would “permit the [plaintiff] to identify John Doe and serve the defendant, 8 permitting this case to go forward.”). Consistent with this generally recognized exception 9 to Rule 26(f), the Ninth Circuit has held that ““where the identity of the alleged defendant[] 10 [is] not [] known prior to the filing of a complaint[,] the plaintiff should be given an 11 opportunity through discovery to identify the unknown defendants, unless it is clear that 12 discovery would not uncover the identities, or that the complaint would be dismissed on 13 other grounds.”” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (quoting 14 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). 15 A party who requests early or expedited discovery must make a showing of good 16 cause. See *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–76 (N.D. Cal. 17 2002) (applying “the conventional standard of good cause in evaluating Plaintiff’s request 18 for expedited discovery”). Good cause is established through a balancing test “where the 19 need for expedited discovery, in consideration of the administration of justice, outweighs 20 the prejudice to the responding party.” Id. at 276. To determine whether “good cause” 21 exists to permit expedited discovery to identify Doe defendants, district courts in the Ninth 22 Circuit consider whether the plaintiff (1) “identif[ies] the missing party with sufficient 23 specificity such that the Court can determine that the defendant is a real person or entity 24 who could be sued in federal court”; (2) “identif[ies] all previous steps taken to locate the 25 elusive defendant” to ensure that plaintiff has made a good faith effort to identify the 26 defendant; and (3) “establish[es] to the Court’s satisfaction that plaintiff’s suit against 27 defendant could withstand a motion to dismiss.” *Columbia Ins.*, 185 F.R.D. at 578–80. 28 Additionally, the plaintiff should demonstrate the discovery will likely lead to identifying 1 information that will permit service of process. Id. at 580. These factors are considered to 2 ensure the expedited discovery procedure “will only be employed in cases where the 3 plaintiff has in good faith exhausted traditional avenues for identifying a civil defendant 4 pre-service, and will prevent use of this method to harass or intimidate.” Id.

5 III. DISCUSSION

6 Plaintiff contends that there is good cause for this Court to allow expedited 7 discovery. ECF No. 28-1 at 10–23. For the reasons stated below, the Court agrees. 8 a. Identification of Missing Party with Sufficient Specificity 9 To satisfy the first prong, Plaintiff must identify the defendant with enough 10 specificity to enable the Court to determine that defendant is a real person or entity who 11 would be subject to the jurisdiction of this Court. *Columbia Ins.*, 185 F.R.D. at 578. Here, 12 Plaintiff has identified the Doe defendants with sufficient specificity. 13 First, Plaintiff explains that “these web stores are directed and controlled by 14 individuals” and “Plaintiff has identified the e-commerce storefronts participating in the 15 sale of infringing goods, and Plaintiff has identified [Amazon, eBay, and Walmart] as the 16 locations of those storefronts.” ECF No. 28-1 at 11. “Without conscious intervention by a 17 person or an entity, infringing products are not listed, infringing products are not sold, and 18 infringing products are not shipped through the E-Commerce Sites.” *Id.* The Court finds 19 that Plaintiff has sufficiently alleged that the Doe Defendants are real persons or entities. 20 See *Instant Checkmate, LLC v. Does*, No. 18cv2132-BAS-BGS, 2018 U.S. Dist. LEXIS 21 208098, at *4 (S.D. Cal. Dec. 7, 2018) (granting early discovery in trademark infringement 22 case involving a copied website, explaining that, “[a]lthough Plaintiff is unable to identify 23 the individual at this point, the initial research on who the site is registered to and the 24 infringing conduct alleged (wholesale copying of the website) suggest there is a person 25 responsible that may be identified through early discovery”). 26 Second, Plaintiff adequately alleges that the Doe defendants would be subject to this 27 Court’s jurisdiction. Plaintiff represents that “Doe defendants operate e-commerce 28 storefronts in the form of interactive websites that consumers utilize to make purchases of 1 products directly from Doe defendants[,]” i.e., “consumers must select products to 2 purchase and then input their shipping and payment information to complete the 3 transaction.” ECF No. 28-1 at 17–18. Plaintiffs argue that this Court has personal 4 jurisdiction because “Doe defendants allegedly received consumer information including 5 payment and shipping data, then allegedly knowingly utilized that information to deliver 6 products into this forum despite being on notice that a California plaintiff would suffer 7 harm [from] Doe defendants’ actions due to the fame of Plaintiff’s marks, which [] Plaintiff 8 has spent millions of dollars promoting.” *Id.* at 19. Plaintiff also alleges that “Doe 9 defendants were aware that harm would occur in California because Plaintiff is located in 10 California” since “Plaintiff’s trademark is famous.” *Id.* at 19, 21. The Court finds that the 11 prima facie elements of personal jurisdiction have been met.¹ See *Herbal Brands, Inc. v. 12 Photoplaza, Inc.*, 72 F.4th 1085, 1094 (9th Cir. 2023); see e.g., *Instant Checkmate*, 2019 13 WL 1170486, at *2 (finding that plaintiff sufficiently pled personal jurisdiction to warrant 14 early discovery in a trademark infringement case regarding copying of a website). 15 “The Court understands and appreciates the special difficulties involved in 16 uncovering the identities of defendants in these sorts of cases.” *Whaleco Inc. v. Arslan*, No. 17 CV-23-02549-PHX-DLR, 2024 WL 342459, at *3 (D. Ariz. Jan. 30, 2024) (granting early 18 discovery to obtain the contact information of the website owners in a trademark 19 infringement

case regarding cybersquatting domain names). Based on all of the 20 information above, the Court concludes Plaintiff has provided a sufficient showing that it 21 seeks to sue a real person subject to the Court's jurisdiction. Likewise, if Plaintiff obtains 22 the identifying information from the online retailers for the online storefronts, the 23 24 25 26 1 The Court notes that its "conclusion on [] personal jurisdiction for purposes of obtaining early discovery is in no way binding as to any future motion to dismiss that might be filed 27 by Defendants should Plaintiff be successful in locating them." *Instant Checkmate LLC v. 28 Does*, 18cv2132-BAS-BGS, 2019 WL 1170486, at * 2 n.2 (S.D. Cal. Mar. 12, 2019). 1 information sought in the subpoenas would likely enable Plaintiff to serve Doe defendants. 2 Therefore, the Court finds Plaintiff satisfied the "sufficient specificity" threshold. 3 b. Previous Attempts to Locate Defendant 4 Next, Plaintiff is required to describe all steps taken to identify the Doe defendants 5 in a good-faith effort to locate and serve them. Here, Plaintiff explains that it has "diligently 6 attempted to correlate Doe defendants' shop information by searching for information 7 about these sellers on various web search tools" and has investigated the listings on the 8 Amazon, eBay, and Walmart websites. ECF No. 28-1 at 21. Despite these diligent efforts, 9 Plaintiff was unable to identify any means of obtaining the identity of the Doe defendants 10 other than through subpoenaing the information from the online retailers. *Id.* at 21–22. 11 Thus, the Court finds that Plaintiff has shown it made a good-faith effort to identify and 12 locate the Doe defendants before resorting to filing the instant motion. 13 c. Whether Plaintiff Can Withstand a Motion to Dismiss 14 Lastly, Plaintiff must establish it could survive a motion to dismiss. See FED. R. CIV. 15 P. 12(b); *Columbia Ins.*, 185 F.R.D. at 579. To survive a motion to dismiss for failure to 16 state a claim upon which relief can be granted, "a complaint must contain sufficient factual 17 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. 18 Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 19 (2007)). To present a prima facie case of trademark infringement under the Lanham Act, 20 15 U.S.C. § 1114, Plaintiff must show: "(1) that it has a protectible ownership interest in 21 the mark; and (2) that the defendant's use of the mark is likely to cause consumer 22 confusion.'" *Network Automation, Inc. v. Advanced Sys. Concepts*, 638 F.3d 1137, 1144 23 (9th Cir. 2011) (quoting *Dep't of Parks & Rec. v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118, 24 1124 (9th Cir. 2006)). 25 Here, Plaintiff's Complaint clearly alleges that trademark infringement. As the 26 District Judge previously found, "Plaintiff has provided proof that it owns valid and 27 protectible federal trademark registrations for the Lipozene marks" and "the facts show 28 there is a likelihood of confusion among consumers." ECF No. 15 at 4, 6; see also *id.* at 6 1 ("Plaintiff has demonstrated a likelihood of success on the merits"). Accordingly, the Court 2 concludes Plaintiff has met the third prong necessary to establish good cause for granting 3 early discovery.

4 IV. CONCLUSION

5 For the reasons set forth above, and for good cause shown, the Court GRANTS 6 Plaintiff's ex parte application for leave to serve subpoenas prior to a Rule 26(f) conference 7 (ECF No. 28).

See, e.g., *Pennymac Loan Servs., LLC v. Doe*, No. 2:18-cv-05993-ODW- 8 RAO, 2018 WL 6521577, at *2 (C.D. Cal. Oct. 31, 2018) (granting early discovery in 9 trademark infringement case and explaining that, “[w]ithout leave to conduct this early 10 discovery, [plaintiff] is unable obtain this basic information, Doe’s identity, necessary to 11 serve Doe with the Complaint and advance the administration of justice. Doe will be 12 notified of the subpoenas, as ordered below, and will have an opportunity to respond before 13 Google discloses any information. Finally, all information obtained by way of this early 14 discovery shall be used only for the purpose of protecting [plaintiff]’s rights as set forth in 15 the Complaint, thus limiting any potential prejudice to Doe.”). Accordingly, the Court 16 ORDERS as follows: 17 1. Plaintiff shall attach a copy of this Order to any subpoena. 18 2. Plaintiff may serve Walmart, Amazon, and eBay (collectively, “E-Commerce 19 Platforms”) with Rule 45 subpoenas commanding the E-Commerce Platforms 20 to provide Plaintiff with the names, addresses, and contact information of the 21 Doe defendants. 22 3. Within fourteen (14) calendar days after service of the subpoena, the 23 E-Commerce Platforms shall notify the sellers or subscribers that their 24 identities are sought by Plaintiff. The E-Commerce Platforms must also 25 provide a copy of this Order along with the required notice to the seller whose 26 identity is sought pursuant to this Order. 27 4. The seller whose identity has been subpoenaed shall have twenty-one (21) 28 calendar days from the date of such notice to challenge the disclosure of his 1 or her name and contact information by filing an appropriate pleading with 2 this Court contesting the subpoena. A seller who moves to quash or modify 3 the subpoena may proceed anonymously as “John Doe,” and shall remain 4 anonymous until the Court orders that the identifying information may be 5 released. 6 5. If the Walmart, Amazon, and/or eBay wishes to move to quash the 7 subpoena(s), they shall do so before the return date of the subpoena. The 8 return date of the subpoena must allow for at least forty-five (45) days from 9 service to production. If a motion to quash or other challenge is brought, the 10 E-Commerce Platform must preserve the information sought by Plaintiff in 11 the subpoena pending resolution of such motion or challenge. 12 6. Plaintiff may only use the information disclosed in response to the Rule 45 13 subpoenas served on the E-Commerce Platforms for the purpose of protecting 14 and enforcing Plaintiff’s rights as set forth in its Complaint. 15 IT IS SO ORDERED. Dated: August 6, 2025 4 18 Honorable Allison H. Goddard 19 United States Magistrate Judge 20 21 22 23 24 25 26 27 28