

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-2704-REB-CBS

PATRICK COLLINS, INC.,
Plaintiff,
v.

JOHN DOE,
Defendant.

ORDER

Magistrate Judge Craig B. Shaffer

This civil action is before the court on Plaintiff's "Motion for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference" (filed October 20, 2011) (Doc. #5). Pursuant to the Order of Reference dated October 18, 2011 (Doc. #3) and the memorandum dated October 21, 2011 (Doc. #6), this matter has been referred to the Magistrate Judge. The court has reviewed the pending Motion, the entire case file, and the applicable law and is sufficiently advised in the premises.

Plaintiff alleges that an unknown John Doe Defendant utilized a "BitTorrent," peer-to-peer file sharing system to reproduce and distribute infringing copies of Plaintiff's copyrighted motion picture. *See* Complaint (Doc. #1 at 3 of 11). Plaintiff seeks an order from this court to serve third party subpoenas under Fed. R. Civ. P. 45 on Defendant's Internet Service Provider ("ISP") to determine the identity of the John Doe Defendant. *See* Motion for Leave to Serve Third Party (Doc. #5 at 2 of 6). Plaintiff seeks leave to serve subpoenas because "[a] party may

not seek discovery from any source before the parties have conferred as required by Rule 26(f),” unless authorized by the court. *See* Fed. R. Civ. P. 26(d).

Under similar circumstances, the court in *Liberty Media Holdings, LLC. v. Colorado Members of Swarm*, granted a motion for expedited discovery to allow plaintiffs to serve subpoenas for the purpose of identifying John Doe defendants in a file-sharing, infringement case. 2011 WL 1812554, *1 (D. Colo. 2011). In doing so, the court articulated a good cause standard for permitting expedited discovery. *Id.* at 1. The good cause standard is satisfied in cases “involving infringement and unfair competition,” when the “[d]efendants must be identified before [the] suit can progress.” *Id.* at *2 (quoting *Arista Records, LLC. v. John Does*, 551 F.Supp.2d 1, 6 (D.D.C. 2008)). Recognizing the factual similarities between this case and *Liberty Media*, and applying *Liberty Media’s* good cause analysis, the court finds that Plaintiff has shown good cause and should be permitted to serve third party subpoenas under Fed. R. Civ. P. 45 for the limited purpose of discovering Defendant Doe’s identity. Accordingly,

IT IS ORDERED that Plaintiff’s “Motion for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Scheduling Conference” (filed October 20, 2011) (Doc. #5) is GRANTED.

_____ DATED at Denver, Colorado, this 10th day of November, 2011.

BY THE COURT:

s/Craig B. Shaffer

United States Magistrate Judge