

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

TCYK, LLC,

Case No.: 13-cv-2779 (DWF/SER)

Plaintiff,

v.

ORDER TO SHOW CAUSE

Does 1–24,

Defendants.

Mark R. Anfinson, Esq., Anfinson Law Office, 3109 Hennepin Avenue South, Minneapolis, Minnesota 55408, for Plaintiff.

STEVEN E. RAU, United States Magistrate Judge

The above-captioned case comes before the undersigned on Plaintiff TCYK, LLC's ("TCYK") Motion for Leave to Serve Third-Party Subpoenas Prior to Rule 26(f) Conference ("Mot. for Third-Party Disc." or "Motion for Third-Party Discovery") [Doc. No. 8]. This matter has been referred for the resolution of pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(A) and District of Minnesota Local Rule 72.1. For the reasons stated below, the Court denies the Motion for Third-Party Discovery and *sua sponte* issues an Order to Show Cause why the Court should not recommend dismissal.

I. BACKGROUND

TCYK filed its case against Defendants Does on October 8, 2013, and amended its complaint the following day. (Compl.) [Doc. No. 1]; (Am. Compl.) [Doc. No. 4]. TCYK alleges twenty-four unnamed Defendants infringed its copyright in the movie *The Company You Keep*,

(the “Movie”). (Am. Compl. ¶¶ 1, 13). TCYK alleges Defendants use “an online media distribution system to reproduce and distribute [the Movie] to the public” (Am. Compl. ¶ 13).

TCYK has only been able to identify Defendants by their Internet Protocol (“IP”) addresses; the dates and times of the alleged infringement; a “hash value,” which identifies the Defendants who participate in the infringement; and the location of each IP address. (Mem. in Supp. of Pl.’s Mot. for Leave to Take Disc. Prior to Rule 26(f) Conference, “Mem. in Supp.”) [Doc. No. 9 at 2]. Defendants subscribe to Internet Service Providers (“ISPs”) who provide internet access, and TCYK contends the ISPs are the only entities who can identify Defendants’ true names. (*Id.* at 2–3). Therefore, TCYK filed the instant Motion for Third-Party Discovery. (Mot. for Third-Party Disc.). In it, TCYK seeks the Court’s permission to serve subpoenas under Federal Rule of Civil Procedure 45 on non-party ISPs that it has identified. (Mem. in Supp. at 2–3, 11).

In support of its Motion, TCYK cites a case from this District, *TCYK, LLC v. Does 1–17*, No. 13-cv-1727 (ADM/JJK), (“*TCYK (13-cv-1727)*”). (Mem. at 4). In that case, the Honorable Jeffrey J. Keyes entered an order granting the same discovery TCYK seeks here. *See* Order Dated Aug. 14, 2013, *TCYK (13-cv-1727)* [Doc. No. 12]. It appears that TCYK now seeks discovery related to the exact same IP addresses it sought in *TCYK (13-cv-1727)*. *Compare* (Ex. B, Attached to Am. Compl.) [Doc. No. 4-2] *with* Ex. B, Attached to Compl. [Doc. No. 1-2], *TCYK (13-cv-1727)*. Because Judge Keyes already granted third-party discovery, and because the IP addresses in *TCYK (13-cv-1727)* and this case are identical, there is no good cause to grant TCYK the exact same discovery it previously sought and received in its related case. TCYK’s Motion for Third-Party Discovery is denied.

Upon further review, the complaints in both cases are nearly identical: In *TCYK (13-cv-1727)*, TCYK alleges the same infringing conduct, the same method of infringement, and its claims are based on the same copyright-protected movie, *The Company You Keep*. Compare (Am. Compl.) with Compl. [Doc. No. 1], *TCYK (13-cv-1727)*. It is not clear to the Court why these matters are separate cases, and therefore, TCYK is ordered to show cause why this case should not be recommended for dismissal. TCYK shall respond within fourteen days of the date of this Order, either by voluntarily dismissing the instant case, or by filing a memorandum on CM/ECF explaining why the case should not be recommended for dismissal.

II. CONCLUSION

Based upon all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff TCYK, LLC's Motion for Leave to Serve Third-Party Subpoenas Prior to Rule 26(f) Conference [Doc. No. 8] is **DENIED**; and
2. TCYK, LLC is ordered to show cause why this case should not be recommended for dismissal as duplicative of *TCYK, LLC v. Does 1-17*, No. 13-cv-1727 (ADM/JJK), with in fourteen (14) days by either:
 - a. Voluntarily dismissing the instant case (13-cv-2779); or
 - b. Filing a memorandum on CM/ECF explaining why this case should not be recommended for dismissal.
 - c. No hearing on the order to show case shall take place.

Dated: December 9, 2013.

s/Steven E. Raul
STEVEN E. RAU
United States Magistrate Judge