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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

ADOBE SYSTEMS INCORPORATED,
Plaintiff,
v.
CHRIS GORSLINE, et al.,
Defendants.

Case No. [17-cv-03675-RS](#) (LB)

ORDER GRANTING PLAINTIFF'S
MOTION FOR EXPEDITED DISCOVERY

Re: ECF No. 13

INTRODUCTION

Adobe owns copyrights and trademarks for its software.¹ It alleges that Chris Gorsline, Lindsay Duvanski, the entity wxonline, and Does 1–10 sold counterfeit and unauthorized software using eBay, PayPal, Bonanza, and other online services.² Adobe has been unable to discover the true identities of the defendants.³ It seeks to obtain limited discovery from the third-party providers used to sell the counterfeit software sufficient to identify the defendants.⁴ Because Adobe demonstrates good cause for the discovery, the court grants the motion.

¹ See generally Compl. ECF No. 1 at 8–9 (¶¶ 24–25). Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

² Compl. at 13–20 (¶¶ 45–79).

³ Huerter Decl. – ECF No. 13-1 at 2–7 (¶¶ 5–18).

⁴ Motion for Expedited Discovery – ECF No. 13.

1 **STATEMENT**

2 Adobe develops and distributes its copyrighted software using trademarks, such as its “Adobe”
3 and “Acrobat” marks.⁵ The defendants used online platforms, such as eBay, to sell counterfeit and
4 unauthorized versions of Adobe’s software without its permission.⁶ The defendants used fake
5 receipts to obtain replacement serial numbers that they then affixed to their counterfeit software.⁷
6 The defendants also gave Adobe false contact information to become authorized resellers in an
7 effort to appear legitimate when selling their counterfeit software.⁸ Adobe asserts claims against
8 the defendants for trademark infringement, trademark dilution, false designation of origin,
9 copyright infringement, and fraud.

10 Adobe determined the defendants sold infringing software using the seller IDs voodoo1337,
11 robyne_26, and stormlabs, to name a few.⁹ The defendants processed payments through PayPal
12 using email addresses including componentsguy@gmail.com and
13 support@integritysystembuilders.com.¹⁰ They also used the websites integritysystembuilders.com,
14 3dfxgraphics.com, and graphicstechnica.com, which they registered through Domains by Proxy,
15 LLC to mask their identities.¹¹ The defendants obscured their physical location by shipping
16 counterfeit software through the shipping service Shipito, LLC.¹²

17 Adobe moves for expedited discovery.¹³ It asks the court for permission to serve eBay, PayPal,
18 Bonanza.com, Domains by Proxy, and Shipito with subpoenas for the production of “documents
19 sufficient to conclusively identify and locate the defendants doing business under” the seller IDs
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22 ⁵ Compl. at 5–6 (¶¶ 19–24); Compl., Exs. A–B – ECF Nos. 1-1, 1-2.

23 ⁶ Id. at 12– 13 (¶¶ 37–44).

24 ⁷ Id. at 27–28 (¶¶ 120–29).

25 ⁸ Id. at 28–29 (¶¶ 130–46).

26 ⁹ Huerter Decl. – ECF No. 13-1 at 6 (¶ 20).

27 ¹⁰ Id.

28 ¹¹ Id.

¹² Id.

¹³ Motion for Expedited Discovery – ECF No. 13.

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and aliases it identified.¹⁴

GOVERNING LAW

A court may authorize expedited discovery before the Rule 26(f) conference for the parties’ and witnesses’ convenience and in the interest of justice. Fed. R. Civ. P. 26(d). Courts within the Ninth Circuit generally consider whether a plaintiff has shown “good cause” for early discovery. See, e.g., *IO Grp., Inc. v. Does 1–65*, No. 10-CV-4377-SC, 2010 WL 4055667, at *2 (N.D. Cal. Oct. 15, 2010); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002); *Tex. Guaranteed Student Loan Corp. v. Dhindsa*, No. 10-CV-0035, 2010 WL 2353520, at *2 (E.D. Cal. June 9, 2010); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613–14 (D. Ariz. 2001) (collecting cases and standards). “Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Semitool*, 208 F.R.D. at 276.

In evaluating whether a plaintiff establishes good cause to learn the identity of a defendant through expedited discovery, courts examine whether the plaintiff: (1) identifies the defendant with sufficient specificity that the court can determine that the defendant is a real person who can be sued in federal court; (2) recounts the steps taken to locate and identify the defendant; (3) demonstrates that the action can withstand a motion to dismiss; and (4) shows that the discovery is reasonably likely to lead to identifying information that will permit service of process. *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578–80 (N.D. Cal. 1999) (internal citations omitted). “[W]here the identity of alleged defendants [is not] known prior to the filing of a complaint[,] the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)).

¹⁴ See Proposed Order – ECF No. 13-19 at 2.

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ANALYSIS

Adobe has made a sufficient showing under each of the four seescandy.com factors listed above to establish good cause.

First, Adobe identifies the defendants with sufficient specificity that the court can determine that they are real people who can be sued in federal court. Adobe’s investigators purchased counterfeit software from the defendants, identified online aliases they used to sell the software, and even corresponded with the defendants via email.¹⁵

Second, Adobe recounts the steps taken to locate and identify the defendants. Adobe identified email addresses the defendants used in connection with eBay and PayPal.¹⁶ The defendants refused to provide their contact information when Adobe corresponded with them via email.¹⁷ Adobe also attempted to locate the defendants through a fax number they used and the address from which they shipped the counterfeit software.¹⁸ In response, Adobe “was contacted by a woman who claimed that her elderly father’s identity had been stolen and was being used in connection with the eBay account ‘stormlabs.’”¹⁹ The defendants used stolen identifying information and third-party services, such as Domains by Proxy, to mask their identities.²⁰ Adobe attempted to use the (presumably false) identifying information to locate defendants through “general Internet searches, public records databases, people finder tools, and various other methods.”²¹ Adobe followed available leads, but could not identify the defendants.

Third, Adobe has demonstrated that its copyright, trademark, and fraud claims could withstand a motion to dismiss. Adobe alleges that it holds the copyrights for its software and that the defendants copied its software without its permission, which is sufficient to state a claim for

¹⁵ Huerter Decl. – ECF No. 13-1 at 4–5 (¶¶ 13–15, 18–19); Huerter Decl., Exs. A–B, F–H, J, L–N, Q – ECF Nos. 13-2 to 13-3, 13-7 to 13-9, 13-11, 13-13 to 13-15, 13-18.
¹⁶ Huerter Decl. ECF No. 13-1 at 2–3 (¶¶ 3, 6); Huerter Decl., Ex. O – ECF No. 13-16.
¹⁷ Huerter Decl. ECF No. 13-1 at 2–3 (¶¶ 3, 6).
¹⁸ Id. at 5 (¶¶ 16–19); Huerter Decl., Ex. P – ECF No. 13-17.
¹⁹ Huerter Decl. – ECF No. 13-1 at 5 (¶ 19).
²⁰ Id. at 3–6 (¶¶ 7–10, 12); Huerter Decl., Exs. C–E, I, K – ECF Nos. 13-4 to 13-6, 13-10, 13-12.
²¹ Huerter Decl. – ECF No. 13-1 at 5 (¶ 19).

1 copyright infringement.²² See *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th Cir.
2 2007); 17 U.S.C. § 501(a). Adobe adequately alleges that the defendants failed to obtain its
3 authorization to commercially distribute, market, and sell products bearing its trademarks and that
4 the defendants’ use and sale of such counterfeit items is likely to cause confusion.²³ See *Adobe*
5 *Systems, Inc. v. A & S Electronics, Inc.*, 153 F. Supp. 3d 1136, 1142 (N.D. Cal. Dec. 29, 2015)
6 (Adobe stated viable trademark claims against infringing entity that used its marks and reseller
7 agreement to appear legitimate); see also *Adobe Systems, Inc. v. Blue Source Group, Inc.*, 125 F.
8 Supp. 3d 945, 969–70 (N.D. Cal. Aug. 31, 2015) (viable claim for trademark dilution alleged
9 based on sale of counterfeit software bearing Adobe’s marks). Adobe alleges, with particularity,
10 that the defendants intentionally provided false information to become authorized resellers and
11 obtain replacement serial numbers and that its reasonable reliance on these misrepresentations
12 caused it to suffer substantial financial harm and injury to its goodwill.²⁴ This is sufficient to state
13 a claim for fraud. See *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) (citing
14 Fed. R. Civ. P. 9(b)).

15 Finally, Adobe shows that the discovery it seeks is reasonably likely to lead to identifying
16 information that will permit service of process on the defendants. Adobe asserts eBay, PayPal,
17 Bonanza.com, Domains by Proxy, and Shipito, will likely know the defendants’ true identities
18 and current contact information because records of this information are maintained in the ordinary
19 course of business.²⁵ Adobe states records held by PayPal are especially likely to contain the
20 defendants’ true identities and contact information because they relied on this third party to
21 process payments, including those tendered by Adobe’s investigators.²⁶

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26 ²² Compl. at 11–12, 26 (¶¶ 34–40, 113–18); Compl., Ex. B – ECF No. 1-2.
27 ²³ Compl. at 3, 4, 12–14, 19–26 (¶¶ 14, 40–41, 44, 47, 75, 80–112).
28 ²⁴ Compl. at 16, 21, 27–30 (¶¶ 57, 85, 119–52).
²⁵ Huerter Decl. – ECF No. 13-1 at 6 (¶ 20).
²⁶ Id. at 4 (¶ 15).

1 **CONCLUSION**

2 Good cause appearing, the court grants Adobe's motion for expedited discovery. The court
3 directs Adobe to file a proposed subpoena for the court's approval by August 4, 2017.

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5 **IT IS SO ORDERED.**

6 Dated: July 21, 2017

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9 LAUREL BEELER
10 United States Magistrate Judge
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