

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

TDG ACQUISITION COMPANY, LLC, a
Delaware limited liability company,

DECISION AND ORDER

Plaintiff,

vs.

13-CV-6035-CJS-MWP

VUZIX CORPORATION, a Delaware
corporation; PAUL J. TRAVERS, an
adult individual; and JOHN DOE #1, an
adult individual,

Defendants.

Siragusa, J. Before the Court is Plaintiff's *ex parte* Motion seeking an Order to Preserve Evidence and for Expedited Discovery. Plaintiff TDG Acquisition Company, LLC ("TDG") alleges that defendant Vuzix Corporation ("Vuzix"), an email hosting company, is using TDG's email system information to deceive TDG's customers by false designation of origin, false and misleading representations of fact, and unfair competition. Attached to the complaint is an email that TDG alleges was sent by a Vuzix employee to a TDG customer purporting to be from a TDG sales manager and essentially turning away business. Plaintiff makes claims under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and the common law of the State of New York.

The Court having determined that TDG has shown that an immediate and irreparable injury, loss, or damage will result to it before Vuzix can be heard in opposition, and that TDG's counsel has shown that advance notice may result in

spoliation of evidence, it is hereby ORDERED that said Motion is GRANTED in part.

This Court hereby ORDERS:

1. Vuzix Corporation to preserve all electronically stored information contained on its email server, including halting the routine destruction or overwriting of any log files, including transaction, client access, and mailbox audit logs; database files; or similar files maintained on the email server or any separate disk containing any such files from the email server.
2. Vuzix Corporation to preserve all archive, backup, or disaster recovery copies of its email server created from June 15, 2012, to the present date.
3. Vuzix Corporation to preserve all communications between Vuzix Corporation and any military, defense, security, commercial, or industrial organizations.
4. TDG is to arrange for service on Vuzix Corporation of the Verified Complaint and this Order, costs to be borne by TDG.

This matter has been referred to U.S. Magistrate Judge Marion Payson who will make a determination about TDG's application to obtain a forensic copy of Vuzix's email server and all other discovery matters.

IT IS SO ORDERED.

Dated: February 5, 2013
Rochester, New York

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge