

1 MARC E. MAYER (SBN 190969)  
mem@msk.com  
2 EMILY F. EVITT (SBN 261491)  
efe@msk.com  
3 MITCHELL SILBERBERG & KNUPP LLP  
11377 West Olympic Boulevard  
4 Los Angeles, California 90064-1683  
Telephone: (310) 312-2000  
5 Facsimile: (310) 312-3100

6 Attorneys for Plaintiff Manwin Licensing  
International S.à.r.l.  
7  
8  
9

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13 MANWIN LICENSING  
INTERNATIONAL SARL, a  
14 Luxembourg Limited Liability  
Company,

15 Plaintiff,

16 v.

17 NICHOLAS BULGIN, a/k/a "Gill  
Manwinder," "Yi Weng," "Chris Hill,"  
18 "contact@Manwinsucks.com," "Jim  
Jagen," and "Radishdreams," an  
19 individual,

20 Defendant.  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO. CV12-02484 GW (SHx)

**NOTICE OF *EX PARTE*  
APPLICATION AND *EX PARTE*  
APPLICATION OF MANWIN  
LICENSING INTERNATIONAL  
SARL FOR LEAVE TO SERVE  
ADDITIONAL LIMITED THIRD-  
PARTY DISCOVERY**

**[DECLARATION OF EMILY F.  
EVITT, [PROPOSED] *EX PARTE*  
ORDER FILED CONCURRENTLY  
HEREWITH]**

**NOTICE OF EX PARTE APPLICATION**

PLEASE TAKE NOTICE that Manwin Licensing International S.à.r.l. (“Manwin”) hereby applies *ex parte* pursuant to Federal Rule of Civil Procedure 26(d) and Local Rule 7-19 for leave to serve additional limited discovery on the following third parties, specifically:

- Google, Inc.
- Phonebooth, a division of Bandwith.com, Inc.
- Hush Communications, Ltd., d/b/a Hushmail
- Formless Networking, LLC

This is an action for cybersquatting, defamation, intentional interference with prospective advantage, and unfair competition arising from the registration and use of four Internet domain names that appropriate Plaintiff’s valuable MANWIN trademark and BRAZZERS trademark: www.manwin.net, www.manwin.co, www.manwinsucks.com, www.brazzer.us (the “Infringing Domain Names”).

On April 23, 2012, the Court granted Manwin leave to take expedited discovery to determine the identities of the owners and operators of the Infringing Domain Names, and Manwin subpoenaed GoDaddy.com, LLC; Domains By Proxy, LLC; and Charter Communications, Inc. After the first round of subpoenas, Manwin learned that an individual using the handle @ManwinSucks was making defamatory postings on Twitter and on a Blogspot page located at <http://manwinsucks.blogspot.com> and <http://manwinexposed.blogspot.com>. On May 21, 2012, Manwin filed an *ex parte* application to serve additional subpoenas on Twitter and Blogspot, which the Court granted the same day. Manwin proceeded to serve subpoenas on Twitter and Blogspot.

Manwin’s investigation into the individuals operating the Infringing Domain Names, Twitter account, and Blogspot page is ongoing. Manwin has learned that the Blogspot page was posted to via the Internet Service Provider (“ISP”) Formless

1 Networking, LLC. Additionally, based on its findings, Manwin believes that one  
 2 or more of the same individuals created an e-mail account  
 3 "GillSevenz@gmail.com" using Gmail, as well as a telephone number, (424) 256-  
 4 5814, using the service "Phonebooth," and then used both to contact Manwin and  
 5 to engage in business dealings with Defendant James Martin concerning the  
 6 Infringing Domain Names. Manwin believes that "Gill Stevens" is one of the Doe  
 7 defendants and has participated in the conduct at issue. However, Manwin's  
 8 investigation suggests that no such person named "Gill Stevens" exists, and that  
 9 this is an invented name used to deceive and mislead Manwin. Additionally, in  
 10 June and July 2012, Defendants sent two anonymous, threatening e-mails to  
 11 Manwin using the third-party service "Hushmail."

12 This Application is based upon this *Ex Parte* Application, the attached  
 13 Memorandum of Points and Authorities, the attached supporting Declaration of  
 14 Emily F. Evitt, the Complaint in this action, and such other and further oral or  
 15 documentary evidence and legal memoranda as may be presented at or before any  
 16 hearing on this Application.

17 Manwin provided notice of this *Ex Parte* Application to Defendant Nicholas  
 18 Bulgin pursuant to Local Rule 7-19.1 on July 11, 2012 by mailing a copy, via  
 19 overnight mail, to Mr. Bulgin's home address.

20  
 21 DATED: July 12, 2012

MARC E. MAYER  
 EMILY F. EVITT  
 MITCHELL SILBERBERG & KNUPP LLP

22  
 23  
 24 By: /s/ Marc E. Mayer

25 Attorneys for Plaintiff  
 26 Manwin Licensing International S.à.r.l.  
 27

**EX PARTE APPLICATION**

By this *Ex Parte* Application, Manwin Licensing International S.à.r.l. (“Manwin”) seeks leave to serve additional limited discovery on four third parties that it believes have information concerning the identities of the Doe Defendants, specifically: (1) **Google, Inc.**, (2) **Phonebooth**, a division of Bandwith.com, Inc., (3) **Hush Communications, Ltd.**, d/b/a “Hushmail,” and (4) **Formless Networking, LLC**. This is Manwin’s third request for limited third-party discovery in this action, and is justified by Manwin’s continuing investigation. This investigation has revealed that the entities listed above (Google, Phonebooth, Hushmail, and Formless Networking) possess relevant information concerning the Doe Defendants.

The background facts are set forth in detail in Manwin’s initial request for discovery, but are summarized (and updated) briefly here. Manwin owns and licenses the trademarks and domain names used for many of the most popular adult-oriented websites. This is an action for cybersquatting, defamation, intentional interference with prospective advantage, and unfair competition arising from the registration and use of four Internet domain names that appropriate Plaintiff’s valuable MANWIN trademark and BRAZZERS trademark: www.manwin.net, www.manwin.co, www.manwinsucks.com, www.brazzer.us (the “Infringing Domain Names”). Defendant Nicholas Bulgin used the Infringing Domain Names to disseminate false and defamatory material about Manwin and launch public campaigns to harm Manwin’s business interests. On April 23, 2012, the Court granted Manwin’s *ex parte* application to take expedited discovery to determine the identities of the owners of the Infringing Domain Names and the history of transfers of the Infringing Domain Names between and among Bulgin and the Doe Defendants.

1  
 2 The conduct at issue has escalated since this lawsuit was filed. Additionally,  
 3 the participants in the conduct have engaged in a set of increasingly complex and  
 4 bizarre transactions that apparently are designed to confuse and mislead Manwin.  
 5 Specifically, since this lawsuit was filed, the Infringing Domain Names were  
 6 transferred between and among a variety of accounts, including an account  
 7 belonging to a "James Martin." Manwin amended its complaint to add Martin as a  
 8 defendant. Defendants also created new accounts on the web services Blogspot  
 9 and Twitter, and began posting increasingly outrageous defamatory statements  
 10 concerning Manwin and its owner (Fabian Thylmann). Manwin therefore filed a  
 11 second *ex parte* application on May 21, 2012, which was granted the same day,  
 12 and subpoenaed Twitter and Blogspot for the identities of the owners and operators  
 13 of the Blogspot and Twitter accounts. From these subpoena results, Manwin has  
 14 determined that the Blogspot page was posted to via the Internet Service Provider  
 15 ("ISP") Formless Networking, LLC. After the subpoenas were issued, the owners  
 16 of the Blogspot and Twitter accounts threatened to engage in cyberattacks on  
 17 Manwin and falsely accused Manwin's owner of engaging in a variety of criminal  
 18 acts. See [http://manwinexposed.blogspot.com/2012/07/confessions-from-](http://manwinexposed.blogspot.com/2012/07/confessions-from-manwin.html)  
 19 [manwin.html](http://manwinexposed.blogspot.com/2012/07/confessions-from-manwin.html).

20 In June and July 2012, Defendants also sent two anonymous e-mails to  
 21 Manwin using the third-party service "Hushmail" (the "Hushmail Account"). The  
 22 most recent of these e-mails (dated July 5, 2012) stated as follows:

23 I will keep this short. Tomorrow while your sites are  
 24 active, were going to find every flaw to your security.  
 25 We come together as one to take down the giant. We will  
 26 study your sites and how they respond to our small  
 27 attempts then hit you with the big guns later. Why am I  
 28 telling you this? The challenge is greatest prize in my  
 clan. We want to see how you respond to this threat. We  
 warned you nicely before and you were too prideful.

1 People think your smart but that's just it. To smart  
2 people, a genius is the nerd. You should have expected  
3 us.

4 P.s- Dont report this email as spam because if you want  
5 future warnings and challenges, i will need this email  
6 address to contact you. Until then!

7 See Evitt Declaration, Ex. 3.

8 Additionally, Manwin recently learned that one of the Defendants created an  
9 e-mail account "GillSevenz@gmail.com" using Gmail, that one or more of the  
10 Defendants may have created other pseudonymous Gmail accounts (collectively  
11 the "Gmail Accounts"), and that one of the Defendants created a telephone  
12 number, (424) 256-5814, using the service "Phonebooth" (the "Phonebooth  
13 Number").<sup>1</sup> This individual, using the alias "Gill Stevens," then contacted Martin  
14 and discussed the Infringing Domain Names with him. Among other things, "Mr.  
15 Stevens" advised Martin that he intended to extort a cash payment from Manwin  
16 for the Infringing Domain Names and would fight to ensure that Manwin never  
17 obtained control of the Infringing Domain Names. See Evitt Declaration, Ex. 1  
18 ("Man win only wants the domains. Nicholas [Bulgin] contacted me a while back  
19 asking for them. I won't give away my domains even if its to save someone from a  
20 lawsuit"); ("I was tasked to acquire the domain in ur possession now and then  
21 protect them at all costs.").

22 As this Court has recognized in granting Manwin's earlier applications,  
23 district courts have broad discretion in scheduling discovery, and may authorize  
24 expedited discovery for "good cause." Hallet v. Morgan, 296 F.3d 732, 751 (9th  
25 Cir. 2002); Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D.  
26 Cal. 2002). Good cause exists here. The proposed additional discovery would be

---

27 <sup>1</sup> Phonebooth is a web-based phone service that allows its users to buy a telephone  
28 number in nearly any area code in the country. Phonebooth also enables its users  
to route calls to any device (fixed or mobile phone).

1 limited to determining the identities of the person who posted to and accessed the  
2 Blogspot page via Formless Networking and the persons who registered and  
3 administered the Hushmail Account, the Gmail Accounts and the Phonebooth  
4 Number. Expedited discovery is necessary because Defendants are continuing to  
5 engage in unlawful and highly damaging conduct. It is critical that Manwin  
6 identify these individuals and their role in this scheme to stop the damage to its  
7 business and reputation. Additionally, it is critical that discovery take place before  
8 the records or server logs retained by the third parties are lost or deleted.

9 Expedited discovery will not prejudice any responding party. Manwin's  
10 discovery will be narrowly tailored to learn the identities of the owners and  
11 operators of the Hushmail Account, Gmail Accounts, and Phonebooth Number.  
12 See Capitol Records, Inc. v. Doe, No. 07-cv-1570-JM (POR), 2007 WL 2429830,  
13 at \*1 (S.D. Cal. Aug. 24, 2007) (motion for immediate discovery granted because  
14 of narrow tailoring of requests, allegations of intellectual property infringement,  
15 danger of lost evidence, and need for the discovery to move the case forward). The  
16 subpoenaed companies will be asked for information that they would have  
17 eventually provided in the normal course of discovery, so they take on no extra  
18 burden by responding to expedited discovery. Moreover, the subpoenaed  
19 companies will be able to notify the users in question about Manwin's subpoena,  
20 and those users will have the opportunity to raise objections by filing a motion to  
21 quash in this Court before the return date of the subpoena. Thus, Defendants will  
22 not be prejudiced if this Application is granted.

23 //

24 //

25 //

26 //

27 //



1 //

2 For the above reasons, Manwin requests that this Court grant it leave to  
3 serve limited discovery on the following third parties: (1) Google, Inc.; (2)  
4 Phonebooth, a division of Bandwith.com, Inc.; (3) Hush Communications, Ltd.; (4)  
5 Formless Networking, LLC.

6 DATED: July 12, 2012

MARC E. MAYER  
EMILY F. EVITT  
MITCHELL SILBERBERG & KNUPP LLP

7  
8  
9 By: /s/ Marc E. Mayer  
10 Attorneys for Plaintiff  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27