

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

In the matter of the Application of

ATLANTIC RECORDING CORPORATION,

Petitioner,

Index No.: 156210/2016

For an Order pursuant to Section 3102(c) of the Civil
Practice Law and Rules to compel disclosure pre-action
from:

REDDIT, INC.,

Respondent,

of the identity of the defendants John Doe and/or
Jane Doe being unknown to the petitioner, in an
action about to be commenced.

MEMORANDUM OF LAW

HARRIS BEACH PLLC
Attorneys for Respondent
677 Broadway, Suite 1100
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. SUMMARY OF ALLEGATIONS	1
III. ARGUMENT	2
a. Legal Standard	2
b. Atlantic has failed to establish meritorious causes of action for either a breach of contract or a breach of fiduciary duty against the unknown Reddit user; thus, its petition for pre-action discovery should be denied	3
c.. Should the Court grant Atlantic’s petition for pre-action discovery, the scope of the subpoena should be limited to information about the Reddit User twentyoneheathens	5
CONCLUSION.....	7

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Collins v Doe 1</i> , 288 F.R.D. 233 (EDNY 2012)	6
<i>Elisa Dreier Reporting Corp., v. Global Naps Networks, Inc.</i> , 84 AD3d 122 (2d Dept. 2011)	4
<i>Holtzman v Manhattan & Bronx Surface Tr. Operating Auth.</i> , 271 AD2d 346 [1st Dept. 2000].....	3
<i>In re Banco de Concepcion v Manfra, Tordella & Brooke, Inc.</i> , 70 AD2d 840 [1st Dept. 1979]	3
<i>In re Gleich</i> , 111 AD2d 130 [1st Dept. 1985]	3
<i>Kurtzman v Bergstol</i> , 40 AD 3d 588 (2nd Dept. 2007)	5
<i>Liberty Imports v Bourguet</i> , 146 AD2d 535 [1st Dept. 1989]	3
<i>Pokoik v Pokoik</i> , 115 AD3d 428 (1st Dept. 2014).....	5
<i>Public Relations Soc. of America, Inc. v Road Runner High</i> , 8 Misc 3d 820 [Sup Ct, NY County 2005]	3
<i>Stewart v Socony Vacuum Oil Co.</i> , 3AD2d 582 [3d Dept. 1957]	3
<i>Stump v. 209 East 56th Street Corp.</i> , 212 AD2d 410 [1st Dept. 1995]	3
<i>Uddin v New York City Transit Authority</i> , 27 AD3d 265 [1st Dept 2006]	3
Statutes	
C.P.L.R. §3102(c)	1, 3

Reddit, Inc., (“Reddit”) respectfully submits this memorandum of law in opposition of the Application for an Order pursuant to Section 3102(c) of the Civil Practice Law and Rules, requesting issuance of a judicial subpoena *duces tecum* compelling disclosure from Reddit of identifying information related to its users.

I. INTRODUCTION

Atlantic Recording Corporation petitions the Court to order pre-action discovery concerning an unidentified Reddit user who posted a hyperlink to reddit.com, a website operated by Reddit, the Respondent. The hyperlink leads to an unaffiliated, third-party site, Dropfile.to, which hosted a previously unreleased song from Twenty One Pilots, a band that is signed to a subsidiary of Atlantic. Atlantic claims that, once the Court orders discovery regarding the Reddit user’s identity, Atlantic will pursue claims for breach of contract and for breach of fiduciary duty against the user. Of course, in order to obtain pre-action discovery, Atlantic must demonstrate now that it has meritorious claims against the Reddit user. However, Atlantic has failed to show that its claims are meritorious for two, simple reasons. First, it has failed to establish that it has a contractual relationship with the Reddit user. Second, it has failed to establish that it has a fiduciary relationship with the Reddit user. Because Atlantic has not demonstrated that it has meritorious causes of action against the unidentified Reddit user, its petition for pre-action discovery related to such user should be denied.

II. SUMMARY OF ALLEGATIONS

On or about June 15, 2016, an unknown individual allegedly uploaded a digital copy of the song “Heathens” by Atlantic Recording Corporation’s Twenty One Pilots, to Dropfile.to, a website which allows its users to upload content for other users to download (Petition at ¶12). Dropfile.to is not owned by, controlled by, endorsed by, or affiliated with Reddit, the Respondent (Respondent’s Affirmation at ¶9). A link to this downloadable file, which remained hosted on Dropfile.to, was

subsequently posted to reddit.com, a service operated by Reddit that provides users with the means to post links to third-party websites and to discuss the content of such sites (Respondent's Affirmation at ¶4). While Atlantic alleges that the same "individual or individuals" who uploaded the file to Dropfile.to also posted a link to the file on reddit.com, it relies only on "information and belief" and no specific allegations to establish such a connection (Petition at ¶12-13.)

At the time the song was uploaded to Dropfile.to, Atlantic alleges that only certain groups of persons had access to the song. Atlantic states that, if the Reddit user is an Atlantic employee, or if the user acquired the song from an Atlantic employee, it will pursue claims for breach of contract "and/or" breach of fiduciary duty against such user (Petition at ¶20). However, Atlantic does not describe the claims it would bring against a non-employee Reddit user who discovered the link on Dropfile.to and posted it to reddit.com without assistance from an Atlantic employee or an employee of Fueled by Ramen, the members of Twenty One Pilots, or their manager, each of whom had access to the song at the time of the leak.

Notably, Atlantic has failed to describe its efforts, if any, to obtain such information from Dropfile.to, the website to which the song was uploaded.

III. ARGUMENT

Because Atlantic has failed to demonstrate that it has a meritorious cause of action against the Reddit user who submitted the Dropfile.to link to reddit.com, its request for pre-action discovery of information related to such user should be denied.

a. Legal Standard

CPLR §3102(c) authorizes, by court order, disclosure prior to the commencement of an action to "aid in bringing an action." Pre-action discovery may be appropriate to preserve evidence or to identify potential defendants; however, "it cannot be used by a prospective plaintiff to ascertain

whether he has a cause of action at all” (*Holtzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [1st Dept. 2000]; *Uddin v New York City Transit Authority*, 27 AD3d 265, 266 [1st Dept 2006]; *Stump v. 209 East 56th Street Corp.*, 212 AD2d 410, 410 [1st Dept. 1995]). Indeed, “it is well-settled that preaction disclosure may not be used to discover whether or not a claim exists” or “to ‘explore the feasibility of framing a complaint” (*Public Relations Soc. of America, Inc. v Road Runner High*, 8 Misc 3d 820, 823 [Sup Ct, NY County 2005]; *In re Banco de Concepcion v Manfra, Tordella & Brooke, Inc.*, 70 AD2d 840, 842 [1st Dept. 1979]).

A petition for pre-action discovery should be granted only if a petitioner demonstrates that he has a meritorious cause of action and the information sought is material and necessary to an existing and actionable wrong (*Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept. 1989]; *Holtzman, id* 271 AD2d at 347; *In re Gleich*, 111 AD2d 130, 131-32 [1st Dept. 1985] (*quoting Stewart v Socony Vacuum Oil Co.*, 3AD2d 582, 583 [3d Dept. 1957] (mere conclusory statements of suspicion and conjecture are insufficient to allow “a judicial franchise to penetrate into another party’s affairs, either by examination or inspection, to find out whether he ought to sue or ought not to sue”)).

- b. Atlantic has failed to establish meritorious causes of action for either a breach of contract or a breach of fiduciary duty against the unidentified Reddit user; thus, its petition for pre-action discovery should be denied.

Because Atlantic’s petition does not demonstrate meritorious claims for either a breach of contract or breach of fiduciary duty against the Reddit user, the Court should deny Atlantic’s petition for pre-action discovery as an improper attempt to determine whether a claim even exists against the unknown Reddit user.

To state a claim for breach of contract under New York law, a plaintiff must allege facts showing (i) the existence of a contract; (ii) the plaintiff’s performance under that contract; (iii) the defendant’s breach of its contractual obligations; and (iv) damages resulting from the breach. *See Elisa Dreier Reporting Corp., v. Global Naps Networks, Inc.*, 84 AD3d 122, 127 (2d Dept. 2011).

Here, while Atlantic has failed to establish even one element of its claim for a breach of contracts, its allegations are particularly deficient with respect to the existence of a contract and the breach of any such contract. First, Atlantic has not established that a contract exists between it and the Reddit user. For example, the Reddit user may have been a member of the general public, who, after discovering the Dropfile.to link on another publicly available website, decided to resubmit it to [reddit.com](https://www.reddit.com). A member of the public would not likely have a contractual relationship with Atlantic that was breached and Atlantic has not alleged as much.

Alternatively, even if the Dropfile.to user and the Reddit user were the same individual—a fact that Atlantic relies heavily upon but fails to allege with particularity -- the Reddit user may have been an employee of Fueled by Ramen, the manager of Twenty One Pilots, or even a member of Twenty One Pilots band. Each of these categories of individuals, whose total numbers remain unknown, had access to the unreleased song and could have submitted the song to Dropfile.to and the link to reddit.com; however, Atlantic does not allege the existence of a relevant contract between it and any party except Atlantic employees.

Second, Atlantic has failed to establish that the unknown Reddit user was in breach of any contract with Atlantic. It is axiomatic that, in order for a breach of contract to occur, a contract between the Reddit user and Atlantic must first exist, a fact that Atlantic has not alleged with any level of particularity. Further, even if a contract exists between Atlantic and the Reddit user, Atlantic fails to allege the terms of any such contract beyond the conclusory allegation that the Reddit user's linking to content that already existed on Dropfile.to was a breach. Without establishing that a contract exists or that a breach of such contract occurred, Atlantic can neither establish that it has a meritorious claim against the Reddit user and nor that it should be entitled to pre-action discovery.

Similarly, Atlantic has not established a meritorious claim for a breach of a fiduciary relationship against the Reddit user and should not be entitled to pre-action discovery from Reddit on that claim. To prevail on a breach of fiduciary duty claim, “a plaintiff must prove the existence of a fiduciary duty, misconduct by the defendant, and damages that were directly caused by the defendant’s misconduct.” *Kurtzman v Bergstol*, 40 AD 3d 588, 590 (2nd Dept. 2007); *see also Pokoik v Pokoik*, 115 AD3d 428 (1st Dept. 2014). As with its claim for breach of contract, which failed to establish a contract between Atlantic and the Reddit user, Atlantic has failed to establish a fiduciary relationship between itself and the Reddit user. Again, while Atlantic premises its claim for a breach of fiduciary duty on the unsupported allegation that the Reddit user is its employee or in direct contact with its employee, it has not even attempted to establish a meritorious claims for breach of fiduciary duty if the Reddit user is a member of the general public, an employee of Fueled by Ramen, the manager of Twenty One Pilots, or a member of Twenty One Pilots band. As pre-action discovery may not be used to determine whether Atlantic has a claim against the unknown Reddit user or whether such user is an Atlantic employee the petition must be denied.

Because Atlantic seeks to use pre-action discovery as an impermissible fishing expedition to determine if it has a plausible claim for breach of contract or breach of fiduciary duty against the Reddit user and not as a means to match an existing, meritorious claim to an individual, its petition for pre-action discovery should be denied.

- c. Should the Court grant Atlantic’s petition for pre-action discovery, the scope of the subpoena should be limited to information about the Reddit User twentyoneheathens.

Although Atlantic’s petition for pre-action discovery has failed to establish a single meritorious cause of action against the unidentified Reddit user, should the Court decide to grant the petition, the scope of the subpoena should be limited to information directly related to the user (u/

twentyoneheathens) and should not include other, potentially unrelated Reddit users with the same IP address.

Presently, Atlantic's subpoena requests not only information related to the user twentyoneheathens, but also for information related to "all and any other Reddit accounts which accessed [Reddit's] service from the same IP address on or about June 15, 2016." However, courts have recognized that an IP address is a numeric label specific to a computer network that serves to identify and locate that network on the Internet, but not to further identify a single user. *Collins v Doe 1*, 288 F.R.D. 233, 234-35 (EDNY 2012) (warning that use of an IP address to identify an individual presents a real risk that defendants might be falsely identified and forced to defend themselves against unwarranted allegations). In fact, a single IP address may host one or more devices operated or owned by multiple, unrelated users, each communicating on the same network, such as with a wireless router, an internet café, or a business intranet. While such users may share an IP address, they otherwise have no relationship among them. For this reason, any order requiring pre-action discovery should be limited to information directly related to the user twentyoneheathens and not violate the privacy interests of any Reddit users sharing the IP address.

CONCLUSION

Atlantic petitions the Court to order pre-action discovery on claims it desires to bring for breach of contract and breach of fiduciary duty against a Reddit user. However, because Atlantic has failed to demonstrate that it has meritorious claims against the user, the Court should deny Atlantic's petition in full. Should the Court decide to order any pre-action discovery, the scope of the request should be narrowly tailored to information directly related to the user in question and should not include other, unrelated users that share the same IP address.

Dated: August 10, 2016

HARRIS BEACH PLLC

/s/ Joan P. Sullivan

Joan P. Sullivan

Karl J. Sleight

Andrew J. Orenstein

677 Broadway, Suite 1101

Albany, NY 12207

Tel: (518) 427-9700

Fax: (518) 427-0235

jsullivan@harrisbeach.com

ksleight@harrisbeach.com

aorenstein@harrisbeach.com

Attorneys for Respondent