

ORDER

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

JOHNS-BYRNE COMPANY, an Illinois)
corporation,)
)
)
) Petitioner,) The Honorable Michael R. Panter
) Motion Calendar “X”
v.)
) Case No. 2011 L 009161
)
TECHNOBUFFALO LLC, a California)
limited liability company; MEDIA TEMPLE,)
INC., a California corporation; GOOGLE, INC.)
a Delaware corporation; and AT&T, INC., a)
Delaware corporation,)
)
)
) Respondents.)

ORDER

This cause comes to be heard on Johns-Byrne Company’s Rule 224 Petition. The court has reviewed the pleadings, briefs and exhibits submitted by each party. For the reasons stated below, the Petition is granted.

This case arises out of the alleged capture, distribution and posting of images of the Motorola Droid Bionic smartphone prior to its public release. Johns-Byrne Company (JBC) alleges that on August 16, 2011, an unknown individual allegedly captured trade secret images of the phone. JBC alleges defendant TechnoBuffalo received the images and displayed them on its website several weeks before the product release. The website posting states “an anonymous tipster” provided TechnoBuffalo with information about the phone, and that images of the phone “fell into our inbox late last night.” JBC alleges the other respondents were also involved in distributing the information.

JBC alleges TechnoBuffalo may have information on the identity of the “tipster” who provided the allegedly trade secret images. JBC alleges it has a potential cause of action against that individual for theft of confidential trade secrets and possibly breach of contract. JBC petitions this Court pursuant to Illinois Supreme Court Rule 224 for limited discovery of the communications TechnoBuffalo had in regard to this one posting on their website. The petition requests communications in a seven-day period (August 11-17, 2011) from all named respondents. All other respondents agree to comply. Only TechnoBuffalo has objected, arguing the Illinois reporter’s privilege prevents JBC from compelling the disclosure of its confidential source.

TechnoBuffalo maintains it is a “news medium” as defined by the privilege because TechnoBuffalo’s website provides articles covering a breadth of technology-related issues and topics through editorial commentary, descriptive “how-to” guides and immersive video to over one million readers per month. JBC maintains that TechnoBuffalo is not entitled to the privilege because it was not providing news but rather disseminating “hype.”

ORDER

Illinois Supreme Court Rule 224 provides that a “person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.” Ill. Sup. Ct. R. 224(a)(i). The use of a Rule 224 petition is appropriate in situations where a plaintiff has suffered an injury but does not know the identity of one from whom recovery might be sought. *Gaynor v. Burlington Northern & Santa Fe Railway*, 322 Ill. App. 3d 288 (2001). “In order to determine ‘who may be responsible,’ one must be able to identify those individuals or entities who stand in the universe of potential defendants.” *Beale v. EdgeMark Fin. Corp.*, 279 Ill. App. 3d 242, 252 (1996). “Where the known connection to the injury is remote and does little or nothing to limit or define the universe of potential defendants, the petitioner should not be precluded from ascertaining additional connecting facts to further refine the universe of defendants having potential liability so long as the attempted discovery does not seek to delve into any actual details of wrongdoing.” *Id.* at 252-53. When the petitioner seeks to establish actual liability or responsibility rather than potentiality for liability, discovery should be denied.” *Id.* Thus, the petition should supply the petitioner with the identity of possible defendants and identify a sufficient connection to the injury. *Id.*

While Rule 224 is intended to assist a potential plaintiff in seeking redress against a person who may be liable, the rule also requires a petitioner to demonstrate the reason why the proposed discovery seeking the individual’s identity is “necessary.” *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, ¶14. Recently, the Appellate Court held a petitioner must provide allegations sufficient to overcome a section 2-615 motion to dismiss to show the necessity in seeking an individual’s identity through a Rule 224 petition. *Id.*, ¶18. A section 2-615 motion to dismiss should only be granted if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The extent of the permissible inquiry must be determined by the trial judge on a case-by-case basis and in consideration of the cause of action alleged. *Beale*, 279 Ill. App. 3d at 253.

The Illinois reporter’s privilege set out in 735 ILCS 5/8-901 provides, “No court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act.” “The reporter’s privilege has evolved from a common law recognition that the compelled disclosure of a reporter’s sources could compromise the news media’s first amendment right to freely gather and disseminate information.” *In re Special Grand Jury Investigation of Alleged Violation of the Juvenile Court Act*, 104 Ill. 2d 419, 424 (1984). The purpose of the privilege is to assure reporters access to information, thereby encouraging a free press and a well-informed citizenry. *Cukier v. American Med. Ass’n*, 259 Ill. App. 3d 159, 163 (1994); *In re Subpoena Duces Tecum to Arya*, 226 Ill. App. 3d 848, 852, (1992).

Any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis is a “reporter,” including any person who was a reporter at the time the information sought was procured or obtained. 735 ILCS 5/8-902(a). Any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation is considered a “news medium,” as is a news service whether in print or electronic format. 735 ILCS 8/902(b). “Source” means the person or means from or through which the news or information was obtained. 735 ILCS 5/8-902(c). A reporter may be divested of the privilege only by the successful completion of a multistep process delineated in the Act. 735 ILCS 5/8-901.

ORDER

TechnoBuffalo's reliance on the Illinois reporter's privilege is misplaced. This is a fast-evolving issue facing courts everywhere. The scope and variety of electronic communication is a challenge in many areas of law. While TechnoBuffalo's website may have over a million viewers, it fails to show it qualifies as a "news medium" under the Illinois Act. It fails to show it is covered by the Act as is a newspaper or periodical in regular circulation. The content on TechnoBuffalo's website may inform viewers how to use certain devices or offer sneak peaks of upcoming technology, but that does not qualify the website as a "news medium" or its bloggers as "reporters." The article at issue is an editorial posting that is part of a technology blog on TechnoBuffalo's site. It does not "encourage a well-informed citizenry" to protect the source and type of confidential information disseminated by TechnoBuffalo in its blog posting about JBC's client's not-yet-released smartphone, and TechnoBuffalo's anonymous "tipster" is hardly an example of a "source" of investigative journalism that requires the protection of the Act.

JBC's Rule 224 petition is granted. The requested discovery is sufficiently narrow in scope. JBC's Rider seeks only information concerning the identity of the individual who provided TechnoBuffalo with the images of its client's allegedly confidential information. Further, JBC has limited the request to communications regarding the particular posting on August 17, 2011, and only to communications made in the seven-day period leading up to the post. Moreover, TechnoBuffalo has not argued that the requested discovery is unduly burdensome or overbroad. TechnoBuffalo's own website supports JBC's allegations that TechnoBuffalo may know the identity of the "tipster" since TechnoBuffalo proclaimed it received the images in its own "inbox," presumably from some identifiable or at least traceable source. Second, JBC has alleged this information is necessary to ascertain the identity of the individual against whom it may have a cause of action for theft of trade secrets. Further, JBC has alleged it believes the individual may be one of its own employees. If, indeed, the individual is an employee of JBC, JBC alleges it may have a cause of action against the individual for breach of contract. TechnoBuffalo has not disputed that JBC has potential causes of action against this individual. Clearly, JBC has demonstrated the necessity of identifying the unknown individual for potential causes of action sufficient to survive a section 2-615 motion to dismiss, which should only be granted if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall*, 222 Ill. 2d at 429. JBC's petition is granted.

IT IS HEREBY ORDERED:

Plaintiff's Rule 224 Petition for Discovery is GRANTED.

This matter is set for further case management on February 14, 2012 at 10:15 AM.

ENTER:

Michael R. Panter, Associate Judge 1990

DATE:

Assoc. Judge Michael Panter

JAN 13 2012