

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

APPLE INC.,

Petitioner,

-against-

DOE,

Respondent.

Civil Action No. 1:17-mc-00150-P1

**MEMORANDUM OF LAW IN  
SUPPORT OF AN EXPEDITED  
ORDER COMPELLING  
COMPLIANCE WITH APPLE INC.'S  
RULE 45 SUBPOENA**

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Apple Inc. (“Apple”) moves this Court for an Order compelling compliance with its duly issued and served subpoena to OEM World Inc. (“OEM World”) pursuant to Rule 45(d)(2)(B)(i) of the Federal Rules of Civil Procedure.

**I. BACKGROUND**

**A. The Nature of the Action Pending in the Northern District of California.**

Apple’s action in the Northern District of California is against a New Jersey-based defendant, Mobile Star, LLC (“Mobile Star”), which sells goods bearing Apple’s registered trademarks and copies of Apple’s registered copyrighted work—either directly on the goods or on the packaging in which the goods are sold. Zellerbach Decl. ¶¶ 3-4, Ex. A. Through Apple test purchases from Amazon.com and Groupon, both of which unequivocally identified Mobile Star as their source of Apple-branded products sold by them to Apple, as well as through test purchases directly from Mobile Star, Apple learned that Mobile Star was selling counterfeit Apple-branded products. Zellerbach Decl. ¶ 4. The counterfeit products distributed by Mobile Star include power adapters and Lightning® cables used to charge Apple’s well-known consumer products. Apple’s tests confirmed that the counterfeit power adapters were so poorly designed and constructed that they pose serious safety risks, including the possibility of fire, electric shock, and even electrocution. Zellerbach Decl. Ex. B (Pearson Decl.) ¶¶ 7-9.

After Mobile Star was identified as a source of counterfeit Apple products, Apple sought Mobile Star’s cooperation in identifying its upstream vendors of the counterfeit Apple products so these dangerous products could be removed from the market. After Mobile Star repeatedly refused to provide such information, Apple finally filed suit against Mobile Star and Doe defendants alleging violations of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Counterfeiting and Infringement), 1125(a)(1)(A) (False Designation of Origin), the Copyright Act, 17 U.S.C. § 501 (Copyright Infringement), and a claim under California state law.

Discovery in that action enabled Apple to learn the identity of Mobile Star's upstream suppliers of Apple-branded goods. Respondent OEM World was one of the suppliers identified as a source of Mobile Star's Apple-branded products during expedited discovery.

Zellerbach Decl. ¶ 7.

**B. Apple's Attempts to Obtain Discovery From OEM World.**

After the entry of a stipulated preliminary injunction against Mobile Star and the start of the regular discovery period under Rule 26, Apple served Rule 45 subpoenas on entities identified as Mobile Star's sources of Apple-branded products in order to determine the ultimate source of the counterfeit products sold by Mobile Star. The requests served on Mobile Star's suppliers, including Respondent OEM World, were extremely narrow, seeking only documents in the four following categories:

1. Records of transactions through which the entity acquired Apple-branded products between October 17, 2013, and October 17, 2016;
2. Communications during the same time period regarding the genuineness or origin of Apple-branded products;
3. Documents and communications exchanged with Mobile Star concerning Apple-branded products; and
4. Communications exchanged with Mobile Star that discuss the litigation between Apple and Mobile Star.

Zellerbach Decl. ¶ 8, Ex. C.

OEM World was served with the subpoena at issue on February 22, 2017. Zellerbach Decl. Ex. D. OEM World failed to serve any objections to the subpoena, asking only for a short extension of the date to produce documents, which was given. Shaffer Decl. ¶ 7. On March 30, 2017, OEM World delivered to Apple's counsel's offices 15 pages of documents consisting of

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