

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BIG DADDY GAMES, LLC,

Plaintiff,

v.

REEL SPIN STUDIOS, LLC;
GAME MANAGEMENT CORP.;
JAMES L. DONKER; DAVID E. GROND;
PATRICK YOUNG; WILLIAM STIMAC;
MICHAEL LINDEMAN; RHODY R. MALLICK;
DALE CEBULA; KATHLEEN MALONEY;
MATTHEW BARRETT; ROBERT L. DIENER;
THE LYONS DEN DL, LLC; NIGL'S, INC.;
GAMEDAY SPORTS BAR, INC.;
ANTLERS SPORTS BAR & GRILL, LLC;
OSHKOSH LANES LLC; BACK AGAIN
STADIUM BAR, INC.; MR. D'S TWO, LLC;
SUSIE'S TRACKSIDE LLC; LAST HURRAH LLC;
HOTEL PUB, L.L.P.; WOOD SHED, INC.;
GEORGE SIMONIS; Q GAME TECHNOLOGIES
PTY LTD; and NICK MCLEOD,

Defendants.

ORDER

12-cv-449-bbc

In this civil action plaintiff Big Daddy Games, LLC has sued defendant Reel Spin Studios, LLC and several other defendants for infringing its copyrights in three video games. During the course of discovery, Reel Spin Studios has requested a significant amount of information from the alleged original developer of the three games, John Jones. Jones is an Australian citizen and nonparty, and Reel Spin Studios has been using the procedures provided under the Hague Convention to obtain evidence from Jones in Australia. On October 15, 2012,

I signed an order granting Reel Spin Studios's request to obtain certain evidence from Jones. Dkt. #104. Under the order, a letter of request was issued to the Australian Attorney General's office, asking for assistance in obtaining evidence from Jones on several different topics. Id. One of the topics identified in the letter is computer source code relating to the three games at issue in this case. All parties agree that the computer source codes are valuable proprietary information.

Now before the court is an emergency motion to amend the letter of request, filed by nonparty Toccata Gaming International, LLC, in which Toccata asks that defendant Reel Spin Studios be precluded from obtaining the source code to all post-2008 versions of the three games. Dkt. #215. Like plaintiff, Toccata contends that it owns copyrights in the three games at issue in this case. In particular, Toccata states that it owns the copyrights to all post-2008 versions of the games, while plaintiff owns the pre-2009 versions. Toccata contends that because it is not a party and has not accused defendants of infringing its copyrights in the post-2008 versions of the game, the post-2008 versions are irrelevant to the issues in this case. Additionally, Toccata contends that permitting Reel Spin Studios access to its source codes would be highly burdensome and would allow Reel Spin Studios access to its highly confidential proprietary information without adequate protections. Plaintiff filed a brief in support of Toccata's position, dkt. #225, and Reel Spin Studios filed a brief in opposition, dkt. #223, as well as a motion to strike plaintiff's brief. Dkt. #226. Defendant George Simonis filed a motion to quash Toccata's motion. Dkt. #220.

I am denying Toccata's motion to amend the letter of request for several reasons. First, I am not persuaded that the post-2008 source code is irrelevant to the issues in this case.

Throughout this case, the parties have had a difficult time articulating which versions of the games are at issue in this case, which entity owns which versions, how the versions differ and what aspects of the games are relevant to the various copyright claims. In light of this confusion, information and source code relating to all versions of the game may be relevant to the claims and issues in this case.

Second, although I understand Toccata's concerns about its proprietary information, I conclude that the protective order in this case will protect the information adequately. As defendants point out, Jones can mark the source code documents as "highly confidential source code" under the terms of the protective order in this case, dkt. #97, and thus prevent the code from being viewed by anyone other than attorneys and those identified in the protective order. To the extent that Toccata or Jones were unsure about their ability to mark the documents according to the stipulated protective order, I conclude that such marking would be appropriate and enforceable under the terms of the protective order.

Finally, Toccata's request comes too late in the case. This case is scheduled for trial on June 3, 2013, a little more than two months away. Toccata does not state when it first became aware of defendants' discovery request to Jones, but in light of Toccata's interest in this case, it is likely that Toccata has been aware of the request for some time and should have raised its objections earlier. However, regardless whether Toccata delayed unnecessarily, I would deny its request because it would be highly prejudicial to defendants to amend the letter of request at this stage. The process for obtaining discovery through the procedures of the Hague Convention can be cumbersome and time consuming. An amendment at this stage might delay the process, and there is no time for further delay in the schedule of this case. Therefore, I am denying Toccata's

motion.

With respect to the remaining motions, I am granting Reel Spin Studios's motion to strike plaintiff's brief in support of Toccata's motion. Plaintiff has known about defendants' discovery requests to Jones since October 2012 and cannot now object to them. I am denying defendant George Simonis's motion to quash as unnecessary.

ORDER

IT IS ORDERED that

1. Toccata Gaming International, LLC's emergency motion to amend the letter of request issued on October 15, 2012, dkt. #215, is DENIED.
2. Defendant George Simonis's motion to quash, dkt. #220, is DENIED as unnecessary.
3. Defendant Reel Spin Studios's motion to strike plaintiff Big Daddy Games's brief in support of Toccata's motion, dkt. #226, is GRANTED.
4. John Jones may mark any proprietary source code information as "highly confidential source code" in accordance with the stipulated protected order entered in this case. Dkt. #97.

Entered this 28th day of March, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge