

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KILLER JOE NEVADA, LLC,

Plaintiff,

v.

DOE-76.115.252.140,

Defendant.

Case No. 6:15-cv-00494-ST

ORDER

STEWART, Magistrate Judge:

Plaintiff filed this action to enforce its copyrights in its motion picture and to address the issues of Internet piracy against an unknown party (“infringer”) identified as Doe-76.115.252.140. Plaintiff subpoenaed the Internet Service Provider (“ISP”) to obtain the identity of the party assigned the ISP account associated with the infringing activity, commonly called the subscriber. Crowell Decl. (docket #19), ¶ 3. The ISP identified Reston Eilers as the subscriber. *Id.*

As the subscriber may or may not be the same as the infringer, plaintiff then attempted to ascertain whether the subscriber is an innocent third party and, if so, the identity of the infringer. In that attempt, plaintiff sent several letters to Mr. Eilers to elicit his cooperation. *Id.*, ¶ 4. Mr. Eilers did not respond to these letters. *Id.* Plaintiff then moved for and was granted leave to issue an FRCP 45 subpoena to compel Mr. Eilers’s assistance in its investigation (dockets ## 7 & 9). Because Mr. Eilers evaded service (Crowell Decl., ¶ 6), this court allowed plaintiff to serve Mr. Eilers by U.S. mail (docket #13). A subpoena was delivered to Mr. Eilers mail, but he failed

to respond. Crowell Decl., ¶¶ 8-9. As a result, plaintiff obtained an Order compelling his response (docket #17). Mr. Eilers was served with the Order, a new subpoena, and a cover letter, but failed to respond or appear pursuant to the subpoena. Crowell Decl., ¶¶ 12-15.

Accordingly, this court issued an Order to Show Cause (docket #23) to Mr. Eilers.

Mr. Eilers appeared at the show cause hearing on September 30, 2015, and assured the court that he is not the infringer who downloaded plaintiff's motion picture, and there is no evidence before the court to indicate otherwise. However, the issue currently before the court is not whether Mr. Eilers is the infringer, but is his refusal to respond to a subpoena served on him by U.S. Mail, delivery confirmed, and his subsequent failure to comply with this court's Order that he respond to plaintiff's subpoena.

The court finds that Mr. Eilers was properly served with a subpoena for his FRCP 45 deposition by U.S. Mail pursuant to a this court's Order allowing such service and failed to respond. The court also finds that Mr. Eilers was properly served with and failed to comply with the subsequent Order compelling his response. Mr. Eilers explained that he did not respond in reliance on advice provided by various Internet web pages that oppose plaintiff's actions or copyright enforcement. However, any advice to ignore court Orders or a subpoena, whether served in person or by mail, is incorrect and provides no legal excuse.

Therefore, this court finds Mr. Eilers in contempt of this Court's Order of July 20, 2015. As a sanction, plaintiff is awarded its reasonable costs and fees in an amount to be determined pursuant to FRCP 54.

DATED October 5, 2015.

s/ Janice M. Stewart

Janice M. Stewart
United States Magistrate Judge