

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re 2themart.com, Inc. Securities Litigation	Case No: Misc. Pending in C.D. California SACV-99-01127 DOC (AMx) ORDER GRANTING J. DOE'S MOTION TO PROCEED UNDER PSEUDONYM AND TO QUASH SUBPOENA ISSUED TO SILICON INVESTOR/INFOSPACE, INC. [Proposed]
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Movant J. Doe is allowed to proceed under a pseudonym for purposes of this motion, so that the litigation process does not itself undermine the privacy interest the movant seeks to vindicate. Does I through XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000).

The subpoena dated January 24, 2001 served by defendants on Silicon Investor and its parent company Infospace, Inc. is quashed to the extent that it would require identification of the persons who posted material on online message boards under pseudonymous user names.

Speech on the internet, including the postings on bulletin boards at issue here, enjoys the same high level of protection from governmental interference as does speech in traditional public forums. ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996), aff'd, 521 U.S. 844 (1997). The right to speak anonymously is similarly protected by the First Amendment. Buckley v. American Constitutional Law Found. Inc., 525 U.S. 182 (1999); McIntyre v. Ohio Elections Comm'n., 514 U.S. 334 (1995); Talley v. California, 362 U.S. 60 (1960). Where a civil litigant's interest in learning the identity of an anonymous speaker conflicts with the speaker's desire to remain anonymous, the court should allow its subpoena power to be used only sparingly. This case is similar to other contexts where the First Amendment creates a privilege against discovery for anonymous identity information. See e.g., Mark v. Shoen, 48 F.3d a 415-416 (9th Cir. 1995); (reporter's privilege against disclosure of confidential news sources and research materials); Snedigar v. Hodderson,

114 Wn.2d 153, 786 P.2d 781 (1990) (association's privilege against disclosure of membership lists).

A subpoena asking an internet company to reveal the identities of persons who use its service to speak anonymously on the internet should be enforced only where the party seeking the information can show that the information is central to the case and cannot be obtained by other means, and that the need for the information outweighs the anonymous speaker's interest in shielding identity. In the instant case, the requested information does not meet that test.

DATED this ____ day of _____, 2001.

United States District Judge

Presented by:

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ORDER GRANTING MOTION TO QUASH -- 11

Please send any questions or comments to webmaster@eff.org.