

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00941-CMA-BNB

FACONNABLE USA CORPORATION,)
A Delaware Corporation,)
)
Plaintiff,)
)
v.)
)
JOHN DOES 1-10,)
All whose true names are unknown,)
)
Defendants.)

**SKYBEAM, INC., OBJECTIONS TO MAGISTRATE JUDGE BOLAND’S ORDER
COMPELLING SKYBEAM TO IDENTIFY DEFENDANTS**

Skybeam, Inc., objects to the order issued by Magistrate Judge Boyd Boland on May 25, 2011, DN 15 (here cited as “Opin.”), for the reasons set forth in the accompanying memorandum of law, as follows:

1. The judge erred by refusing to modify the April 18 Order authorizing expedited discovery and by refusing to grant a protective order.
2. The judge erred by applying the wrong legal standard to decide whether discovery should be permitted or denied, namely, that “(1) the information is otherwise discoverable in a pending action and the requirements set out in the federal rules for obtaining the discovery have been satisfied; (2) the plaintiff has stated a plausible claim for relief; and (3) the rights of the anonymous posters to prior notice of the subpoena [be] honored” only if there is a pre-existing contractual obligation to provide such notice. Opin. at 11-12, 14.
3. The judge erred in his application of the legal standard to decide whether discovery should be denied on the record in this case. Because the application of the First Amendment to the facts of

the case is at issue here, the order is subject to de novo review. *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984).

4. The judge erred by failing to address the existence of subject matter jurisdiction.
5. The judge erred by suggesting that, if discovery were denied in this case, Façonnable would be “left with no ability to vindicate its rights, and legal process [would be] rendered meaningless.” Opin. at 10.
6. The judge erred by treating the complaint as having been verified, without noting that the “verification” is not attested and was stated only on information and belief. *Id.*
7. The judge erred by concluding that plaintiff has alleged “plausible claims for relief” under the Lanham Act and the Colorado Consumer Protection Act. *Id.* at 10-11.
8. The judge erred by requiring disclosure without first insisting that Does receive notice so that she could have an opportunity to oppose disclosure. *Id.* at 11-12.
9. The judge erred by treating Skybeam’s Terms of Service as a reason not to give notice to Does or to employ a strict standard for requiring disclosure. *Id.*
10. The judge erred by apparently assuming that the subpoena at issue here sought to identify the Doe defendants for content-neutral reasons. *Id.* at 13.
11. The judge erred by holding that Does’ First Amendment right to speak anonymously could be overridden by a merely substantial government interest, instead of requiring a compelling government interest. *Id.* at 14.
12. The judge erred by holding that Does’ First Amendment right to speak anonymously could be overridden because the subpoena is narrowly tailored to serve the government interest, instead of requiring that the subpoena be necessary to serve that interest. *Id.*

13. The judge erred by requiring Skybeam to “comply with the commands of the subpoena . . . not later than June 3, 2011.”

Respectfully submitted,

/s/ Paul Alan Levy
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June 1, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this date I am causing a copy of the Objections to Judge Judge Boland's order to identify anonymous Internet speakers and the accompanying memorandum of law, to be filed through the Court's ECF system which will serve the papers on all counsel.

 /s/ Paul Alan Levy

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