

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

FACONNABLE USA CORPORATION,

Plaintiff,

v.

JOHN DOES 1 – 10,

Defendants.

No. 11-cv-00941-CMA-BNB

**MEMORANDUM OF LAW IN SUPPORT
OF THIRD-PARTY SKYBEAM, INC.’S
MOTION TO MODIFY THE APRIL 18,
2011 ORDER PERMITTING EXPEDITED
DISCOVERY, AND FOR A PROTECTIVE
ORDER**

Third-Party Skybeam, Inc. (“Skybeam”) hereby moves to modify the this Court’s April 18, 2011 Order Permitting Expedited Discovery (the “April 18 Order”) [Doc. #7], and for a Protective Order. This Motion is accompanied by a Memorandum of Law. As grounds for this motion, Skybeam states that the April 18 Order, which granted Façonnable’s Motion For Expedited Order Authorizing Discovery (“Façonnable’s *Ex Parte* Discovery Motion”), incorrectly stated that the standard for ordering an Internet Service Provider (“ISP”) to disclose the identity of subscriber(s) alleged to have posted defamatory statements is “good cause.” Recent case law rejects the “good cause” standard in cases of actual speech in favor of a balancing test to weigh a plaintiff’s discovery needs against anonymous speakers’ First Amendment right to speak anonymously. Accordingly, this Court should modify the April 18 Order to acknowledge and apply the appropriate standard

Moreover, the Court must also provide the John Doe defendant(s) with the opportunity to appear anonymously and object to disclosure of their identities. Accordingly, the Court should engage in a preliminary analysis of the standard for disclosing identities and then direct Skybeam to provide notice to its subscriber(s) whose identities are sought in this action so that they have

the opportunity to address First Amendment protections for their speech prior to disclosure of their identities. The Court should allow thirty (30) days from the date of Skybeam's notice to its subscriber(s) before deciding whether the standard for disclosure has been met and whether such disclosure should be made.

Further, as a non-party, Skybeam is entitled to reimbursement from Façonnable for the costs it will incur in responding to this or any future subpoena in this action.

Skybeam represents that, pursuant to Local Rule 7.1, prior to the filing of this Motion, Skybeam made reasonable, good-faith efforts to confer with opposing counsel to resolve this disputed matter.

WHEREFORE, Skybeam respectfully requests that the Court modify the April 18 Order. Additionally, the Court should enter a protective order with respect to the Subpoena served on Skybeam in this action to allow for reasonable time for Skybeam to provide notice to its subscriber(s), and setting the amounts to be reimbursed by Façonnable to Skybeam. Finally, the Court should award Skybeam costs and attorneys fees associated with its motion.

Dated: April 29, 2011

Respectfully submitted,

s/ John D. Seiver

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Attorneys for Skybeam, Inc.

CERTIFICATE OF SERVICE

HEREBY CERTIFY that on this 29th day of April, 2011, true and correct copies of the foregoing document and proposed order were served via ECF upon all counsel of record.

s/ Leslie G Moylan
Leslie G. Moylan