

Hon. Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABERCROMBIE & FITCH CO.,
Plaintiff,
v.
JOHN DOES 1-13,
Defendants.

No. C10-1998RAJ
ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiff's *ex parte* motion to conduct third-party discovery (Dkt. # 3). For the reasons explained below, Plaintiff's motion is GRANTED.

II. BACKGROUND

Plaintiff Abercrombie & Fitch Company ("A&F") is a retailer of casual apparel that has registered a number of Internet domain names, many of which correspond to A&F's trademarks and service marks. The unknown Defendants are the registrants, assignees, traffickers, and users of 159 Internet domain names that contain or consist of A&F's registered marks and/or misspellings of A&F's marks. The Defendants have

1 registered their allegedly infringing domain names using false or unreliable domain
2 registration information that has prevented A&F from discovering their true identities.
3 *See* Complaint ¶¶ 21-20.

4 A&F seeks leave to conduct limited discovery to determine the Defendants'
5 identities so that A&F can name and serve them in this lawsuit.

6 II. ANALYSIS

7 A. Legal Standards.

8 Fed. R. Civ. P. 26(d) provides that “[a] party may not seek discovery from any
9 source before the parties have conferred as required by [Fed. R. Civ. P.] 26(f) , except . . .
10 when authorized by these rules, by stipulation, or by court order.” But in situations
11 “where the identity of alleged defendants [is] not [] known prior to the filing of a
12 complaint . . . the plaintiff should be given an opportunity through discovery to identify
13 the unknown defendants, unless it is clear that discovery would not uncover the identities,
14 or that the complaint would be dismissed on other grounds.” *Gillespie v. Civiletti*, 629
15 F.2d 637, 642 (9th Cir. 1980). Some district courts in this circuit have, to determine
16 whether such limited discovery is warranted, used a four-part test first promulgated in
17 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999). *See, e.g., Liberty*
18 *Media Holdings, LLC v. Does*, 2010 WL 4568714 (S.D. Cal. Nov. 3, 2010) (applying the
19 *Seescandy.com* test).

20 Under *Seescandy.com*, a plaintiff may be entitled to limited discovery if it (1)
21 identifies “the missing party with sufficient specificity such that the Court can determine
22 that defendant is a real person or entity who could be sued in federal court”; (2) identifies
23 “all previous steps taken to locate the elusive defendant”; (3) establishes “to the Court’s
24 satisfaction that plaintiff’s sued against defendant could withstand a motion to dismiss”;
25 and (4) files “a request for discovery with the Court, along with a statement of reasons
26 justifying the specific discovery requested as well as identification of a limited number of
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1 persons or entities on whom discovery process might be served” that would likely
2 uncover the identity of the defendants. *Seescandy.com*, 185 F.R.D. at 578-580.

3 **B. The Plaintiff has Establish It is Entitled to Limited Discovery.**

4 **1. The Plaintiff has Adequately Identified the Defendants.**

5 A&F’s allegations identify the Defendants as the individuals that have created and
6 maintained websites that infringe A&F’s marks, in violation of the federal Anti-
7 Cybersquatting and Consumer Protection Act and the Lanham Act. Thus, A&F has
8 established that the Defendants are individuals that could be sued in federal court.

9 **2. The Plaintiff Has Adequately Attempted to Locate the Defendants.**

10 A&F has searched public records to discover the identities of the Defendants, but
11 that search has returned no reliable results. *See* Bateman Decl. (Dkt. # 4) ¶¶ 3-6. These
12 searches constitute a good-faith effort to comply with the rules for service of process.

13 **3. This Lawsuit Could Withstand a Motion to Dismiss.**

14 This factor requires a plaintiff to “make some showing that an act giving rise to
15 civil liability actually occurred and that the discovery is aimed at revealing specific
16 identifying features of the person or entity who committed that act.” *Seescandy.com*, 185
17 F.R.D. at 580. A&F’s Complaint goes beyond conclusory allegations: A&F alleges that
18 the Defendants have registered domain names that infringe on A&F’s marks and profit
19 from A&F’s marks in bad faith. *See* Complaint ¶¶ 21-29. The court is satisfied that
20 A&F’s allegations are sufficiently specific to withstand a motion to dismiss.

21 **4. The Plaintiff’s Proposed Discovery Will Likely Lead to Identifying**
22 **Information.**

23 A&F proposes to conduct limited discovery of third parties, including domain
24 registrars, web hosts, Internet service providers, ad venue payors, financial institutions,
25 and e-mail service providers who should be able to identify the defendants. A&F
26 proposes to send subpoenas to these third parties requesting information about the
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1 defendants' identities and potentially any transactions with the third parties, and to send
2 follow-up subpoenas to additional third parties identified by the originally subpoenaed
3 parties. *See* Bateman Decl. ¶ 7. A&F represents that it could complete this limited
4 discovery in 120 days, assuming timely responses to subpoenas. *See* Bateman Decl. ¶ 8.


5 The court finds that this proposed discovery is likely to reveal identifying
6 information about the Defendants' identities because it is reasonable to assume that the
7 Defendants must have contracted with third-party providers of goods and services in
8 order to register the domain names at issue, and those providers will thus have identifying
9 information regarding the Defendants.

10 Thus, the court has found that A&F has satisfied all four factors of the
11 *Seescandy.com* test and is therefore satisfied that A&F's proposed limited discovery is
12 warranted.

13 IV. CONCLUSION

14 For the foregoing reasons, the court GRANTS the Plaintiff's motion (Dkt. # 3).

15 DATED this 17th day of December, 2010.

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19 The Honorable Richard A. Jones
United States District Judge