

1 **** E-filed August 27, 2010 ****

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7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 SOLARBRIDGE TECHNOLOGIES, INC., a
Delaware corporation,

No. C10-03769 LHK (HRL)

12 Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO CONDUCT
THIRD-PARTY DISCOVERY AND
DENYING AS MOOT PLAINTIFF'S
ADMINISTRATIVE MOTION**

13 v.

14 JOHN DOE (dba "Mark Tatley"),

[Re: Docket Nos. 4 & 7]

15 Defendant.

16 _____/

17 **BACKGROUND**

18 SolarBridge Technologies, Inc. ("SolarBridge"), a developer of productions and systems for
19 solar panel installations, filed this action against the John Doe defendant ("Defendant") alleging
20 violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* ("CFAA"), and
21 California Penal Code § 502(c) for unauthorized access of a computer, as well as statutory and
22 common law trade secret misappropriation and unfair competition, after one of SolarBridge's
23 competitors notified it that it had received an anonymous email containing SolarBridge's
24 confidential intellectual property and trade secret material (including schematics and other product
25 design documents related to current and future products).

26 The email to which the confidential material was attached was sent using the alias "Mark
27 Tatley" from the email address "tattel_49@yahoo.com" and had the subject heading "Gift."
28 (Docket No. 5 ("Ramsey Decl.") at ¶ 3.) Upon learning of this, SolarBridge sent an email to the

1 “tattel_49@yahoo.com” email address, requesting that the email recipient identify themselves, but
2 so far SolarBridge has received no reply. (*Id.* at ¶ 8.) It also searched public record names and the
3 Internet for the name “Mark Tatley” and the Yahoo! email address. (*Id.* at ¶ 6.) SolarBridge’s
4 investigation suggests that there is no real individual named “Mark Tatley” and that the email
5 address was created anonymously with fake information. (*Id.* at ¶ 7.)

6 SolarBridge has also contacted its other competitors to determine whether they received
7 similar emails, but they have indicated that they did not get any such email and do not have any
8 information to help identify Defendant. (*Id.*) SolarBridge further contacted all parties subject to
9 non-disclosure or confidentiality agreements and who might have had access to SolarBridge’s
10 confidential information, but none of those parties have responded with any information to help
11 identify Defendant, either. (*Id.*)

12 As such, after exhausting all reasonable efforts to identify and locate Defendant, SolarBridge
13 filed the instant motion for leave to conduct limited discovery of third party entities — specifically,
14 various internet service providers — necessary to identify and locate Defendant so SolarBridge can
15 properly serve Defendant in this action.¹ (Docket No. 4.)

16 LEGAL STANDARD

17 The practice of suing Doe defendants is generally disfavored in the Ninth Circuit. However,
18 in cases where the identity of the alleged defendant will not be known prior to the filing of a lawsuit,
19 “the plaintiff should be given an opportunity through discovery to identify the unknown
20 defendants, unless it is clear that discovery would not uncover the identities, or that the complaint
21 would be dismissed on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir.
22 1999) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)).

23 When an anonymous Internet user is a target defendant, limited discovery to identify the
24 defendant may be permitted where a plaintiff:

25 (1) identifies the missing party with sufficient specificity such that the court can
26 determine that defendant is a real person or entity who could be sued in federal court;

27 ¹ SolarBridge also filed an administrative motion for the Court to hear its motion for leave to
28 conduct third party discovery on August 31, 2010. Because the Court finds the matter suitable for
determination without oral argument pursuant to Civil Local Rule 7-1(b), the Court will deny
SolarBridge’s administrative motion as moot.

1 (2) identifies all previous steps taken to locate the elusive defendant;
2 (3) establishes to the court’s satisfaction that the lawsuit against defendant could
3 withstand a motion to dismiss; and

4 (4) states reasons justifying the specific discovery requested, and identifies a limited
5 number of persons or entities upon whom discovery might be served and for which there is a
6 reasonable likelihood that the discovery will lead to identifying information about defendant that
7 would make service of process possible.

8 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999).

9 **DISCUSSION**

10 SolarBridge has met its burden as set forth above. First, Defendant is an individual or entity
11 that accessed SolarBridge’s confidential information and disclosed that information to one of its
12 competitors, and the email sent by Defendant is associated with San Jose-based company Yahoo!,
13 Inc.

14 Second, and as described above, SolarBridge has undertaken a diligent investigation to
15 identify Defendant without the use of third party discovery, to no avail. The “Mark Tatley” name
16 and “tattel_49@yahoo.com” email address, by themselves, only have value insofar as they can be
17 associated with further email account information and/or an IP address. This information, though, is
18 only possessed by an email or internet service provider, and they generally do not divulge customer
19 information without a subpoena or other legal authorization. As such, SolarBridge seeks to
20 subpoena Yahoo!, Inc. and Google, Inc. for this otherwise unobtainable information.²

21 Third, the Court is satisfied that SolarBridge’s action would likely withstand a motion to
22 dismiss, as it appears to have sufficiently alleged claims for violations of the CFAA and California
23 Penal Code § 502(c) as well as statutory and common law trade secret misappropriation and unfair
24 competition. And fourth, SolarBridge has shown that there is a reasonable likelihood that its

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27 ² SolarBridge states that has requested archived copies of the email from Google, Inc., the internet
28 service provider for SolarBridge’s competitor that received the email from “Mark Tatley.” An
archived copy of the email may reveal header information and transmission data, including the
originating IP address(es), which would allow SolarBridge to identify the computer where the email
was sent. (Ramsey Decl. at ¶¶ 11-15.)

1 requested discovery will lead to information to identify Defendant and make service on Defendant
2 possible.

3 **CONCLUSION**

4 Based on the foregoing, the Court GRANTS SolarBridge’s motion for leave to conduct third
5 party discovery. Accordingly, IT IS ORDERED THAT:

- 6 1. SolarBridge may subpoena Yahoo!, Inc. for registration, assignment, contact, billing and
7 payment information, and any IP address information related to the email account
8 “tattel_49@yahoo.com”;
- 9 2. SolarBridge may subpoena Google, Inc. for registration, assignment, contact, billing and
10 payment information associated with any IP address related to the sender of the email
11 from account “tattel_49@yahoo.com”;
- 12 3. SolarBridge will be permitted to seek discovery of other IP addresses that Defendant has
13 registered with the hosts/ISPs listed above, and to subpoena registration, assignment,
14 contact, billing and payment information for those additional addresses;
- 15 4. SolarBridge will be permitted to seek discovery of IP addresses that the hosts/ISPs listed
16 above have assigned to other users who have provided the same billing information as
17 that provided for the IP addresses associated with the email sent from the email account
18 “tattel_49@yahoo.com”;
- 19 5. To the extent discovery of the host/ISP records identifies other IP addresses that (a) were
20 associated with the email sent from the email account “tattel_49@yahoo.com”; and (b)
21 are not controlled by the subpoenaed hosts/ISPs, SolarBridge will be permitted to
22 subpoena other hosts/ISPs identified in the responses to its subpoenas for registration,
23 assignment, contact, billing and payment information for those IP addresses; and
- 24 6. In granting SolarBridge’s motion for leave to conduct discovery to identify Defendant,
25 the Court does not intend to foreclose any valid objections that may be raised by parties
26 responding to these subpoenas.

27 In addition, the Court DENIES AS MOOT SolarBridge’s administrative motion for shorten time.
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IT IS SO ORDERED.

Dated: August 27, 2010



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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C10-03769 HRL Notice will be electronically mailed to:

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