

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE WEATHER UNDERGROUND,
INC.,

Plaintiff,

CIVIL ACTION NO. 09-10756

v.

DISTRICT JUDGE MARIANNE O. BATTANI

NAVIGATION CATALYST
SYSTEMS, INC.,

MAGISTRATE JUDGE VIRGINIA M.
MORGAN

Defendant.¹

**ORDER DENYING DEFENDANT'S
MOTION FOR PROTECTIVE ORDER (D/E #36)**

This is an action in which plaintiff filed suit against defendant alleging cybersquatting under the Anti-Cybersquatting Consumer Protection, 15 U.S.C. § 1125(d), trademark infringement under the Lanham Act, 15 U.S.C. § 1114(1), false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a), and dilution by blurring and tarnishment under the Lanham Act, 15 U.S.C. §1125(c). Plaintiff also alleges claims of unfair competition and trademark infringement, civil conspiracy, contributory trademark infringement, and vicarious trademark infringement under Michigan law. The matter comes before the court on defendant's Motion for Protective Order (D/E #36). Plaintiff filed a response in opposition to that motion (D/E #42) and defendant subsequently filed a reply brief (D/E #44). This court heard oral arguments on March

¹All of the other defendants named in the complaint; Basic Fusion, Inc., Connexus, Corp., and Firstlook, Inc., have been dismissed due to a lack of personal jurisdiction (D/E #29).

15, 2010. For the reasons stated on the record and discussed below, it is ordered that defendant's motion be **DENIED**.

Defendant moves for a protective order pursuant to Fed. R. Civ. P. 26(c). Fed. R. Civ. P. 26(c)(1) provides, in part, that:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending--or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

Here, defendant seeks a protective order prohibiting subpoenas from being sent to third-parties relating to the third-parties' trademarks and interactions with defendant. However, as argued by plaintiff, defendant lacks standing to bring this motion. It is clear that, "as a general rule, a party has no standing to seek to quash a subpoena directed to a non-party." United States v. Wells, No. 06-10589, 2006 WL 3203905, *2 (E.D. Mich. Nov.3, 2006) (Battani, J.). See also Iron Workers' Local 25 Pension Fund v. Watson Wyatt & Co., No. Nos. 04-cv-40243, 07-cv-12368, 2009 WL 648503, *6 (E.D. Mich. March 10, 2009) (Murphy, J.); Underwood v. Riverview of Ann Arbor, No. 08-CV-11024-DT, 2008 WL 5235992, *1 (E.D. Mich. December 15, 2008) (Cleland, J.). An exception exists where the party-movant can demonstrate a claim of privilege or personal right. Mann v. Univ. of Cincinnati, No. 95-3195, 1997 WL 280188, *4 (6th Cir.1997) (per curiam). A party seeking to quash a subpoena bears a heavy burden of proof.

Wells, 2006 WL 3203905 at *2. Defendant, in seeking to quash subpoenas directed at third-parties, makes no claim of privilege or personal right here. As such, and in light of the heavy burden of proof, the court finds defendant is without standing to move for the requested protective order. Therefore, the motion is denied.²

SO ORDERED.

S/Virginia M. Morgan
Virginia M. Morgan
United States Magistrate Judge

Dated: March 22, 2010

PROOF OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record via the Court's ECF System and/or U. S. Mail on March 22, 2010.

s/Jane Johnson
Case Manager to
Magistrate Judge Virginia M. Morgan

²To the extent defendant could have standing to bring this motion, its arguments that the subpoenas are overbroad and harassing must be rejected. For plaintiff to prevail on its cybersquatting claim, it must establish defendant's bad faith and that bad faith determination is guided by the non-exclusive Statutory Factors set forth in 15 U.S.C §1125. The subpoenas at issue here, relating to the third-parties' trademarks and interactions with defendant, are clearly relevant to a number of those non-exclusive factors.