

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

Civil Action No. 11-cv-_____

FAÇONNABLE USA CORPORATION, a Delaware corporation,

Plaintiff,

v.

JOHN DOES 1-10, all whose true names are unknown,

Defendants.

VERIFIED COMPLAINT AND JURY DEMAND

Plaintiff, FAÇONNABLE USA CORPORATION ("Façonnable USA"), by and through its undersigned counsel, for its Complaint against Defendants JOHN DOES 1-10 (collectively, "Defendants"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for violation of the Lanham Act and the Colorado Consumer Protection Act, and for trade libel/commercial disparagement arising out of Defendants' unauthorized disparagement of Façonnable USA, which is part of the M1 Group of companies, through postings on the Wikipedia website located at <http://www.wikipedia.com>. Each of the Defendants has posted or has assisted in the posting of false and defamatory comments concerning Façonnable USA and M1 Group on the Wikipedia website. M1 Group has informally requested identifying information for the Defendants from Skybeam, Inc. ("Skybeam"), the Internet service provider associated with the Internet Protocol address from which the Defendants' postings originated. However, this lawsuit became necessary in order to

obtain the requested information from the Internet service provider. Façonnable USA, by separate motion filed contemporaneously herewith, is seeking the Court's authorization to conduct limited discovery for the purpose of obtaining the identifying information for the Defendants.

PARTIES

2. Façonnable USA Corporation is a Delaware corporation with its registered address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Façonnable USA is part of the M1 Group of companies and its ultimate parent is M1 Group Limited.

3. At this time, Façonnable USA does not know the identities or citizenship information for Defendants John Does 1-10. If the Court permits the initial discovery being requested by Façonnable USA to ascertain the names, addresses and other identifying information for the Defendants, Façonnable USA will amend this Complaint to include the actual names of the Defendants.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has supplemental jurisdiction over Façonnable USA's claims arising under the laws of Colorado and the common law pursuant to 28 U.S.C. § 1367(a) because these claims are so related to the federal claims in this action that they form a part of the same case or controversy.

6. Venue is proper in this district pursuant to at least 28 U.S.C. § 1391(b) because a

substantial part of the events or omissions giving rise to these claims occurred in this district. Among other things, upon information and belief, the Internet Protocol ("IP") addresses from which Defendants' postings on Wikipedia originated are associated with the Internet service provider Skybeam, which is located in this district at 320 Gateway Drive, Berthoud, Colorado 80513.

FACTUAL BACKGROUND

7. Façonnable is a world-renowned clothing brand specializing in men's and women's luxury sportswear. In the United States, Façonnable clothing has been sold at high-end department stores since the 1980s and, more recently, at Façonnable boutiques located throughout the country. Since 2007, Façonnable has been owned by the M1 Group of companies.

8. The Internet-based encyclopedia website Wikipedia contains article entries for Façonnable and M1 Group, located at <http://en.wikipedia.org/wiki/Fa%C3%A7onnable> and http://en.wikipedia.org/wiki/M1_Group, respectively.

9. Upon information and belief, anyone with Internet access can write and make changes to Wikipedia articles. According to the Wikipedia website, an Internet user can contribute to articles as an anonymous author, under a pseudonym, or by using their real identity. Unless an Internet user edits a website through his or her Wikipedia account, the Wikipedia "edit" link for each article will show the IP address associated with the user's edits.

10. In the past two months, one or more anonymous Internet users have edited the Wikipedia articles for M1 Group and Façonnable by adding false and misleading statements that

M1 Group and Façonnable are supporters of Hezbollah (the "Defamatory Statements").¹ For example, on March 1, 2011, an anonymous Internet user added the following statements to the Façonnable article on Wikipedia:

- "M1 Group is purported to be a strong supporter of Hezbollah..."
- "Customer's of [Façonnable] should consider that their purchases provide support for an organization identified by the US government as a supporter of terrorism"

See Ex. A, printout from the Wikipedia article on Façonnable printed on April 1, 2011.

11. According to Wikipedia records, the anonymous user who posted those Defamatory Statements did so from the IP address 72.42.100.214. Upon information and belief, that IP address is associated with Skybeam, an Internet service provider located in Colorado. Skybeam has declined to provide to M1 Group information identifying the anonymous user absent a subpoena. *See* Ex. B, correspondence between M1 Group and Skybeam.

12. M1 Group edited the Wikipedia articles for M1 Group and Façonnable to remove the Defamatory Statements. However, an anonymous Internet user subsequently re-posted the Defamatory Statements to the articles, from the IP address 72.42.80.123. Upon information and belief, that IP address also is associated with Skybeam.

13. A significant portion of purchasers and potential purchasers of Façonnable-branded products are Internet users, and many of them use the Internet in connection with making purchasing decisions. Those purchasers could easily be exposed to the Defamatory Statements, especially if they are searching the Wikipedia site directly or conducting a search for information on Façonnable or M1 Group through a search engine such as Google. For example,

¹ Hezbollah is a Shiite Islamist militia and political party based in Lebanon that has been designated by the U.S. State department as a terrorist organization.

in searching the Google search engine for the terms "Façonnable" and "M1 Group," consumers are likely to access the Wikipedia articles since they appear near the top of the Internet search results for each term. As a result, Defendants' repeated publication of the Defamatory Statements on Wikipedia are causing, and will continue to cause, damage to the Façonnable brand and M1 Group.

FIRST CLAIM FOR RELIEF
(Violation of the Lanham Act – 15 U.S.C. § 1125(a))

14. Façonnable USA hereby incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

15. Defendants' activities constitute false descriptions and representations concerning the nature, characteristics and qualities of Façonnable USA's goods, services and commercial activities in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

16. As a proximate result of Defendants' actions, Façonnable USA has suffered and will continue to suffer damage and loss, in an amount to be determined at the time of trial. Defendants' actions have caused and will continue to cause irreparable harm to Façonnable USA for which there is no adequate remedy at law.

17. The foregoing acts of infringement have been knowing, deliberate, willful and wanton and in utter disregard of Façonnable USA's rights, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

SECOND CLAIM FOR RELIEF
(Common Law Trade Libel/Commercial Disparagement)

18. Façonnable USA hereby incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

19. Defendants published or caused to be published false statements that are harmful to Façonnable USA's interests, with the intent that the publication of the statements would cause harm to its interests.

20. At the time of such publication, Defendants knew that the statements were false or acted in reckless disregard of the truth or falsity of such statements.

21. As a proximate result of Defendants' actions, Façonnable USA has suffered and will continue to suffer damage and loss, in an amount to be determined at the time of trial. Defendants' actions have caused and will continue to cause irreparable harm to Façonnable USA for which there is no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Violation of Colorado Consumer Protection Act – C.R.S. § 6-1-101 *et seq.*)

22. Façonnable USA hereby incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

23. Upon information and belief, in the course of their business, Defendants have made false representations as to the characteristics of Façonnable USA's goods and commercial activities and as to the affiliation or connection of a person therewith and disparaged the goods and business of Façonnable USA by false and misleading representations of fact.

24. Upon information and belief, Defendants engaged in these activities knowingly, willfully and deliberately.

25. As a proximate result of Defendants' actions, Façonnable USA has suffered and will continue to suffer damage and loss, in an amount to be determined at the time of trial. Defendants' actions have caused and will continue to cause irreparable harm to Façonnable USA for which there is no adequate remedy at law.

26. Façonnable USA is entitled to treble damages, attorneys' fees and costs, all in amounts to be determined at trial, pursuant to C.R.S. § 6-1-113.

JURY DEMAND

Façonnable USA demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Façonnable USA prays for judgment and relief against Defendants, jointly and severally, as follows:

A. Issuance of an Order granting Façonnable USA's Motion for Expedited Order Authorizing Discovery filed pursuant to Fed.R.Civ.P. 26(d) to allow Façonnable USA to ascertain the identities of Defendants John Does 1-10;

B. For temporary, preliminary and permanent injunctive relief enjoining Defendants and their officers, agents, heirs, servants, employees, successors, and assigns, and those persons in active concert, participation or privity with them, or any of them:

(1) From disparaging Façonnable USA, its business, or its products in any manner, either in writing (including on the Internet), orally, or otherwise; and

(2) From using any false designation, false description or false representation, and from making any false representations or from engaging in any act or acts which, either alone or in combination, constitute deceptive or unfair competition by Defendants with Façonnable USA.

C. That an accounting be conducted and judgment be entered against Defendants for:

(1) All damages sustained by Façonnable USA on account of, *inter alia*, Defendants' trade libel/commercial disparagement and violation of the Lanham Act and the

Colorado Consumer Protection Act;

(3) Actual compensatory damages in an amount not presently known, but to be computed during the pendency of this action; and

(4) Treble, exemplary and punitive damages under state law and federal law.

D. That Façonnable USA be awarded costs, attorneys' fees, and pre-judgment and post-judgment interest; and

E. That Façonnable USA be awarded other and further relief, both general and special, at law and equity, as the Court may deem just and proper.

Dated this 7th day of April, 2011.

s/Peter J. Korneffel, Jr.

Peter J. Korneffel, Jr.

Ashley Krause

Brownstein Hyatt Farber Schreck, LLP

410 Seventeenth Street, Suite 2200

Denver, Colorado 80202-4432

Phone: 303.223.1100

pkorneffel@bhfs.com

akrause@bhfs.com

ATTORNEYS FOR FAÇONNABLE USA
CORPORATION

Plaintiff's Address:

600 5th Avenue

New York, NY 10020-2202.

99999\946\1523248.3

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

Civil Action No. 11-cv-_____

FACONNABLE USA CORPORATION,
a Delaware corporation

Plaintiff,

v.

JOHN DOES 1-10,
all whose true names are unknown,

Defendants.

VERIFICATION

I, Jean-Francois Beaudouin depose and state that I am a Director and Vice-President of Plaintiff Façonnable USA Corporation, I am authorized to execute this VERIFICATION on behalf of Plaintiff in the above-captioned action, and the facts in the foregoing VERIFIED COMPLAINT AND JURY DEMAND are based on my personal knowledge or on information available to me, and the facts are true and correct to the best of my knowledge, information and belief.

This 7th day of April, 2011.

 s/ Jean-Francois Beaudouin