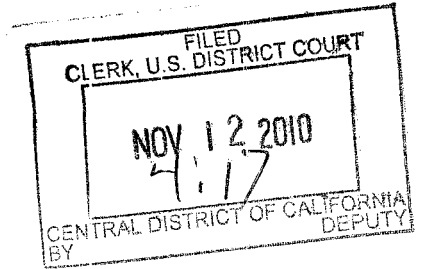


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26 UNITED STATES DISTRICT COURT FOR
 27 THE CENTRAL DISTRICT OF CALIFORNIA

28 THE WEATHER UNDERGROUND,
 INC., a Michigan corporation,

Plaintiff,

v.

BASIC FUSION, INC., a Delaware

COMPLIANT AND JURY
 DEMAND

Case No CV 10 8677

JFW
 CAGR

1 corporation; CONNEXUS CORP.,
2 a Delaware corporation; FIRSTLOOK,
3 INC., a Delaware corporation;
4 EPIC MEDIA GROUP, INC.,
5 a Delaware corporation; and DOMAIN
6 NAME PROXY, LLC, a Delaware
7 corporation,

8 Defendants.

9 **COMPLAINT AND DEMAND FOR JURY TRIAL**

10 FOR ITS COMPLAINT in this matter, Plaintiff, THE WEATHER
11 UNDERGROUND, INC., by and through its attorneys, TRAVERSE LEGAL,
12 PLC, states:

13 **I. PARTIES, JURISDICTION, AND VENUE**

14 1. Plaintiff, The Weather Underground, Inc. (hereinafter
15 “Wunderground”), is a for profit corporation organized and existing under the
16 laws of the State of Michigan, with its principal place of business located at 300
17 N. Fifth #240, Ann Arbor, Michigan 48104.

18 2. Defendant, Connexus Corporation (“Connexus”), is a for profit
19 corporation organized and existing under the laws of the State of Delaware with
20 its principal place of business at 2141 Rosecrans Ave. #2020, El Segundo,
21 California 90245 and on information and belief is now wholly owned by
22 Defendant Epic Media Group.
23
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1 3. Defendant, Basic Fusion, Inc. (“Basic Fusion”), is a for profit
2 corporation organized and existing under the laws of the State of Delaware with
3 its principal place of business at 335 Madison Avenue, Ste. 840, New York, New
4 York 10017. Basic Fusion is a wholly owned subsidiary of FirstLook.
5

6 4. Defendant, FirstLook, Inc. (“FirstLook”), is a for profit corporation
7 organized and existing under the laws of the State of Delaware with its principal
8 place of business at 2141 Rosecrans Ave. #2020, El Segundo, California 90245.
9 FirstLook is a wholly owned subsidiary of Connexus, now Epic Media.
10

11 5. Defendant, Domain Name Proxy, LLC (“DNP”) is a for profit
12 corporation organized under the laws of the State of Delaware with its principal
13 place of business at 2101 Rosecrans Avenue, #2000, El Segundo, California
14 90245. Basic Fusion is a wholly owned subsidiary of FirstLook.
15

16 6. Defendant, Epic Media Group, Inc. (“Epic”), is a for profit
17 corporation organized and existing under the laws of the State of Delaware with
18 its principal place of business at 2141 Rosecrans Avenue, #2020, El Segundo,
19 California 90245.
20

21 7. Defendants officers, directors and contractors have collectively and
22 have each acted as an agent for the other and the acts herein complained of were
23 within the scope of such agency. As such, Defendants are jointly and severally
24 liable for the commission of the unlawful acts.
25
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1 8. This action arises under the Trademark Act of 1946, 15 U.S.C. §§
2 1051 *et seq.*, including without limitation the Anti-cybersquatting Consumer
3 Protection Act (ACPA), 15 U.S.C. § 1125(d), and the common laws of the State
4 of California.
5

6 9. This Court has subject matter jurisdiction over Plaintiff's claims
7 pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b) as well as 15 U.S.C. §§ 1121 and
8 1125(d).
9

10 10. This court has supplemental jurisdiction over the claims in this
11 Complaint that arise under the common laws in the State of California pursuant to
12 28 U.S.C. § 1367(a), because the state law claims are so related to the federal
13 claims that they form part of the same case or controversy and derive from a
14 common nucleus of operative facts.
15
16

17 11. This Court has personal jurisdiction over Defendant Basic Fusion,
18 Defendant DNP, Defendant Epic, Defendant FirstLook, and Defendant Connexus
19 (collectively "Defendants") because Defendants have: (a) committed intentional
20 and tortious acts within this State; (b) conducted substantial business within this
21 State related to the unlawful activity at issue in this Complaint; and (c)
22 otherwise have availed themselves of this forum. The harm suffered by Plaintiff
23 is a result of the business conducted by these Defendants within this district and
24 elsewhere.
25
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1 12. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because
2 Defendants conduct substantial business within this judicial district related to the
3 unlawful activity at issue in this Complaint and because a substantial part of the
4 events or omissions giving rise to the claim occurred in this judicial district,
5 including, but not limited to, registering, using, trafficking, monetizing and
6 using/parking the infringing domain names within this judicial district.
7

8
9 **II. PLAINTIFF'S BUSINESS AND USE OF THE INTERNET**
10

11 13. Plaintiff Wunderground has been providing real-time online weather
12 information via the Internet as a commercial entity since 1995. Prior to that, the
13 menu-based telnet interface program that displayed real-time weather information
14 via the Internet had originated at the University of Michigan. It was later
15 developed for use on numerous operating platforms and evolved to a user-friendly
16 web interface.
17

18
19 14. Wunderground was one of the first organizations to provide users
20 with an online weather service. Wunderground pioneered the offering of real-time
21 weather conditions with such features as severe weather warnings and advisories,
22 international conditions, marine weather, and detailed local forecasts. Internet
23 users can find weather for any city, state, zip code, airport code, or country. Users
24 can also customize the web site by selecting a language, a time zone, units (metric
25 or English), and site appearance (e.g. show favorites, photos, promos). Moreover,
26
27
28

1 users can listen to local weather radio stations, track radar, and even customize
2 and print a Forecast Flyer.

3
4 15. Wunderground provides Internet users with access to various blogs,
5 such as Climate Change Blog, Tropical Weather Discussion, and Forecast
6 Competition, wherein the users post, share, and comment on weather related
7 information and discussions with other users from around the world. *See Exhibit*
8 *A, Wunderground's Blog Directory.*

9
10
11 16. Internet users can become members to the web site, and as a result,
12 have access to enhanced features of the web site. Moreover, users may opt to pay
13 for a one year membership giving them longer radar animations, ad-free weather,
14 universal favorites, and U.S. forecasts and alerts through email (known as “no ads
15 members”). Wunderground has over 80,000 no ads members.

16
17
18 17. Wunderground has developed the world’s largest network of personal
19 weather stations (i.e. weather information provided by individuals and other
20 entities from their exact location from around the globe) to provide users with the
21 most localized weather conditions. Wunderground displays weather information
22 provided by over 40,000 personal weather stations.

23
24 18. Wunderground makes its services available through mobile devices,
25 such as T-Mobile and the Apple iPhone cell phones.
26
27
28

1 19. Wunderground made its web site multilingual in 1998. In fact, the
2 <wunderground.com> domain has now added language identifiers, e.g.
3 <swedish.wunderground.com>, with the corresponding language available at said
4 web site.
5

6 20. Wunderground has offered its services via its official web sites,
7 www.wunderground.com, www.weatherunderground.com, and www.wund.com,
8 since 1995, 1998, and 2001 respectively. *See Exhibit B, Printout of*
9 *<wunderground.com>*.
10

11 21. Wunderground's official web site, located at <wunderground.com>,
12 attracts approximately 14 million global visitors each month. 11 million of these
13 visitors are from the United States alone. As a result, wunderground.com ranks
14 within or near the top 100 amongst all United States web sites, per quantcast.com.
15 *See Exhibit C, Quantcast.com Results for <wunderground.com>*.
16
17

18 22. Hundreds of thousands of Internet users utilize Wunderground's
19 weather services at its web sites each day.
20

21 23. Numerous organizations utilize Wunderground's technologies,
22 hardware, and software to power their products and services, including, but not
23 limited to, the Chicago Tribune, State Farm Insurance, Associated Press, and the
24 Mayo Clinic.
25
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1 24. While many of the weather related offerings at Wunderground's web
2 site are free, Wunderground generates revenue from its web site via advertising.
3 Such major organizations as eBay, H&R Block, VacationsToGo.com, and
4 Classmates.com advertise on Wunderground's web sites.
5

6 25. Wunderground also places millions of advertisements on third party
7 web sites by providing an application that displays Wunderground's logo and
8 name along with the local temperature. *See, e.g., Exhibit D, Printout of Display*
9 *on Third Party Web Site.* An Internet user can click on the display, which
10 Wunderground refers to as a WEATHER STICKER®, in order to be redirected to
11 Wunderground's website where more detailed weather information is provided to
12 the Internet user. *See Exhibit E, Printout of Wunderground's Web Site after User*
13 *Clicked the Display.*
14
15
16

17 26. Wunderground is the registrant of a portfolio of domain names that
18 includes over 125 domain names, the majority of which incorporate its trademarks
19 and service marks. *See Exhibit F, List of Domains Owned by Wunderground.*
20
21

22 27. The Internet has become an indispensable tool through which
23 Complainant communicates, markets, and services its customers.
24

25 **III. PLAINTIFF'S TRADEMARKS AND SERVICE MARKS**

26 28. Wunderground is the owner of all rights, common law or otherwise,
27 in and to the mark THE WEATHER UNDERGROUND. Wunderground owns
28

1 the following service mark registered on the Principal Register of the United
2 States Patent and Trademark Office (USPTO).

3
4 a. THE WEATHER UNDERGROUND

5 i. Reg. No. 2,297,683

6 ii. Registration Date: December 7, 1999

7
8 iii. Providing weather information via a global computer network

9 *See Exhibit G a true copy of U.S. Reg. No. 2,297,683.* The USPTO acknowledged
10 the incontestability of U.S. Reg. No. 2,297,683 pursuant to 15 U.S.C. § 1065 on
11 April 1, 2005. *See Exhibit H, a true copy of Section 8 Acceptance and Section 15*
12 *Acknowledgement for U.S. Reg. No. 2,297,683.* Furthermore, the USPTO
13
14 accepted the declaration of continued use and renewal on December 20, 2008.

15
16 *See Exhibit I, a true copy of Acceptance of Section 8 Declaration and Section 9*
17 *Renewal.*

18
19 29. Wunderground is the owner of all rights, common law or otherwise,
20 in and to the mark WUNDERGROUND. Wunderground owns the following
21 service mark registered on the Principal Register of the United States Patent and
22 Trademark Office (USPTO).

23
24 a. WUNDERGROUND.COM

25 i. Reg. No. 2,324,272

26
27 ii. Registration Date: February 29, 2000

- 1 iii. Computer services, namely, creating indexes of information,
2 sites, and other references available on computer networks;
3 searching and retrieving information, sites and other resources
4 available on computer networks for others; providing an on-
5 line link to news, weather, sports, current events, and reference
6 materials
7

8
9 *See Exhibit M, a true copy of U.S. Reg. No. 2,447,954. The USPTO*
10 acknowledged the incontestability of U.S. Reg. No. 2,447,954 pursuant to 15
11 U.S.C. § 1065 on March 19, 2007. *See Exhibit N, a true copy of Section 8*
12 *Acceptance and Section 15 Acknowledgement for U.S. Reg. No. 2,447,954.*
13

14
15 32. Wunderground is the owner of all rights, common law or otherwise,
16 in and to the mark WUNDERMAP. Wunderground owns the following service
17 mark registered on the Principal Register of the United States Patent and
18 Trademark Office (USPTO).
19

20 a. WUNDERMAP

21 i. Reg. No. 3,527,030

22 ii. Registration Date: November 4, 2008

23 iii. Providing a web site and web site links to geographic
24 information in the nature of geospatial maps: Computer
25 services, namely, providing on-line information services in the
26
27
28

1 field of weather and geospatial weather maps; providing
2 location-specific weather data and geospatial weather maps via
3 a global computer network; on-line computer generated
4 cartography
5

6 *See Exhibit O a true copy of U.S. Reg. No. 3,527,030.*
7

8 33. Wunderground is the owner of all rights, common law or otherwise,
9 in and to the mark WUNDERRADIO. Wunderground owns the following service
10 mark registered on the Principal Register of the United States Patent and
11 Trademark Office (USPTO).
12

13 a. WUNDERRADIO

14 i. Reg. No. 3,647,301

15 ii. Registration Date: June 30, 2009

16 iii. Downloadable computer software used for playing radio or
17 audio streams on a mobile device or cell phone
18
19

20 *See Exhibit P, a true copy of U.S. Reg. No. 3,647,301.*
21

22 34. Wunderground is the owner of all rights, common law or otherwise,
23 in and to the mark WUNDERPHOTOS. Wunderground owns the following
24 service mark registered on the Principal Register of the United States Patent and
25 Trademark Office (USPTO).
26

27 a. WUNDERPHOTOS
28

- i. Reg. No. 3,739,351
- ii. Registration Date: January 19, 2010
- iii. Providing a web site that gives multiple computer users simultaneously the ability to upload, share, rate, review and exchange digital photos relating to the earth sciences, weather and natural phenomena

See Exhibit Q, a true copy of U.S. Reg. No. 3,739,351.

35. Wunderground is the owner of all rights, common law or otherwise, in and to the mark WUNDERBLOG. Wunderground owns the following service mark registered on the Principal Register of the United States Patent and Trademark Office (USPTO).

a. WUNDERBLOG

- i. Reg. No. 3,742,092
- ii. Registration Date: January 26, 2010
- iii. On-line journals, namely blogs featuring information about weather

See Exhibit R, a true copy of U.S. Reg. No. 3,742,092.

36. Wunderground is also the owner of all rights, common law or otherwise, in and to the mark WUNDER in connection with its services.

1 37. Through its efforts, Wunderground has also established tremendous
2 value and goodwill associated with its family of marks, all of which include the
3 distinctive, common element of WUNDER. As a result, Wunderground's family
4 of marks (hereinafter "WUNDER Family of Marks") have reached a high degree
5 of consumer recognition.
6

7
8 38. Wunderground's registered trademarks, common law trademarks,
9 trade names, service marks, family of marks, and variants are collectively referred
10 to as the "Wunderground Marks".
11

12 39. The Wunderground Marks are distinctive and were distinctive in the
13 marketplace at the time of all acts alleged herein and, as such, designate a source
14 of origin attributable to Plaintiff.
15

16 40. The Wunderground Marks were and continue to be used in interstate
17 commerce and are widely known and recognized among the general consuming
18 public.
19

20 41. As a result of Wunderground's substantial investment, the
21 Wunderground Marks have developed a reputation for excellence and extensive
22 goodwill in the market. As such, the Wunderground Marks are extremely
23 valuable to Plaintiff as the true indicator of source for its offerings and services.
24
25
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1 typically placed through Google's Adword program or Yahoo's Overture
2 program, are being displayed on Parked Domains with no content beyond the
3 advertisements themselves.
4

5 45. "Typosquatting,"¹ also called URL hijacking, is a form of
6 cybersquatting which relies on mistakes such as typographical errors made by
7 Internet users when inputting a trademark protected website address into a web
8 browser. Typo-variants of famous trademarks are registered, trafficked in and
9 used because of the high traffic generated by those web sites and the fact that a
10 certain percentage of people directly navigating to the trademark protected web
11 site will accidentally misspell or mis-type the domain name into the address bar.
12 Typosquatted domains can generate significant pay-per-click (PPC) revenue,
13 especially when registered, trafficked and used en masse with automated software.
14
15
16
17

18 46. Predicting typographical errors by Internet users is part of the
19 typosquatting strategy, with logic built into automated domain identification
20 software for profitable "Qwerty Typos" (users accidentally hitting letters adjacent
21 to the correct key-stroke on the qwerty-style keyboard), "Letter Swaps" (users
22
23
24

25 ¹ See Wikipedia, <http://en.wikipedia.org/wiki/Typosquatting> ("Typosquatting, also
26 called URL hijacking, is a form of cybersquatting which relies on mistakes such
27 as typographical errors made by Internet users when inputting a website address
28 into a web browser. Should a user accidentally enter an incorrect website address,
they may be led to an alternative website owned by a cybersquatter.").

1 typing the domain name in the wrong letter-order) and “Sticky Keys” (users
2 accidentally hitting a letter twice or missing it all together).
3

4 47. “Domain Tasting” is the practice using the five-day "grace period"
5 (the “Add Grace Period” or “AGP”) to test the marketability of the domain. A
6 registrant utilizes to the AGP and then elects to either keep the domain and pay
7 the registration fee or return it to the registry and pay no or a limited fee. The
8 AGP was originally instituted by the Internet’s governing body ICANN
9 (International Corporation for Assigned Names and Numbers) to allow users to
10 obtain a refund if they mistakenly register the wrong domain. Companies such as
11 these Defendants determined a way to use the AGP to mass register, traffic and
12 use domains and ‘taste’ them for traffic during the AGP, returning those domains
13 for a full refund which they predict will not derive enough income from PPC
14 advertisements on Parked Pages. Some companies such as these Defendants
15 further abuse the AGP by repeatedly registering, trafficking in and using domains
16 during the registration period in order to avoid registration fees while they
17 determine profitability of a particular domain. Domain Tasting has been a
18 controversial practice that recently resulted in policy changes by ICANN in order
19 to reduce or eliminate mass Domain Tasting by companies with Parking Page
20 business models.
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1 48. The software which generates the Parked Page and used to pull in
2 Yahoo Overture and other advertisements is designed to predict the interests of the
3 visitor and, in many instances, shows advertisements in violation of third party
4 trademark rights (i.e. qwunderground.com [note typo] serving up advertisements
5 for weather web sites and competitors of Wunderground and its
6 wunderground.com web site). *See, e.g., Exhibit S, Printout of*
7 *<qwunderground.com>*. The typo-domain Registrant is paid based on how many
8 links have been clicked on the Parked Page, and as such receives PPC revenue.
9
10

11
12 **b. The Means by Which Defendants Accomplished Their**
13 **Calculated Scheme**

14 49. Defendants have engaged in Domain Tasting, Domain Parking and
15 Typosquatting.
16

17 50. Defendants, during the relevant period, registered, used and
18 trafficked, en masse, typo-domains such as the Infringing Domains, *infra*, which
19 are the subject of this lawsuit and as more fully detailed below.
20

21 51. Navigation Catalyst Systems, Inc. (“NCS”), is a for profit corporation
22 organized and existing under the laws of the State of Delaware and a foreign
23 corporation in the State of California with its principal place of business at 2141
24 Rosecrans Ave., #2020, El Segundo, CA 90245 and has been sued by the Plaintiff
25 in the Federal District Court in the Eastern District of Michigan for similar claims
26 as the ones alleged in this lawsuit, *The Weather Underground, Inc., a Michigan*
27
28

1 *corporation; v. Navigation Catalyst systems, Inc., a Delaware corporation, Case*
2 *No: 2:09CV10756.*

3
4 52. Plaintiff's Complaint *Case No: 2:09CV10756* originally included
5 NCS, Basic Fusion, FirstLook and Connexus. Basic Fusion, FirstLook and
6 Connexus' objected to personal jurisdiction and were dismissed without prejudice
7
8 from that case.

9 53. NCS, or its proxy service, Defendant DNP, is, or was, listed as the
10 Registrant of the Infringing Domains, *infra*, which are the subject of this lawsuit.
11

12 54. NCS is a shell company with no employees, bank accounts or other
13 assets.
14

15 55. Upon information and belief, NCS was incorporated merely to serve
16 as the registrant of domain names in an effort to take advantage of limited liability
17 protections while not being exposed to a risk of loss.
18

19 56. Upon information and belief, Epic and Connexus have undergone a
20 merger in 2010 and continue to operate under both company names.
21

22 57. Upon information and belief, Epic Media has accepted the liabilities
23 of its wholly owned subsidiaries, including Basic Fusion, DNP, FirstLook and the
24 company it merged with, Connexus.
25

26 58. Connexus and/or Epic, on its behalf and on behalf of and in
27 collaboration with its Co-Defendants, designs, develops and maintains an online
28

1 marketing software platform offering Parking Page software technology to
2 parking companies, domain registrants and others.

3
4 59. Connexus, now Epic Media, employees, contractors, officers and/or
5 directors engaged in and are responsible for the acts complained of in this
6 Complaint.

7
8 60. Connexus, now Epic Media, provided funding, employees,
9 technology, know-how and other resources that enabled the registration, use,
10 trafficking and monetization of the Infringing Domains that are the subject of this
11 lawsuit.

12
13 61. Connexus, now Epic Media, controlled the business plan, policies
14 and procedures of the unlawful acts complained of in this Complaint.

15
16 62. Connexus, now Epic Media, is a primary financial beneficiary of the
17 acts complained of in this Complaint.

18
19 63. FirstLook holds itself out as primarily a domain parking company
20 using processes, technology and software, including Parking Page software,
21 owned, licensed, developed and/or implemented by itself and its Co-Defendants.

22
23 64. FirstLook employees, contractors, officers and/or directors engaged
24 in and are responsible for the acts complained of in this Complaint, including but
25 not limited to the registration, use and trafficking of the Infringing Domains.
26
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1 65. FirstLook provided funding, employees, technology, know-how and
2 other resources that enabled the registration, use, trafficking and monetization of
3 the Infringing Domains, which are the subject of this lawsuit.
4

5 66. FirstLook controlled the business plan, policies and procedures of the
6 unlawful acts complained of in this Complaint.
7

8 67. FirstLook is a primary beneficiary of the acts complained of in this
9 Complaint.
10

11 68. Basic Fusion is an ICANN accredited registrar of Internet domain
12 names and acted as the registrar for the Infringing Domains which are the subject
13 of this lawsuit and was, until recently, also owned by FirstLook and is now
14 believed to be owned by Epic.
15

16 69. Basic Fusion services are used primarily, if not during some points
17 almost exclusively, to perpetuate the scheme of cybersquatting set forth in this
18 Complaint.
19

20 70. Defendants' actions in creating and implementing the cybersquatting
21 scheme set forth in this Complaint are knowing and intentional.
22

23 71. Defendants have devised a system using automated software by
24 which high traffic web sites, which are often trademark protected, are identified
25 and typographical variations of the domains are registered, renewed and parked
26 for PPC monetization. Defendants' business model is essentially to monetize
27
28

1 traffic of trademark-protected domains until a trademark holder complains, at
2 which point Defendants voluntarily turn over the domains(s) after enjoying PPC
3 revenue in the interim.
4

5 72. Defendants' business model has come under increasing attack, as
6 further discussed below, *infra* ¶ 102, in numerous cases. In defending these cases,
7 Defendants (a) argue for the legitimacy of the systems and software that they
8 designed for registering, trafficking in and using domain names which they, in
9 fact, knew, and continue to know, would contain trademark protected domains, (b)
10 argue that they exercise due diligence in turning over trademark protected
11 domains upon complaint by the trademark holder, and (c) argue that they take
12 measures to blacklist certain trademarks from registration in their portfolio.
13
14
15

16 73. Essentially, Defendants rely upon the fact that most trademark
17 holders do not pursue these matters in Court under the ACPA if they are able to
18 voluntarily secure the typo-domains or that they can settle cases alleging bad faith
19 infringement for an amount well below the money they earn as a result of
20 infringement. Similarly, Defendants wait to be a named Respondent in a UDRP
21 Complaint before voluntarily transferring the infringing domain names.
22
23

24 74. Upon information and belief, Defendants have created and utilize
25 software for registering, trafficking in and using typo-domains that target domain
26
27
28

1 names with a high amount of traffic, many of which they know will be, and in fact
2 are, trademark protected.

3
4 75. Defendants are working together or have worked together to
5 conceive, design, conspire and commit the unlawful activities complained of in
6 this Complaint.

7
8 76. NCS as the registrant of the subject domain names has no employees
9 or bank accounts leaving employees of FirstLook and Epic and/or Connexus to
10 identify and perform the registration, use and trafficking of domain names that
11 infringe third party trademarks.

12
13 77. DNP is a proxy service to hold the registrations NCS in an effort to
14 obscure the identity of NCS as the actual registrant of many of the domain names
15 making it more difficult for trademark holders to identify NCS as the actual
16 registrant of Infringing Domains and more difficult to pursue remedies for
17 trademark infringement against NCS for infringement of those domains.

18
19 78. Despite the identification, selection, registration, and monetization of
20 these domains registered by Defendants, there are apparently no executed written
21 agreements among NCS, DNP, FirstLook, Connexus, and Epic.

22
23 79. Upon information and belief, there are no funds that are exchanged
24 among NCS, DNP, FirstLook, Connexus and Epic in connection with the
25
26
27
28

1 identification, selection, registration, use, trafficking and monetization of the
2 domains registered by Defendants or registered by DNP on behalf of Defendants.
3

4 80. NCS, DNP, FirstLook, Connexus, and Epic are under common
5 ownership and control.

6
7 81. Each of the Defendants was the agent, servant, employee, partner,
8 alter ego, subsidiary, or joint venture of each of the other Defendants and NCS,
9 and the acts of each of Defendants were in the scope of such relationship. Each of
10 the Defendants acted with the knowledge, permission, and consent of each of the
11 other Defendants and NCS. Each of the Defendants aided and abetted the other
12 Defendants and NCS in the acts or omissions alleged in this Complaint.
13
14

15 V. DEFENDANTS' UNLAWFUL ACTIONS

16 a. Past Registration and Use of Infringing Domain Names

17
18 82. Defendants registered, trafficked in and used 238 domain names
19 which are typographical or other derivations of Plaintiff's trademarks (collectively
20 referred to as "Infringing Domains"), listed in *Exhibit T* and *Exhibit U (filed under*
21 *seal)* and other domains yet to be identified. Wunderground never authorized
22 Defendants to register, traffic in or use the Infringing Domains or otherwise
23 register or use its marks in any way.
24

25
26 83. The Infringing Domains are misspellings, inversions, typos or
27 otherwise confusingly similar to the Wunderground marks.
28

1 84. Defendants used the Infringing Domains to redirect to web sites that
2 consisted of either contextual pay-per-click parking pages or paid search engine
3 listings. *See, e.g., Exhibit S, Printout of <qwunderground.com>; Exhibit V,*
4 *Printout of <udergroundweather.com>.*
5

6 85. Many of the web sites on the infringing domains redirect or show
7 advertisements to Plaintiff's competitors, including WeatherBug, Top-
8 Weather.net, ALOT Weather, DTN Meteorlogix, and others. *See Exhibit V,*
9 *Printout of Links from <udergroundweather.com>.*
10
11

12 86. Upon information and belief, the earliest registration,
13 <udergroundweather.com>, was on or near July 7, 2004. This is approximately
14 nine years after Wunderground had registered and used <wunderground.com>,
15 approximately ten years after Wunderground had registered and used
16 <weatherunderground.com>, over four years after Wunderground received its
17 Certificate of Registration from the USPTO for WUNDERGROUND.COM, and
18 over nine years after Wunderground received its Certificate of Registration from
19 the USPTO for THE WEATHER UNDERGROUND.
20
21
22

23 87. Upon information and belief, Defendants registered, trafficked in and
24 used some of the Infringing Domains that are the subject of this lawsuit during the
25 ICANN Add Grace Period ("AGP"). In doing so, Defendants used process,
26 technology and/or software developed Defendants to 'taste' the typo-traffic on
27
28

1 those domains during the AGP to ensure adequate direct navigation traffic and
2 revenue. Defendants then kept the typo-domains which have adequate direct
3 navigation traffic and monetized those domains using Parking Page software,
4 process and technology conceived, designed, developed and maintained through
5 their collaborative efforts.
6

7
8 88. The Infringing Domains were/are identical or confusingly similar to
9 the Wunderground Marks.
10

11 89. Defendants' registration and use of the Infringing Domains created a
12 likelihood of consumer confusion.
13

14 90. By means of their registration and use of the Infringing Domains,
15 Defendants intended to capitalize on the goodwill associated with the
16 Wunderground Marks and Wunderground's own web sites.
17

18 91. Defendants wrongfully profited from the unlawful use of the
19 Wunderground Marks.
20

21 92. Defendants' use of the Infringing Domains was in commerce,
22 including United States commerce, as defined by 15 U.S.C. § 1127.
23

24 93. Defendants' use of the Infringing Domains created a likelihood of
25 confusion as to the source, sponsorship, affiliation, or endorsement of those web
26 sites.
27
28

1 94. Defendants were typosquatting on Wunderground's distinctive and
2 famous trademarks.

3
4 95. On or about August 18, 2008, Plaintiff filed a Complaint against
5 NCS with the National Arbitration Forum in accordance with ICANN's Uniform
6 Domain Name Dispute Resolution Policy regarding domains of which Plaintiff
7 was then aware.
8

9 96. The UDRP Complaint named 41 domain names, including
10 <qwunderground.com>, <swunderground.com>, <wundertground.com>,
11 <wunederground.com>, <wununderground.com>, <winderground.com>,
12 <wumderground.com>, <wundeerground.com>, <wunderfround.com>,
13 <wundergtound.com>, <wundergroundr.com>, <udergroundweather.com>,
14 <undegroundweather.com>, <undergoundweather.com>,
15 <undergroudweather.com>, <undergroundwaether.com>,
16 <undergroundwwaether.com>, <undergrounweather.com>,
17 <watherunderground.com>, <weaherunderground.com>,
18 <weahterunderground.com>, <weartherunderground.com>,
19 <weatehrunderground.com>, <weatgerunderground.com>,
20 <weathernunderground.com>, <weatherunbderground.com>,
21 <weatherundergound.net>, <weatherundergriund.com>,
22 <weatherundergrouind.com>, <weatherunderground.com>,
23
24
25
26
27
28

1 <weatherundergrounf.com>, <weatherunderround.com>,
2 <weatherundergrpound.com>, <weatherundewrground.com>,
3 <weatherundreground.com>, <weathrunderground.com>,
4 <weatherunferground.com>, <wewaterunderground.com>,
5 <wetaherunderground.com>, <wweatherunderground.com>, and
6 <wwwund.com>.
7

8
9 97. On October 13, 2008, the Panel, composed of The Honorable Charles
10 K. McCotter, Jr. (Ret.), ordered that all domain names be transferred to Plaintiff.²
11

12 98. Thereafter, the above then known 41 domains were transferred to
13 Plaintiff.
14

15 99. Plaintiff has since become aware of the other Infringing
16 Domains as set forth in Exhibits T and U.
17

18 **b. Continued Mass Cybersquatting Evidences Defendants’**
19 **Unlawful Business Model**

20 100. Defendants committed, and continue to commit, the unlawful acts
21 cited herein intentionally, as part of their regular way of conducting business.
22

23 101. As noted above, Defendants utilize software and a process to register
24 the domain names with sufficient direct navigation traffic to generate a positive
25 Return on Investment (“ROI”). Defendants have been and remain aware that their
26

27 ² Opinion available at
28 <http://domains.adrforum.com/domains/decisions/1221002.htm>.

1 domain registration strategy, software and process will register and monetize
2 typographical variations of trademark protected domain names such as the
3
4 Infringing Domains listed herein, as well as many other famous brands. Its former
5 and current registration, trafficking and use of other typo-domains is easily
6
7 identified by searching for typo-variations high-traffic web sites on the Internet
8 and shows that Defendants continue to engage in cybersquatting. A representative
9
10 sampling includes, but is not limited to, the following typo-domains which are or
11 have been registered, trafficked or used by Defendants:

- 12 a. Wikipedua.org, Wikiperdia.com, Ikipedia.com, Wikipedika.com,
13 Wikipwdia.com, Wikioedia.com infringing the USPTO trademark
14 registration for WIKIPEDIA (Reg. No. 3,040,722);
- 15
16 b. Facebooko.com, Facevbook.com, Favebook.com and Facebhook.com
17 infringing the USPTO trademark for FACEBOOK (Reg. No.
18 3,122,052);
- 19
20 c. Myspacer.org, Myspace3.com, Myspce.org, Myspqce.com,
21 Myspacxe.com, M6yspace.com, Wwwlmyspace.com, Myspzce.com,
22 Myspacwe.com infringing the USPTO trademark for MYSPACE
23 (Reg. No. 2,911,041);
- 24
25
26 d. Eszpn.com, esxpn.com, espb.org infringing the USPTO trademark
27 registration for ESPN (Reg. No. 1,345,096);
28

- 1 e. Oerkut.com, 9orkut.com infringing the USPTO trademark
2 registration for ORKUT (Reg. No. 2,970,421);
3
4 f. Flikckr.com, Glickr.net infringing the USPTO trademark registration
5 for FLICKR (Reg. No. 3455275);
6
7 g. Mi9ninoa.org, Mininovs.org, Mimninoa.org, Minionova.org,
8 Mninoa.net, Mininiva.org, Mioninoa.org, Mioninoa.com,
9 Mininovca.org, Mininopva.com, Mininnova.com infringing the
10 USPTO trademark for MININOVA (Reg. No. 3,491,970);
11
12 h. Beob.org, Bebho.com, Bewbo.com, Bnebo.com, Bgebo.com,
13 Gbebo.com, Bebpo.com, Bebno.com infringing the USPTO
14 trademark for BEBO (Reg. No. 3,138,515);
15
16 i. Yourube.com, Y6outube.com, Youtubge.com, Youtune.net,
17 Youthbe.com, Tyoutube.com com infringing the USPTO trademark
18 for YOUTUBE (Reg. No. 3,525,802);
19
20 j. Neftflix.com infringing the USPTO trademark for NETFLIX (Reg.
21 No. 2,552,950); and
22
23 k. Huffinftonpost.com infringing the USPTO trademark for THE
24 HUFFINGTON POST (Reg. No. 3,095,331).
25

26 102. In fact, NCS as the named registrant of the domain names, has been
27 sued in federal court by distinctive and/or famous trademark holders for its
28

1 typosquatting and cybersquatting activities in violation of federal trademark law
2 under the Lanham Act. These lawsuits include:

- 3
4 a. Mesa Garage Doors v. Navigation Catalyst Systems Inc. et al. Case
5 No. 8:2009cv00053 (CA Central Jan. 13, 2009);
- 6
7 b. Verizon California Inc. et al v. Navigation Catalyst Systems, Inc. et
8 al. Case No. 2:2008cv02463 (CA Central Apr. 15, 2008);
- 9
10 c. Rodman & Renshaw, LLC v. Navigation Catalyst Systems, Inc. Case
11 No. 2:2008cv01081 (CA Central Feb. 15, 2008);
- 12
13 d. Kaplan, Inc. v. Navigation Catalyst Systems, Inc. Case No.
14 2:2008cv00439 (CA Central Jan. 24, 2008);
- 15
16 e. Station Casinos, Inc. v. Navigation Catalyst Systems, Inc. Case No.
17 2:2006cv01401 (NV Nov. 2, 2006);
- 18
19 f. Virgin Enterprises Limited v. Navigation Catalyst Systems, Inc. et al.
20 Case No. 1:2006cv03651 (NY Southern May 12, 2006);
- 21
22 g. Wynn Resorts Holdings, LLC v. Navigation Catalyst Systems, Inc.
23 Case No. 2:2005cv00924 (NV Aug. 1, 2005);
- 24
25 h. Wachovia Corporation v. Navigation Catalyst Systems Inc. Case No.
26 2:2004cv10087 (CA Central Dec. 10, 2004); and
- 27
28 i. Federated Western Properties Inc. et al v. Navigation Catalyst
Systems Inc. et al. Case No. 8:2004cv01171 (CA Central Oct. 6,

1 2004). Verizon, Kaplan, Virgin, Wachovia, Wynn Resorts, and
2 Federated Western.

3
4 103. Any efforts Defendants make to avoid typo-squatting is disingenuous
5 and half-hearted at best, done only to distract from their unlawful business model
6 which targets high traffic, and thus often trademark protected, domain names and
7 typographical errors made by consumers attempting to access the legitimate
8 domain names corresponding to the respective underlying entity. Any use of
9 human screeners that manually “blacklist” or remove trademark protected
10 domains is insufficient to immunize, shield, or otherwise exonerate Defendants
11 from liability in connection with the registration and use of infringing domains in
12 the first instance. Moreover, any efforts, whether via automated tools or human
13 screeners, were not sufficiently implemented when the Infringing Domains were
14 registered.

15
16
17
18
19 104. Defendants business, including its domain registration practices,
20 relies upon third-party victims having to discover Defendants’ unlawful use their
21 trademarks and/or service marks as part of a domain registration and use. Only
22 upon discovery of Defendants’ infringing or otherwise unlawful domain
23 registrations and uses, and subsequent notification to the Defendants, do the
24 Defendants try to avoid liability.
25
26
27
28

1 105. Defendants claimed “policy” of voluntarily transferring disputed
2 domain names after being notified of a dispute or adverse claim is insufficient to
3 immunize, shield, or otherwise exonerate Defendants from liability in connection
4 with the unlawful business model.³
5

6 106. Defendants have exhibited a pattern of mass, unlawful domain name
7 registrations of typo-graphical errors of third-party trademarks.
8

9 107. Defendants’ domain name registrations utilize, in bad faith, qwerty
10 typos and sticky keys, captured in part via DNS error data, to capitalize off of the
11 errors or shortcomings of Internet users seeking the legitimate domain name that
12 incorporates an entity’s trademark protected goods/services.
13
14

15 108. Defendants have registered and/or acquired multiple domain names
16 which it knows, or has the ability to know absent its willful blindness, are
17 identical or confusingly similar to the marks of others that are distinctive at the
18 time of registration of such domain names without regard to the goods or services
19 of the parties.
20

21 109. Defendants have used multiple domain names which they know, or
22 have the ability to know absent their willful blindness, are identical or confusingly
23
24
25

26 ³ To find otherwise would be equivalent to not punishing or penalizing someone
27 for stealing a car because, upon being caught, that someone offered to return the
28 car to its lawful owner.

1 similar to the marks of others that are distinctive at the time of registration of such
2 domain names without regard to the goods or services of the parties.

3
4 110. Defendants have registered and/or acquired multiple domain names
5 which Defendant knows, or has the ability to know absent its willful blindness, are
6 identical or confusingly similar to the marks of others that are dilutive of famous
7 marks of others that are famous at the time of registration of such domain names
8 without regard to the goods or services of the parties.

9
10
11 111. Defendants have used multiple domain names which Defendant
12 knows, or has the ability to know absent its willful blindness, are identical or
13 confusingly similar to the marks of others that are dilutive of famous marks of
14 others that are famous at the time of registration of such domain names without
15 regard to the goods or services of the parties.

16
17
18 112. Defendants have registered and/or used thousands of domain names
19 that are identical, or confusingly similar, to distinctive and/or famous trademarks
20 and service marks owned by unrelated third parties.

21
22 113. Defendants set up NCS, Basic Fusion and DNP as shell companies in
23 order to deflect financial liability for cybersquatting. Defendant FirstLook and
24 Connexus/Epic officers, employees and contractors perform all of the activities
25 necessary to register, traffic and use typo-domains and Infringing Domains of
26 Plaintiff and other third parties.

1 114. Upon information and belief, neither NCS, Defendant Basic Fusion
2 nor Defendant DNP have any employees or bank accounts.
3

4 115. Upon information and belief, Defendants Connexus/Epic Media and
5 FirstLook control and own all the assets necessary to engage in the unlawful
6 activity described in this Complaint.
7

8 116. Upon information and belief, NCS as the named registrant of the
9 domains was set up to hold no assets and thus remain uncollectible in litigation.
10

11 117. Upon information and belief, Defendants Connexus/Epic and
12 FirstLook create DNP in order to shield the public WHOIS data which would
13 otherwise show NCS as the registrant of domains infringing third party
14 trademarks.
15

16 **COUNT I**

17 **Cybersquatting under the Anti-Cybersquatting**
18 **Consumer Protection Act – 15 U.S.C. § 1125(d)**

19 118. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
20 above as though fully restated herein.
21

22 119. Defendants registered, trafficked in, or used the Infringing Domains.
23

24 120. The Wunderground Marks were distinctive and either federally
25 registered with the USPTO or existing under common law, at the time Defendants
26 registered and/or used the Infringing Domains.
27
28

1 121. The Wunderground marks were famous at the time of Defendants
2 registration, use and trafficking of the Infringing Domains and protected under 15
3 U.S.C. § 1125(c).

4
5 122. The Infringing Domains are identical or confusingly similar to the
6 Wunderground Marks.

7
8 123. Defendants registered and/or used the Infringing Domain Names in
9 bad faith with bad faith intent to profit from Wunderground's goodwill in the
10 Wunderground marks with such registration and/or use.

11
12 124. Defendants used the Infringing Domain Names in bad faith with bad
13 faith intent to profit from Wunderground's goodwill in the Wunderground marks
14 with such registration and/or use.

15
16 125. Defendants do not have any intellectual property rights or any other
17 rights in the Wunderground Marks or in the Infringing Domains.

18
19 126. None of the Infringing Domains consists of the legal name of any of
20 the Defendants, or a name that is otherwise commonly used to identify the
21 Defendants.

22
23 127. Defendants have not made any prior use of the Infringing Domains in
24 connection with a *bona fide* offering of any goods or services.

25
26 128. Defendants' use of Infringing Domains was and is in federally
27 regulated commerce, consistent with the definition set forth in 15 U.S.C. § 1127.

1 129. Defendants registered and/or used the Infringing Domains to divert
2 consumers from Plaintiff's web sites to a web site accessible at the Infringing
3 Domains for Defendants' commercial gain by creating a likelihood of confusion
4 as to the source, sponsorship, affiliation, or endorsement of the web site.
5

6 130. Defendants registered and/or used Infringing Domains that
7 Defendants knew were dilutive of famous marks owned by Plaintiff.
8

9 131. Defendants have registered and/or used multiple domain names that
10 Defendant knew were distinctive of marks of others and/or dilutive of famous
11 marks of others when the domain names were registered.
12

13 132. Defendants' registration, use, or trafficking in the Infringing
14 Domains constitutes cybersquatting in violation of 15 U.S.C. § 1125(d), entitling
15 Plaintiff to relief.
16

17 133. By reason of Defendants' acts alleged herein, Plaintiff's remedy at
18 law is not adequate to compensate it for the injuries inflicted by Defendants.
19

20 134. By reason of Defendants' acts alleged herein, Plaintiff is entitled to
21 recover Defendants' profits, actual damages and the costs of the action, or
22 statutory damages under 15 U.S.C. § 1117, on election by Plaintiff, in an amount
23 of one hundred thousand dollars (\$100,000) for each domain name found to
24 constitute cybersquatting.
25
26
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28

1 144. By reason of Defendants' willful acts, Plaintiff is entitled to damages,
2 including but not limited to any and all damages available under 15 U.S.C. §
3 1117.
4

5 145. This is an exceptional case making Plaintiff eligible for an award of
6 attorneys' fees under 15 U.S.C. § 1117.
7

8 **COUNT III**

9 **False Designation of Origin Under the Lanham Act – 15 U.S.C. § 1125(a)**

10 146. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
11 above as though fully restated herein.
12

13 147. Defendants' use in commerce of the Wunderground Marks is likely
14 to cause confusion, mistake and to deceive the relevant public by suggesting the
15 Infringing Domains and the web sites and advertisements displayed at the
16 Infringing Domains are authorized, sponsored, approved by or are affiliated with
17 Plaintiff.
18
19

20 148. Defendants' use of the Wunderground Marks is likely to cause
21 confusion among the general public.
22

23 149. The above-described acts of Defendants constitutes trademark
24 infringement of the Wunderground Marks and false designation of origin in
25 violation of 15 U.S.C. § 1125(a), entitling Plaintiffs to relief.
26

27 150. Defendants have unfairly profited from the actions alleged.
28

1 151. By reason of Defendants' acts alleged herein, Plaintiff has suffered
2 monetary damage and damage to the goodwill associated with the Wunderground
3 Marks.
4

5 152. By reason of Defendants' acts alleged herein, Plaintiff's remedy at
6 law is not adequate to compensate it for the injuries inflicted by Defendants.
7

8 153. By reason of Defendants' willful acts, Plaintiff is entitled to damages,
9 including but not limited to treble damages under 15 U.S.C. § 1117.
10

11 154. This is an exceptional case making Plaintiff eligible for an award of
12 attorneys' fees under 15 U.S.C. § 1117.
13

14 **COUNT IV**

15 **Dilution Under 15 U.S.C. § 1125(c)**

16 155. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
17 above as though fully restated herein.
18

19 156. The Wunderground Marks are famous, as that term is used in 15
20 U.S.C. § 1125(c), and were famous before Defendants' registration and use of
21 them and the Infringing Domains in commerce, due in part to the inherent
22 distinctiveness and federal registration of the the Wunderground marks and the
23 extensive and exclusive nationwide use, advertising, promotion, and recognition
24 of the Wunderground Marks.
25
26
27
28

1 157. Defendants' registration, use and trafficking of the Infringing
2 Domains and corresponding web sites and advertisements in commerce is likely to
3 cause dilution by blurring or dilution by tarnishment of the Wunderground
4 Marks..
5

6 158. Defendants' acts constitute dilution by blurring and dilution by
7 tarnishment in violation of 15 U.S.C. § 1125(c), entitling Plaintiff to relief.
8

9 159. Defendants have unfairly profited from the actions alleged.
10

11 160. By reason of Defendants' acts, Plaintiff has suffered monetary
12 damage and damage to the goodwill associated with the Wunderground Marks..
13

14 161. By reason of Defendants' acts alleged herein, Plaintiff's remedy at
15 law is not adequate to compensate them for the injuries inflicted by Defendants.
16 Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief
17 pursuant to 15 U.S.C. § 1116 as it relates to domain names it owns and/or uses
18 that is identical or confusingly similar to Wunderground's Marks.
19

20 162. By reason of Defendants' willful acts, Plaintiff is entitled to damages,
21 including but not limited to treble damages under 15 U.S.C. § 1117.
22

23 163. This is an exceptional case making Plaintiff eligible for an award of
24 attorneys' fees under 15 U.S.C. § 1117.
25

26 **COUNT V**

27 **Unfair Competition and Trademark Infringement Under State Common**
28 **Law**

1 164. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
2 above as though fully restated herein.
3

4 165. Defendants' use in commerce of the Wunderground Marks is likely
5 to cause confusion, initial or otherwise, mistake and/or to deceive.
6

7 166. Defendants' use in commerce of the Infringing Domains is likely to
8 cause confusion, initial or otherwise, mistake, and/or to deceive.
9

10 167. Defendants' use in commerce of the web sites and advertisements
11 displayed at the Infringing Domains is likely to cause confusion, initial or
12 otherwise, mistake, and/or to deceive.
13

14 168. Defendants are palming off themselves as Plaintiffs, thus falsely
15 inducing the public, in order to obtain benefits properly belonging to Plaintiff.
16

17 169. Defendants' acts constitute unfair competition and trademark
18 infringement, in violation of California law.
19

20 170. Defendants have unfairly profited from the infringing and unfair
21 actions alleged.
22

23 171. By reason of Defendants' acts, Plaintiff has suffered irreparable
24 damage to the goodwill and reputation associated with Plaintiff itself, its products
25 and services, and the Wunderground Marks.
26
27
28

1 172. By reason of Defendants' acts, Plaintiff has suffered actual damages
2 in the form of lost profits and/or damage to the goodwill associated with its
3 company and its Wunderground Marks.
4

5 173. By reason of Defendants' acts alleged herein, Plaintiff's remedy at
6 law is not adequate to compensate them for the injuries inflicted by Defendants.
7 Accordingly, Plaintiff is entitled to permanent injunctive relief precluding
8 registration, trafficking or use of domains identical or confusingly similar to
9 Wunderground's Marks.
10
11

12 **COUNT VI**

13 **Unfair Competition under the California Business**
14 **and Professions Code Sections 17200 et seq**

15 174. Plaintiff, Wunderground, restates and reincorporates paragraphs 1-
16 117 as though fully set forth herein.
17

18 175. Defendants actions as described above and specifically and without
19 limitation, Defendants' use of Plaintiff's trademarks and confusingly similar
20 variations thereof, in commerce, to advertise, market and promote and monetize
21 Defendants' own websites throughout the United States including California
22 constitute unfair competition in violation of Cal. Bus. & Prof. Code Sections
23 17200 et seq.
24
25
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1 176. As a direct and proximate result of Defendants' willful and
2 intentional actions, Plaintiff has and will continue to suffer irreparable damage,
3
4 justifying injunctive and equitable relief.

5 **COUNT VII**

6 **Civil Conspiracy**

7
8 177. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
9 above as though fully restated herein.

10
11 178. Defendants have acted in concert with a shared intent to harm
12 Wunderground.

13
14 179. The combination of all the Defendants enabled them to register the
15 Infringing Domain Names as a registrar, maintain ownership as a registrant, offer
16 a domain parking service, and utilize monetization services in order to unlawfully
17 earn revenue and correspondingly divert it from the Plaintiff.

18
19 180. Defendants had a real agreement or confederation with a common
20 design. In particular, Defendants intentionally agreed to capitalize off of Internet
21 users by diverting consumers from Plaintiff's web sites to a web site accessible at
22 the Infringing Domains by creating a likelihood of confusion as to the source,
23 sponsorship, affiliation, or endorsement of the web site as well as dilutive of
24 Plaintiff's famous marks.
25
26
27
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1 181. Defendants' purpose was unlawful and to capitalize off of the poor
2 typing abilities of unsuspecting Internet users who sought out Wunderground and
3 its products and services. Defendants further sought to offer links to
4 Wunderground's competitors knowing that Internet users would click-through to
5 these weather-related products and services, and in doing so, generate click-
6 through revenue for Defendants.
7

8
9 182. Defendants' unlawful acts were done in furtherance of the
10 conspiracy. Defendants cybersquatted when they registered and/or used domain
11 names that were identical or confusingly similar to Wunderground's trademarks
12 and service marks in bad faith to capitalize off of the goodwill associated with
13 Wunderground's marks.
14

15
16 183. Defendants have committed separate, actionable torts for trademark
17 infringement, trademark dilution, and unfair competition by Defendants'
18 intentionally registering Wunderground's registered trademarks as domain names.
19

20 184. Defendants have unfairly profited from the tortious, infringing and
21 dilutive acts.
22

23 185. By reason of Defendants' acts, Plaintiff has suffered actual damages
24 in the form of lost profits and/or damage to the goodwill associated with its
25 company and its Wunderground Marks.
26
27
28

1 186. By reason of Defendants' acts alleged herein, Plaintiff's remedy at
2 law is not adequate to compensate it for the injuries inflicted by Defendant.
3 Accordingly, Plaintiff is entitled to permanent injunctive relief.
4

5 **COUNT VIII**

6 **Contributory Trademark Infringement**

7
8 187. Plaintiff, Wunderground, restates and incorporates paragraphs 1-117
9 above as though fully restated herein.
10

11 188. Defendant Epic and/or Connexus control and provide services for the
12 registration, use and trafficking of Infringing Domains, and other cybersquatted
13 domains.
14

15 189. Defendant FirstLook control and provide services for the registration,
16 use and trafficking of Infringing Domains, and other cybersquatted domains.
17 Defendant FirstLook physically hosts web sites, which are displayed at the
18 Infringing Domains, on their servers.
19

20 190. Defendant Basic Fusion provides a service, namely domain name
21 registration services, to NCS and DNP.
22

23 191. Defendant DNP provides a proxy service to NCS allowing NCS to
24 obscure its identity from trademark holders.
25
26
27
28

1 192. Defendants Epic, Connexus, FirstLook, and Basic Fusion
2 intentionally and/or recklessly engaged in conduct to infringe the Wunderground
3 Marks in identifying, registering, using, trafficking in and monetizing the Marks.
4

5 193. Defendants Epic, Connexus, FirstLook, and Basic Fusion had actual
6 or constructive knowledge of Plaintiff's trademarks prior to or after registering,
7 using and trafficking in the Infringing Domains.
8

9 194. Defendants Epic, Connexus, FirstLook, DNP and Basic Fusion
10 continue to supply services that they know, or have reason to know, is engaging in
11 trademark infringement of the Infringing Domains.
12

13 195. Defendants Epic, Connexus, FirstLook, DNP and Basic Fusion had
14 actual and/or constructive knowledge of their trademark infringement based upon
15 the registered trademarks, their own research and review of each domain name
16 prior to registration and the UDRP action against NCS, as well as the filing of the
17 Complaint in Michigan and this Complaint.
18
19

20 196. Defendants Epic, Connexus, DNP, FirstLook, and Basic Fusion
21 provided their proxy services with knowledge of and active participants in the
22 scheme to register, traffic and use the domain names which infringe third party
23 trademarks.
24

25 197. Defendants Epic and/or Connexus, FirstLook, DNP and Basic
26 Fusion, acted with willful blindness.
27
28

