Exhibit C

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 1                      UNITED STATES DISTRICT COURT
                        EASTERN DISTRICT OF MICHIGAN
 2                           SOUTHERN DIVISION

 3   WEATHER UNDERGROUND,              Case No. 09-CV-10756
     INCORPORATED,                     U.S. Magistrate Judge
 4                                     Virginia M. Morgan
          Plaintiff,                   Detroit, Michigan
 5                                     May 19, 2010
              v                        2:29 p.m.
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     NAVIGATION CATALYST SYSTEMS,
 7   INCORPORATED,

 8        Defendant.
     _____/
 9
     Ordered By:                       ENRICO SCHAEFER, ESQ.
10
                          MOTION HEARING
11
     APPEARANCES:
12
     For the Plaintiff:                ENRICO SCHAEFER, ESQ. (P43506)
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                                        Traverse City, MI 49684
15                                      231-932-0411

16   For the Defendants:               WILLIAM DELGADO, ESQ.
     (By Phone):                       Willeken, Wilson, Loh & Lieb
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19
     Court Recorder:                   N/A
20
     Transcriber:                      Deborah Kremlick
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23   Proceedings recorded by electronic sound recording, transcript
     produced by transcription service.
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1 | 38 here?

2 | MR. SCHAEFER: Thirty-eight is the -- what -- what

3 | is the web -- is the advertisements that were shown on those

4 | pages which I think he's going to tell us they can't get and

5 | that may be fine. Thirty-five is the list of domains.

6 | Thirty-eight asks for what were those domains used for. So

7 | for instance is it a derivation of Facebook, was it showing

8 | social media ads on that page.

9 | THE COURT: So NCS is ordered to produce all domain

10 | names registered by NCS during the relevant period whether

11 | privacy protected or not. Is that consistent with 35?

12 | MR. SCHAEFER: Yes.

13 | THE COURT: To the extent NCS alleges that prior

14 | registration are not available or cannot reasonably be

15 | produced, NCS is ordered to show -- I'm sorry, NCS is ordered

16 | to provide an affidavit stating in detail the specific reasons

17 | as to why it cannot produce any such list of domain names.

18 | NCS will further provide a Rule 30(b)(6) dep -- dep of

19 | deponent concerning the assertion that information cannot be

20 | reasonably produced.

21 | MR. SCHAEFER: Mr. Delgado says they can't produce

22 | this list. So this is the language that I proposed to say

23 | okay, well, put it in an affidavit, give us a 30(b)(6) if you

24 | can't otherwise produce them.

25 | THE COURT: Well, you can just do -- yeah. Well, I

1   Well, guess what, that sounds like a lot as an absolute

2   number, but when you compare it to 16,000,000, can you really

3   say that -- oh, that that's our business, or -- the answer is

4   no. I mean you had to look at absolute versus relevant.

5   MR. SCHAEFER: And, Your Honor, that's --

6   MR. DELGADO: And that gets back to my point.

7   THE COURT: Let him finish.

8   MR. SCHAEFER: Okay.

9   MR. DELGADO: What's that?

10   MR. SCHAEFER: Could I --

11   THE COURT: Go ahead finish, Mr. Delgado.

12   MR. DELGADO: Okay. Going back to my point. For

13 the earlier periods of time that data is no longer available.

14 I mean it's just -- it was either kept in cases that were

15 deleted long ago before this lawsuit even started. You know,

16 for more -- you know, for the kind domain portfolio, yes, we

17 had that. But it is still a significant effort to put

18 together the kinds of information that you're looking for and

19 we're still talking about hundreds of thousands of domain

20 names and data for those domain names for a trademark case

21 involving you know, 51 domain names. Let's not get away from

22 the fact that this is a trademark case about 51 domain names.

23   And I know Mr. Schaefer likes to talk about statutory

24 factor number eight. But I think, you know, in looking at the

25 legislative history of the ACPA and I've got, you know, about

1 ten cases in front of me all of which look at this bad faith

2 intent factor.

3   In all the cases, and the legislative history all say the

4 same thing which is it is not -- this determination of bad

5 faith intent is not a general bad faith -- in fact it is a

6 specific bad faith intent with respect to the mark that is in

7 the lawsuits.

8   And with regard to statutory factor number eight, and I

9 think Mr. Schaefer is divorcing that from what the legislative

10 history indicates that that factor is really intended to go at

11 which is a phenomenon that would be turning back in 1999 at a

12 time when what we're talking about here didn't even exist, and

13 it wasn't even on the horizon for Congress.

14   THE COURT: Okay.

15   MR. DELGADO: It was not --

16   THE COURT: Okay, okay. Mr. -- Mr. -- Mr. Delgado,

17 let me interrupt you for a moment. Factor number eight talks

18 about I mean -- and I'm -- I'm sure that you're reading from

19 something that talks about the domain names at issue. But

20 factor number eight as -- as I see it in the excerpt which is

21 before me, says the person's registration or acquisition of

22 multiple domain names, that would be you, the person, which

23 the person knows are identical or confusingly similar to marks

24 of others that are distinctive at the time of registration of

25 such domain names, or dilutive of famous marks of others that

1 are famous at the time of registration of such domain names

2 without regard to the goods or services of the party.

3   So your position that it would be limited only to ones

4 that are confusingly similar to the 51 domain names or

5 whatever at issue here, I think reads out the clear language

6 of -- of eight. So what I'm -- I'm willing to do is ask him

7 to give you say another 50 names and then you give us all the

8 domain names that are registered like that.

9   MR. SCHAEFER: Well, here's what -- here's the

10 problem. Part of it is we asked them for the other domains

11 that infringe our trademarks, okay. They said zero. We just

12 by kind of random searching just last week found 11 more. So

13 if we can't get the data base --

14   MR. DELGADO: No, that's not true.

15   MR. SCHAEFER: If we can't get the --

16   MR. DELGADO: That's not true.

17   MR. SCHAEFER: -- if we can't get the data base,

18 Your Honor, we aim to identify the domains at issue in this

19 case. These are examples of the ones we found last week.

20 Thewunderground.com. Keep in mind our trademark is

21 wunderground. So this is registered to them.

22 Tropicalweatherunderground.com. So without the data base for

23 us to search on, it's impossible for us to -- and they refuse

24 to tell us what other domains they have of ours and they've

25 said none and we know it's not true.

1   The other thing is, Your Honor, it's just data. They

2 have affidavits from their people Seth Jacoby that said they

3 had 300,000 domain names as of two years ago. And now they're

4 down to something like 70,000 domain names as of this year.

5 So there's --

6   THE COURT: I thought they had 16,000,000.

7   MR. SCHAEFER: Well, that's what he said, but I got

8 an affidavit that says completely otherwise as of -- as of a

9 couple years ago.

10   MR. DELGADO: Your Honor, can I respond to that? I

11 disagree with a lot of what Mr. Schaefer is --

12   MR. SCHAEFER: I think he was talking about the ad

13 grace Co. names. Because that blossoms -- that blossoms the

14 number.

15   THE COURT: Okay. All right. Stop talking. He's

16 already on the phone. If you don't stop and give him a break,

17 he can't be heard. It's already frustrating enough without

18 the telephone line, okay? Mr. Delgado.

19   MR. DELGADO: Okay. So here's what I was going to

20 say. Mr. Schaefer made the statement that they asked us to

21 identify other domain names and we said zero. That is not the

22 case. What happened was there is -- there was a good faith

23 dispute as to how domain names at issue would be defined from

24 these requests. I have proposed to Mr. Schaefer and to

25 resolve this dispute. If you want me to identify other domain

1 names that you know, are possibly violative of your client's

2 mark, I will do that. I will run, you know, as many searches

3 for as many -- as many strings to capture as many possible

4 names to -- to basically disclose to them what it is that we

5 think that might arguably even be close to that.

6   You know, so for example, if he wants to run a search for

7 under, you know, we'll disclose any domain name that has the

8 phrase under. If he wants to run it for you know what I would

9 call the string eather, E-a-t-h-e-r which would capture

10 Weather, you know, Qeather, and it's the Q next to the W on

11 the keyboard. Will be do that. That -- you know, that is not

12 an issue. We will happily do that. The question or the

13 problem for us has always been you know, to go back six years

14 and divulge statistics for -- you know, for 16,000,000 and

15 that 16,000,000 number is essentially from 2004 forward,

16 that's why that number is as high as it is.

17   THE COURT: Okay. Here's what -- here's --

18   MR. DELGADO: And we can't do that without shutting

19 down the system.

20   THE COURT: Okay. You have some choices here, Mr.

21 Schaefer. You can have fewer domain names with all this crap

22 in 38, or you can just have a list of domain names without any

23 of this crap.

24   MR. SCHAEFER: We'll take the domain names, Your

25 Honor. And I think I'm -- I'm entitled to them under that

1 Paragraph 8. And I will make it simpler. Just run a query

2 for dates two times a year, January 1 and July 1 for each

3 year. And so they don't have to provide us all the domain

4 names. Let's do some snapshots of twice a year for the

5 relevant years.

6   THE COURT: 2004 through 2009, that's ten runs. And

7 nothing on 38.

8   MR. SCHAEFER: And nothing on 38.

9   MR. DELGADO: And, Your Honor, I would just point

10 out that I don't -- like I said, we filed a declaration saying

11 why data from like 2004 to July 2010 is not available, I will

12 provide a -- an affidavit, a second one verifying that. But

13 we've already, you know, in part with this motion, we did

14 submit a declaration explaining that data from the earlier

15 years is just not available anymore. But again --

16   MR. SCHAEFER: That's our proposal.

17   MR. DELGADO: I can provide them with a second

18 affidavit. I just wanted to make sure that the Court is aware

19 of that and it's not like you know, later on you know when we

20 don't produce it for 2004 and the Court's looking at me but

21 I'm telling you right now we just don't have it from the

22 earlier years.

23   THE COURT: Okay.

24   MR. DELGADO: But we will produce it for as early as

25 we do have.

1   THE COURT: All right. So 17, produce all domain

2   names registered during the relevant period whether privacy

3   protected or not and not dropped under the ad grace period.

4   And then to the extent that you say that you don't have them,

5   provide an affidavit stating why don't you have them and then

6   they'll have a 30(b)(6) deponent if necessary concerning its

7   assertions. So those will be back in.

8   MR. SCHAEFER: Okay.

9   MR. DELGADO: And I would just say since Mr.

10 Schaefer said snapshots, I think we need the work in this

11 concept of, you know, for the relevant time periods as of

12 January 1st or July 1st.

13   THE COURT: All right. Produce snapshot, January

14 1st, 2004, July 1st, 2004 and each year you can through 2009.

15   MR. SCHAEFER: All right. And snapshot means your

16 domain portfolio for that date, not just whatever domains you

17 want to identify.

18   MR. DELGADO: No, I understand.

19   MR. SCHAEFER: Okay. The next one, Mr. Delgado, is

20 -- is it's all the same issue, but it's request for production

21 40, 41, 43, and 47. And you -- I had proposed that you

22 supplement those responses and you struck that language.

23 Forty, Your Honor, is the -- on the bottom of all these web

24 sites there are parking software that shows the ads, it says

25 make an offer by the domain. And there's a single email in

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7   I certify that the foregoing is a correct transcript from the

8   electronic sound recording of the proceedings in the

9   above-entitled matter.

10

11 /s/Deborah L. Kremlick, CER-4872   Dated: 6-14-10

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