

Exhibit C



WILLENKEN

WILLENKEN WILSON LOH & LIEB LLP

October 25, 2010

**VIA ELECTRONIC MAIL AND
U.S. MAIL**

Enrico Schaefer, Esq.
Traverse Legal
810 Cottageview Drive, Suite G-20
Traverse City, MI 49684

Re: *Weather Underground v. Navigation Catalyst Systems, Inc.*

Dear Enrico:

I refer to your letter of October 21, 2010 regarding Chris Pirrone and indicating your desire to take his deposition. In your letter, you did not identify specific topics of inquiry about which you intend to ask. Rather, your letter posits that Navigation Catalyst Systems, Inc. ("NCS") has generally waived the attorney-client privilege with respect to communications between Mr. Pirrone and employees of NCS. From that, I gather that it is precisely your intention to inquire about any and all conversations which NCS would consider privileged.

I have reviewed the excerpts of deposition testimony you have selected, the pleadings in this matter, NCS's discovery responses to date, the cases you cited in your letter, and other relevant cases on this topic that I have been able to find. After review of these materials (most importantly, the case law), I do not believe your argument that NCS has waived the attorney-client privilege to have any merit. There are two fundamental flaws in your argument.

First, in the cases you cited, Plaintiff(s) sought a very specific set of privileged communications and documents; to wit, those communications and documents that related to an attorneys' pre-litigation advice about Plaintiff's *specific* intellectual property. *See, e.g., Minnesota Specialty Crops, Inc. v. Minnesota Wild Hockey Club L.P.*, 210 F.R.D. 673, 674 (D. Minn. 2002) (Plaintiff sought "[a]ll documents discussing trademark rights in 'MINNESOTA WILD' or related design or how such rights might be affected by defendants' actions or contemplated actions."). Here, however, you are not seeking a pre-litigation opinion letter or attorney advice regarding WEATHER UNDERGROUND or WUNDERGROUND.¹ Rather, you are arguing for a wholesale

¹ Of course, it makes sense that you are not seeking such communications or documents because, as you know, none exists. All of NCS's witnesses have testified that the company was unaware of your client



waiver of the attorney-client privilege as it applies to every conversation by Mr. Pirrone during the course of his representation of NCS. Your cited cases do not support such a waiver. Indeed, no case I was able to find supports such a broad, implicit waiver.

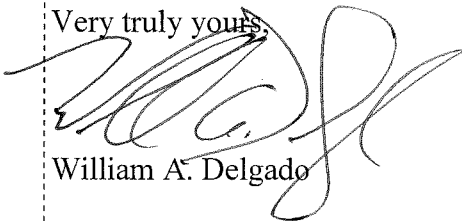
Second, the cases make clear that a waiver only occurs if the substance of the attorney-client privilege is put "at issue" by the holder of the privilege. *See, e.g., Michlin v. Canon, Inc., et al.*, 208 F.R.D. 172, 173 (E.D. Mich. 2002) ("*When such reliance is pleaded*, there is a waiver of the attorney-client privilege and work product protection...") (emphasis added). Here, NCS has never pleaded reliance on Mr. Pirrone's advice vis-à-vis the WEATHER UNDERGROUND trademarks. Again, as a practical matter, it could not have, because it did not know of your client prior to the filing of the UDRP. Moreover, the mere fact that NCS has denied that it registered any domains with a "bad faith" intent or, put another way, that its registrations were in "good faith" is not sufficient to trigger the waiver. Rather, NCS must affirmatively rely on the substance of a communication by its attorney. *U.S. v. Ohio Edison Co.*, 2002 WL 1585597 at *5 (S.D. Ohio. 2002) ("[M]erely pleading the defense of equitable estoppel in patent case without affirmatively relying upon advice of counsel is not sufficient to imply waiver.").

In short, NCS has not pleaded or relied upon any privileged communication specific to WEATHER UNDERGROUND. So, while it is true that the attorney-client privilege cannot be used as both a sword and a shield, "[w]hile the sword stays sheathed, the privilege stands." *Hodak v. Madison Capital Mgt., LLC*, 2008 WL 2355798 (E.D. Ken. 2008) *citing In re Lott*, 139 Fed. Appx. 658, 661 (6th Cir. 2005).

In light of the foregoing, we will not be producing Mr. Pirrone for deposition. If, after further research and consideration of the *Hodak* case, you nevertheless wish to seek Mr. Pirrone's deposition, then please let me know (a brief e-mail is fine), and I will go ahead and file a Motion for Protective Order with the Special Master. Please note that we will likely seek sanctions in having to file such a motion pursuant to Rule 37 as we believe that your position is wholly without support.

Should you have any questions regarding any of the foregoing, please call me.

Very truly yours,



William A. Delgado

cc: Mike Huget (via e-mail)

prior to the filing of the UDRP. Having never heard of your client, it follows as a matter of course that NCS never asked for or received any specific advice regarding your client's marks prior to the commencement of litigation.