

EXHIBIT N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,)
a Michigan Corporation,)
)
Plaintiff,)
)
vs.) Case No. 2:09-CV-10756
)
NAVIGATION CATALYST SYSTEMS,) Volume I
INC., a Delaware corporation;)
BASIC FUSION, INC., a Delaware)
corporation; CONNEXUS CORP., a)
Delaware corporation; and)
FIRSTLOOK, INC., a Delaware)
corporation,)
)
Defendants.)
)
_____)

- CONFIDENTIAL - UNDER SEAL-

VIDEOTAPED DEPOSITION OF DONNIE J. MISINO

Los Angeles, California

Friday, August 20, 2010

Reported by: Judy Samson
CSR No. 6916

1 Q Paralegal?

2 A No.

3 Q Okay. But works within the context of the
4 legal department?

5 A Correct.

6 Q Who do you work for? Who is your employer?

7 A Epic Media.

8 Q And would that be since the mer -- date of
9 merger?

10 A Correct.

11 Q And that means that your paychecks have
12 "Epic Media" on them?

13 A I believe so. It's changed numerous times.
14 I believe it is now.

15 Q Okay. What are all the companies related
16 to NCS that you have received paychecks from?

17 A That would be Connexus Corporation, Vendare
18 Media, and Firstlook.

19 Q Okay. And approximately what months and
20 years did you receive paychecks from Connexus?

21 A It would be difficult for me to say.

22 Q Approximate.

23 A It was some months after the merger with
24 Con- -- with Connexus -- or I'm sorry -- with
25 NetBlue. I'm sorry. Vendare merged with NetBlue.

1 Q Okay. Irrespective of paychecks, who --
2 who is it you believed you were working for in
3 September of 2004, which companies or company?

4 A I was hired originally into Traffic
5 Marketplace. I believe my paycheck came from
6 Vendare Media. I suppose it's a chance it might
7 have said Traffic Marketplace.

8 Q What about 2005?

9 A For most of 2005, it would have also been
10 Traffic Marketplace.

11 Q Okay. And 2006?

12 A I believe it would have been Vendare Media
13 afterwards.

14 Q Vendare Media, perhaps NetBlue, or did
15 NetBlue come in later?

16 A Later.

17 Q What about 2007?

18 A I believe it would have remained Vendare
19 Media in 2007.

20 Q Okay. During 2006 and 2007, irrespective
21 of your paycheck, who is it that you worked for?

22 A It would have been Firstlook, though it
23 wasn't called that at the time.

24 Q What was it called?

25 A It was simply called the search department.

1 Q And that would have been true in 2006 and
2 2007?

3 A Yes.

4 Q Did you do any -- I take it Navigation
5 Catalyst Systems also existed during 2006 and 2007?

6 A Yes.

7 Q Also 2005?

8 A I believe so.

9 Q And what about 2004?

10 A That, I don't know.

11 Q Did you work for NCS in 2005, 2006, and
12 2007?

13 A No.

14 Q Did you work on behalf of NCS during those
15 years?

16 A No.

17 Q Didn't do any work on behalf of NCS during
18 2005, 2006, or 2007; is that true?

19 A Not that I'm aware of.

20 Q Did you work in 2005, 2006, or 2007 on
21 domain registration issues?

22 A Yes.

23 Q On domain registration issues registered to
24 NCS?

25 A Sorry. You said through 2007?

1 Q 2005, 2006, 2007.

2 A I did some work for the -- in -- with the
3 Basic Fusion registrar, I believe, at the end of
4 2007.

5 Q My question was: Did you do work, perform
6 services related to domain names registered in the
7 name of Navigation Catalyst Systems during 2005, '6,
8 and '7?

9 A I'm sorry. Could you clarify.

10 Q What -- what is concerning you?

11 A Do you -- you mean -- I wasn't working for
12 Navigation Catalyst.

13 I worked on systems that were used to
14 register domain names by Navigation Catalyst.

15 Q As I understand it, Navigation Catalyst has
16 never had any employees.

17 Is that your understanding?

18 A I don't know.

19 Q Have you -- can you sit here and tell me
20 any employee that you're aware of that was actually
21 ever paid by NCS?

22 A I wouldn't know that.

23 Q 2005, what kind of services were you
24 performing for Vendare Media, Traffic Marketplace?

25 A I was designing software applications --

1 designing and building software applications.

2 Q Were you designing and building software
3 applications related to the registration of NCS
4 domain names?

5 A No.

6 Q Were you building software applications
7 related to the use of domain names registered by
8 NCS?

9 A No.

10 Q Were you designing software related to the
11 registration of domain names that ultimately became
12 registered to NCS during 2005, 2006?

13 A Possibly the end of 2006.

14 Q Did something happen towards the end of
15 2006 approximately where your role changed with the
16 companies?

17 A Yes.

18 Q Okay. Tell me about that.

19 A I changed positions, and I originally had
20 worked for Traffic Marketplace. I had moved a short
21 time to another group -- to another group called, I
22 believe at the time, eMarketMakers for maybe six
23 months.

24 And then I went to work for the search
25 department.

1 Q Okay. And is the search department the
2 department that provides services related to the NCS
3 domain registrations?

4 A Yes.

5 Q So prior to the end of 2006, to the best of
6 your recollection, you were performing services
7 unrelated to the portfolio of domain names
8 registered under the NCS name, Navigation Catalyst
9 Systems?

10 A Correct.

11 Q Who was -- prior -- prior to late 2006,
12 who -- who were the employees who were working on
13 registration and parking software related to the NCS
14 registered domain names?

15 A I don't know. I don't recall.

16 Q Okay. When -- when in late 2006 or so when
17 you start -- when you were transferred or you began
18 to have responsibilities in the, quote, unquote,
19 "search department"?

20 A Early 2006.

21 Q Early 2006 in the search department.

22 What were those new responsibilities in the
23 search department?

24 A They were as a software engineer,
25 developing software applications.

1 Q What kind of software applications?

2 A There were numerous projects. I do
3 recall --

4 Q Let's just deal with the ones related to
5 the NCS portfolio of domains, which I take it would
6 be registration and parking software.

7 A Sure.

8 One of the first projects related to that
9 was in building the API used to communicate with
10 VeriSign for doing registrar or domain transactions.

11 Q And would that be registrations -- a
12 component of the registration software?

13 A It would ultimately be a component of the
14 registration software, yes.

15 Q Okay. And that would be registration
16 software used by which entity or which entities --
17 Basic Fusion, Navigation Catalyst Systems,
18 Firstlook, Connexus?

19 A That would be used by Basic Fusion
20 registrar.

21 Q On behalf of NCS?

22 A Their clients.

23 Q Okay. And you understand that one of the
24 rulings in this case was that NCS had to produce
25 documents for itself, Firstlook, Connexus, and other

1 related companies; true?

2 A Yes.

3 Q And as part of your production, I take it
4 that you went out and -- and sought out documents
5 from all of those entities if they related to the
6 NCS domain names; true?

7 A I sought out any documents that were
8 available to me, unaware of exactly what business
9 entity they belonged to.

10 Q Okay. Irrespective of business entity, if
11 they related to NCS domain registration or use,
12 parking, you -- those are the -- that's the kind of
13 the general area of documents that you were looking
14 for, irrespective of which company had those
15 documents?

16 A Correct.

17 Q Okay. What else besides the API for -- to
18 work for VeriSign were you working on in or about
19 2006 when you were moved to the search department?

20 A The domain traffic scoring component and
21 the trademark systems.

22 Q Okay. And just generally, what's domain
23 traffic scoring?

24 A It's software that looks at DNS error data
25 and determines, based on the number of hits domains

1 receive and from geographically where those hits
2 came, the likelihood that those domains, if they
3 were registered, would be -- receive a -- a certain
4 threshold of traffic.

5 Q Okay. And so this would be -- the traffic
6 scoring would occur after registration of the domain
7 name?

8 A No. The source data that we were looking
9 at is preregistration data.

10 Q Okay. And so this is traffic data you --
11 tell me where the traffic data comes from that you
12 feed into the registration software.

13 A Either from third-party data provided to us
14 by Internet service providers or others who may have
15 that sort of data or similar data retrieved by our
16 software to the extent that it's installed on client
17 computers.

18 Q Okay. And obviously at some point we'll
19 take your fact witness deposition. But in terms of
20 understanding what -- what discovery has been
21 produced here, we're going to cover some basic stuff
22 today so when we talk about specific documents
23 produced or not produced, we've got some sort of
24 lexicon to use for that.

25 So we'll be talking at some point

1 concerning what was produced in terms of third-party
2 data on the issue of traffic scoring. Okay.

3 So let's just get a little further into it.

4 Give me who else besides ISPs, Internet
5 service providers, you might obtain data from back
6 in 2006 in order to understand which domains you
7 might want to register?

8 A Besides ISPs, it would be companies who
9 also had client software installed on users'
10 computers such as toolbars or browser add-ins.

11 Q So browser software that an end user, an
12 Internet surfer, might incorporate into their
13 browser which captures information such as what they
14 type into their browser bar, what they search for,
15 et cetera?

16 A Yes. And --

17 Q Okay. Go ahead.

18 A Yes.

19 Q ISPs, or Internet service providers, those
20 are the people who actually connect us to the
21 Internet; correct?

22 A Correct.

23 Q And traffic data flows through those ISPs
24 which can be captured in some instances by the ISPs;
25 correct?

1 A I'm not quite sure what I understood at
2 that point.

3 Q Right.

4 Part of your job has been to develop
5 software to compare domain names that are registered
6 or to be registered in the name of NCS to trademark
7 databases in order to see if there's a problem with
8 registering that domain name.

9 Generally, that's been part of your
10 responsibility as a coder; correct?

11 A Generally, yes.

12 Q And I've seen some of the design documents
13 in 2006 where you were proposing various approaches
14 to -- trying to compare the domain name portfolio or
15 the new registrations with trademark registrations
16 in order to determine whether or not there might be
17 a problem, i.e., trademark infringement, by
18 registering those domain names; correct?

19 A Yes.

20 MR. DELGADO: You're asking him if -- if he
21 knows that you've actually done that?

22 MR. SCHAEFER: No, no. I'm asking if part
23 of what he was doing -- the design documents that
24 I've seen for 2006 and 2007 appeared to be trying to
25 develop a software approach to comparing domain