

EXHIBIT B

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,)
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-

DEPOSITION OF LILY STEVENSON

Los Angeles, California

Tuesday, August 31, 2010

Reported by: Judy Samson
CSR No. 6916

1 compliance manager?

2 A I handle all new publishers that come in
3 through Traffic Marketplace. I do all screenings of the
4 new publishers. I check on Westlaw. I do background
5 checks for Traffic Marketplace, for Firstlook.

6 Any cease and desist letters that come in, any
7 UDRP, any WIPOs, I work with general counsel to resolve
8 those issues.

9 Q So let's focus on the cease and desist letters.
10 What is the substances of those cease and
11 desist letters that you're responsible for handling
12 right now?

13 A The ones that I'm handling right now is "Stop
14 infringing on our trademark." They ask to transfer the
15 domain.

16 Q And do you always transfer the domain?

17 A Yes.

18 Q 100 percent of the time you transfer the
19 domain?

20 A To the best of my knowledge, yes.

21 Q And who makes the ultimate decision whether or
22 not to transfer the domain?

23 A General counsel and president of Firstlook.

24 Q Who's the general counsel?

25 A As of today it's David Graff.

1 Q Who in the past has been general counsel making
2 that decision?

3 A Chris Pirrone, Julia Feldman. And there's one
4 other. I can't remember his name.

5 Q And you referred to the president as well.
6 Who is the president making that decision?

7 A The president of Firstlook is Seth Jacoby.

8 Q Has he always been the individual responsible
9 for that decision?

10 A Yes.

11 Q Would it be accurate to say he's been
12 responsible for that decision since 2005 when you first
13 joined Vendare Media?

14 A Yes.

15 Q To your knowledge, who else reviews the cease
16 and desist letters besides you?

17 A General counsel and the president.

18 Q So those individuals that you just told me
19 would be the ones who review the letters as well?

20 A Yes.

21 Q Looking at Exhibit 97 again, if you go to the
22 second page, it notes:

23 "Enclosed are the following:

24 Employee Confidentiality and

25 Non-Disclosure Agreement."

1 domain or character-string on the
2 blacklist."

3 What is the difference between a domain and a
4 character string?

5 MR. DELGADO: As used in this document that
6 she's never seen before?

7 THE WITNESS: I don't know.

8 BY MR. HALL:

9 Q To your knowledge, what's the difference
10 between a domain and a character string?

11 A I don't know what a character string is.

12 Q And just so we're clear, you're the only one
13 that performs a second level review, and you've never
14 seen this document?

15 A I've never seen this document.

16 Q The fourth bullet point says:

17 "This blacklist is regularly
18 updated by our compliance staff as
19 described in the processes below."

20 Do you know who the compliance staff would be?

21 A Myself.

22 Q Anyone else?

23 A Compliance can fall under general counsel also.
24 So it depends.

25 Q Who would that be?

1 A David Graff.

2 Q Before him, would it have been Chris Pirrone?

3 A Yes.

4 Q And before him, Lisa -- what was the name that
5 you told me before who was general counsel before Chris
6 Pirrone?

7 A Julia Feldman.

8 Q Julia Feldman.

9 Let's look at the second item here, No. 2:

10 "Post-registration, pre-purchase
11 human screening for trademarks."

12 Do you know what that means?

13 A I don't know. I've never seen this document.
14 So I don't know.

15 Q I understand you've never seen the document.
16 So I'm simply referring to items in their context in a
17 document, but I want your personal knowledge regarding
18 what some of the language might mean in your everyday
19 work as legal compliance manager. Okay.

20 So the first bullet point talks about:

21 "Derivations of non-generic or
22 descriptive trademarks."

23 What does a "derivation" mean?

24 MR. DELGADO: Objection; vague and ambiguous,
25 lacks foundation, calls for speculation.

1 THE WITNESS: I don't optimize. So I don't
2 know.

3 BY MR. HALL:

4 Q Do you have any input into how to optimize?

5 A No.

6 Q And who's the person in charge of optimization?

7 A Mavi Llamas.

8 Q Let's look at No. 4.

9 Is it correct that any domain at issue is
10 immediately added to a "Do not delete" list to ensure
11 that the domain will remain registered?

12 A I don't understand that one.

13 (Document reviewed by the witness.)

14 THE WITNESS: Yes. I'm sorry. Yes.

15 BY MR. HALL:

16 Q That is correct?

17 A Yes.

18 Q Who instructs you what to do with a domain
19 that's part of a cease and desist or UDRP?

20 A General counsel.

21 Q And what are the things that they tell you to
22 do?

23 For example, do they tell you to delete the
24 domain?

25 A No.

1 Q Do they tell you to transfer the domain?

2 A Yes. If that's the case, yes.

3 Q Do you always do what they tell you to do in
4 those situations?

5 A Yes.

6 Q And are you the one that's told what to do with
7 a domain because you access it through the CMS?

8 A I don't understand your last question.

9 Q If a domain is in a UDRP and Chris Pirrone
10 tells you to transfer the domain, are you the one that's
11 responsible for that because you have access to it via
12 the CMS?

13 A Yes.

14 Q And no one else does?

15 A Whoever has the log-in.

16 Q What happens after a domain is transferred, for
17 example?

18 MR. DELGADO: Objection; vague and ambiguous.

19 BY MR. HALL:

20 Q Is the domain added to the blacklist?

21 A Yes.

22 Q Are derivations of that domain added to the
23 blacklist?

24 A Yes.

25 Q And are you the one doing that?

1 Q What year did you create this document?

2 A 2008.

3 Q Did anybody help you in creating this document?

4 A Yes.

5 Q Who?

6 A General counsel.

7 Q Who?

8 A Chris Pirrone.

9 Q Who actually drafted the language in this
10 agreement -- or excuse me -- in this document?

11 A Chris Pirrone.

12 Q You did not draft any of this language?

13 A No.

14 Q But you've reviewed it and you're familiar with
15 it?

16 A Yes.

17 Q Okay. If we look at the "Objective," it says:

18 "To identify domains that may be
19 deemed to be close derivations of
20 reasonably known trademarks or
21 famous brands/names/movies,
22 including typos and clear
23 misspellings."

24 What's a typo?

25 A McDonalds spelled correctly is McDonalds,

1 M-c-D-o-n-a-n -- wait -- M-c-D-o-n-a-l-d-s.

2 Typos is M-d-d-a-l-d-n.

3 Q So these trademark review instructions are what
4 a screener uses after the domain has already been
5 registered by NCS?

6 A I didn't say that.

7 Q Is that inaccurate?

8 A Yes.

9 Q So when are these trademark review instructions
10 used?

11 A This was for the trademark scrub of the
12 portfolio, when we scrubbed the portfolio back in 2008.

13 Q Scrubbed whose portfolio?

14 A Navigation Catalyst's.

15 Q So they had already registered the domains when
16 the portfolio was scrubbed?

17 A Yes.

18 Q So they were the owner of the domains already?

19 A Yes.

20 Q So this was an attempt after registration to
21 identify trademark domains?

22 A Yes.

23 Q Was any attempt made prior to registration to
24 identify trademark domains?

25 A I don't understand.

1 database was built in.

2 Q So you only search the Google results against
3 what company name or trademark is returned by the
4 trademark tool?

5 A Yes.

6 Q What if some other company name or trademark
7 appears? What do you do then?

8 A They would trigger the levels, the trademark
9 levels below.

10 And if we felt -- if I felt like it was high
11 and enough -- you know, in enough sense where it's like
12 yes, it's a company, I will send it over to Seth Jacoby
13 and Chris Pirrone to make the final decision.

14 I just compile the list as a -- as a list was
15 pulled.

16 Q So where it says "match_level 4," is that
17 automatically generated, or do you put number 4 in?

18 A No. It was matched through the fuzzy match to
19 the USPTO.

20 Q What's fuzzy match?

21 A It's a criteria where the USPTO database said,
22 hey, you might want to look at this domain -- I didn't
23 build the system, but from what I understand is that,
24 hey, here's the fuzzy match. It triggered a level 4,
25 you know, level 4 being the highest.

1 A By me.

2 Q So you do this process. Then you go back and
3 you do it all over again?

4 A I train them. I would review the contractors'
5 work.

6 Q Okay.

7 A They would scrub the portfolio. I reviewed
8 their work.

9 Q Okay.

10 A So that was the second level review.

11 After my reviews, I still send Seth and Chris
12 the domains, saying, "Here, this is what they thought
13 was low. This is what's medium and high."

14 Q To your knowledge, did Chris Pirrone go through
15 every single domain?

16 A Yeah, yes.

17 Q Did Seth Jacoby go through every single domain?

18 A Yes.

19 Q So for this one, when you Googled
20 p-c-p-l-a-n-t-e-t.com, if you saw something unrelated to
21 Progressive Leadership Alliance of Nevada, would you
22 change your trademark level designation?

23 A I don't understand.

24 Would I mark it differently?

25 Q Yes.

1 Q Did it cause you any concern that you were
2 still receiving this -- strike that -- that you were
3 receiving this many cease and desist letters in
4 September 2008?

5 MR. DELGADO: Same objection.

6 THE WITNESS: I have no control.

7 BY MR. HALL:

8 Q You say you have no control, but aren't you the
9 one that decides whether to delete a particular domain
10 name?

11 A No.

12 Q Aren't you the one that is responsible for
13 making a recommendation regarding which domain name to
14 delete?

15 A Yes.

16 Q So when you look at the domain names that are
17 subject of the cease and desist letter, do you believe
18 that your decisions were accurate?

19 A For a cease and desist letter, I don't make the
20 decision. Seth Jacoby and Chris Pirrone makes the
21 decision.

22 I have no say-so on a C&D, UDRP, and WIPO.

23 Q I understand that.

24 I'm saying you, for example, reviewed
25 alliedbarton.com, didn't you?

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- CONFIDENTIAL - UNDER SEAL-

VIDEOTAPED DEPOSITION OF DONNIE J. MISINO
Los Angeles, California
Friday, August 20, 2010

Reported by: Judy Samson
CSR No. 6916

1 BY MR. SCHAEFER:

2 Q With Seth Jacoby, was there ever any
3 discussion about using the proxy service in order to
4 protect the companies from liability on trademark
5 infringement claims, make it harder for people to
6 figure out who the -- who the registrant was of a
7 potentially trademark protected name?

8 MR. DELGADO: To the extent that the
9 conversation with Mr. Jacoby -- you know, he
10 informed you that he got this through counsel and
11 that was the reason you were talking about it -- the
12 same instruction would apply.

13 THE WITNESS: Right. There wasn't anything
14 specifically.

15 BY MR. SCHAEFER:

16 Q Who did you discuss this with?

17 A Primarily conversations like that would
18 have been with Seth Jacoby and, at the time, I
19 believe Chris Pirrone.

20 Q Okay. So you're saying that the rationale
21 as to NCS's portfolio of domain names would have
22 occurred with counsel?

23 That is to say -- I -- I appreciate what
24 counsel is saying here. I just need to know, you
25 know, if -- "There were conversations, but I can't

1 tell you what they were because they were with
2 counsel" or "There were no conversations -- even
3 though we had general conversations with counsel,
4 there were no conversations about protecting NCS and
5 the related entities from potential liability and
6 discovery."

7 A Right. There were discussions along the
8 lines of preventing spam and being able to offer
9 that as a general service. Other registrars do.
10 Should we choose to?

11 Anything related to trademarks was only
12 discussed with counsel.

13 Q Okay. Are you aware that Seth Jacoby has
14 put in multiple previous affidavits saying that one
15 of the reasons why NCS can't be guilty of
16 cybersquatting is because they do not proxy their
17 domain names?

18 MR. DELGADO: Objection; lacks foundation.

19 BY MR. SCHAEFER:

20 Q Are you aware of Seth Jacoby's prior
21 position that when you proxy a domain name to hide
22 your identity, that it is essentially an indication
23 that you're engaging in bad faith cybersquatting?

24 MR. DELGADO: Object. I don't --
25 mischaracterization of the declaration.

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- CONFIDENTIAL - UNDER SEAL-

VIDEOTAPED DEPOSITION OF MAVI LLAMAS
Los Angeles, California
Monday, September 27, 2010

Reported by: Judy Samson
CSR No. 6916

1 match allanbrotherssteaks. So I would have pointed
2 that out as "Hey, maybe we need to rework the code."

3 And also if Victoria's Secret hadn't
4 matched, then we would need to revisit the code to
5 make sure it does match.

6 Q So do you have any idea why something --
7 let's say, for example, "mothers tea" appeared on
8 allanbrotherssteaks.com?

9 A No, I could not tell you why.

10 Q Does it seem particularly helpful to the
11 analysis as to whether or not to keep a domain name?

12 A No.

13 Q Who besides you and Lily Stevenson would
14 have performed the process that goes along with
15 reviewing this list?

16 A We also had some assistance from our legal
17 counsel at some times.

18 There have also been different temps that
19 have come in that we were trying to hire that may
20 have -- may have performed this task.

21 Q When you say assistance from legal counsel,
22 would they tell you which domains to register?

23 A We would review the list with them and say,
24 "This is what I am excluding," send it to our legal
25 counsel, and they would send back their note so that

1 we would be better trained and better...

2

3

4

5 Q Did you ever work with Mr. Delgado?

6 A No.

7 Q Do you know of anybody else that worked
8 with Mr. Delgado?

9 A No.

10 Q What about Chris Pirrone?

11 A Chris Pirrone. He worked -- Lily used to
12 report to him when she was in the legal department.
13 I believe they worked together on this.

14 Q So she would --

15 A I don't know how --

16 MR. HALL: Want to take a break?

17 MR. DELGADO: Sure.

18 THE VIDEOGRAPHER: This marks the end of
19 tape 1, Volume I, in the deposition of Mavi Llamas.

20 We are going off the record.

21 The time is 11:07 a.m.

22 (Pause in proceedings from

23 11:07 a.m. to 11:14 a.m.)

24 THE VIDEOGRAPHER: This marks the beginning
25 of tape 2, Volume I, in the deposition of Mavi

1 Q The list that you chose to keep domain
2 names.

3 A That would be added into our database as
4 domains that we owned.

5 Q I understand that.

6 Who would get that information, knowing to
7 keep the domain name?

8 A It wouldn't go to a person. It would go to
9 our system. The database upload would decide, all,
10 right keep these names. It was all back-end code
11 that I don't understand.

12 Q Okay. And so presumably you would have to
13 notify the registrar to keep the domain name; is
14 that right?

15 A That is right.

16 Q Did you have a contact that you worked with
17 from that registrar?

18 A No.

19 Q What about the list of domain names that
20 you said or identified to be problematic in such a
21 way that you didn't want to keep them?

22 A Those would be added to the database and
23 flagged so that they would no longer come back in
24 our list.

25 Q Do you know if anybody reviewed domain

1 names after you reviewed them?

2 A Yes, they were reviewed occasionally by --
3 as I stated, we had our legal counsel who helped us
4 with domain lists for a period of time.

5 And also sometimes Seth Jacoby would review
6 the lists.

7 Q So is it your understanding that Seth
8 Jacoby would make a determination as to whether to
9 keep or delete a domain name?

10 A He could make a determination, yes.

11 Q What about your legal counsel? Would they
12 make the same --

13 (Speaking simultaneously.)

14 THE WITNESS: They could also --

15 BY MR. HALL:

16 Q -- determination?

17 A Yes.

18 Q Item No. 2 says:

19 "Cleansing of the portfolio."

20 Do you know what is meant by that?

21 A No.

22 Q The bullet point under it says:

23

24

25 Do you know what is meant by that?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

-----x
THE WEATHER UNDERGROUND, INC.,
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-----x

C O N F I D E N T I A L
A T T O R N E Y S ' E Y E S O N L Y

Butzel Long, P.C.
380 Madison Avenue
New York, New York

Wednesday, September 15, 2010
10:03 a.m.

Videotape deposition of SETH JACOBY,
held at the above-mentioned time and place, before
Elizabeth M. Kondor, CCR, CLR and Notary Public.

1 Q. Would he have provided --

2 A. He provided legal advice.

3 Q. Would he have provided advice as to
4 whether or not to register certain domains?

5 A. Chris provided legal advice on where
6 there was risk in the business. That may have
7 included whether a domain name was of high risk or
8 low risk.

9 Q. Okay. I'm not asking about risk.
10 I'm asking you whether or not he provided advice
11 as to whether or not domains should, in some
12 instances, be registered?

13 MR. DELGADO: Same objection. At
14 this point, he's answered the question.

15 MR. SCHAEFER: He has not. It's a
16 yes-or-no response.

17 A. It's not a yes-or-no response.

18 Q. It is a yes-or-no response.

19 A. Then give me a clear example of
20 exactly -- give me a mock conversation and I'll
21 give you an answer of whether or not that may or
22 may not have happened.

23 Q. Let's start again.

24 A. Okay.

25 Q. Again, I'm not asking for what he

1 A. Well, advice could mean a lot of
2 things. I mean, are you asking whether or not,
3 hey, Seth, this is a great domain, go register it?
4 I mean, you could mean that. Is that what you're
5 asking me?

6 Q. Any advice.

7 A. Well, I think -- let's narrow it down
8 to exactly what type of advice you're talking
9 about.

10 Q. Any advice.

11 A. Any advice?

12 Q. Any advice, any input.

13 Did he ever provide any advice?

14 A. He provided legal advice, yes.

15 Q. As to whether or not to register
16 certain domains?

17 A. Whether or not to register a domain
18 name? I mean, legal advice, whether or not to
19 register a domain name? If a domain name was a
20 risk that our company should not have had, Chris
21 would provide legal advice that this domain name
22 should be disposed of, yes.

23 Q. Okay. And so maybe we're getting
24 caught up in semantics here, because the next
25 question is going to be: Did Chris Pirrone ever

1 provide any advice, input, as to whether or not a
2 domain should be deleted?

3 A. Yes.

4 Q. Okay. And so let me ask you, in
5 general, because you control Basic Fusion
6 as well, --

7 A. Yes.

8 Q. -- were you able to actually delete a
9 domain out of your portfolio prior to the lapse of
10 the registration period?

11 A. Could we ever delete a domain name?
12 Well, any registrar can do that.

13 Q. And to your understanding, have you
14 done that before, that is to say, you didn't wait
15 for the domain to expire, --

16 A. Yes.

17 Q. -- you just deleted it --

18 A. Yes.

19 Q. -- and made it available for
20 registration again?

21 A. That happens often.

22 Q. With regards to trademark issues,
23 whether or not a domain may be a trademark risk,
24 I understand Chris Pirrone is sometimes involved
25 in that discussion, I understand you're sometimes

1 involved in that discussion.

2 Who else, through the years, has been
3 a person who would have been involved in
4 discussion as to whether or not to keep a domain
5 that may or may not be a trademark risk?

6 A. Primarily, that conversation would
7 happen between me, and Chris would advise me on
8 that. I mean, how far back do you want to go?

9 Q. Well, let's just start in the last --
10 2010, let's go backwards from there.

11 A. Okay.

12 Q. In 2010, who would have participated
13 in discussions as to whether or not to keep a
14 domain?

15 A. To keep a domain?

16 Q. Well, strike that.

17 I'm a little unclear, after Lilly
18 Stevenson and Donnie Misino, as to exactly how
19 this works, so let's back up.

20 When -- during the registration
21 process which has been described, does -- is part
22 of the process to look at whether or not to
23 register a domain, in terms of trademark issues,
24 prior to registration or does -- alternatively,
25 does the domain get registered and then you look