

# EXHIBIT B

1 UNITED STATES DISTRICT COURT  
2 IN THE EASTERN DISTRICT OF MICHIGAN

3 - - -

4 THE WEATHER UNDERGROUND, INC.,  
5 a Michigan corporation,

6 Plaintiff,

Case No. 09-10756

7 vs.

Hon. Marianne O. Battani

8 NAVIGATION CATALYST SYSTEMS,  
9 INC., a Delaware corporation;  
10 BASIC FUSION, INC., a Delaware  
11 corporation; CONNEXUS CORP., a  
12 Delaware corporation; and  
13 FIRSTLOOK, INC., a Delaware  
14 corporation,

15 Defendants.

16 \_\_\_\_\_/  
17 MOTION HEARINGS

18 BEFORE THE HONORABLE MARIANNE O. BATTANI

19 Detroit, Michigan • Thursday, January 13, 2011

20 APPEARANCES:

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1 any type of legal advice from Mr. Pirrone. We haven't  
2 pleaded it, we haven't put it in a motion, we haven't  
3 prohibited discovery based on something that he said, I don't  
4 think. So we haven't put it at issue which is really kind of  
5 the thrust of what these cases say.

6 THE COURT: Okay.

7 MR. DELGADO: And can I -- just one last thing? I  
8 know I'm kind of pushing my --

9 THE COURT: We have to hurry up.

10 MR. DELGADO: The last thing I want to say is this,  
11 in each of the cases where a waiver was found they are all  
12 very clear that the waiver is very narrow and specific to the  
13 case. They are not looking for a narrow, specific waiver.  
14 What they want is to eliminate the waiver or eliminate the  
15 privilege altogether as to everything that Mr. Pirrone has  
16 talked to these people about and advised them about. I mean,  
17 that type of waiver, quite frankly, is unheard of and is  
18 going to literally open the floodgate for any type of case  
19 where intent might be an issue.

20 THE COURT: All right. Thank you.

21 Mr. Schaefer.

22 MR. SCHAEFER: Thank you, Your Honor.

23 Enrico Schaefer on behalf of the Plaintiff.

24 A couple things right out of the gate. We are not  
25 asking for a complete waiver of everything that Mr. Pirrone

1 every said or did with regards to his representation in-house  
2 or otherwise with Navigation Catalyst Systems. Unlike  
3 Shelton, which clearly does not apply in this case, we are  
4 not asking for any information about how the decisions were  
5 made in defending this case, which is what the Shelton case  
6 is. Plaintiffs were looking to take the deposition of the  
7 attorney, trial counsel, in-house counsel, it doesn't matter  
8 how it gets designated, concerning issues after the filing of  
9 the case concerning the defense of the case. We have already  
10 told them we have no interest in that.

11 What we do have an interest in is to find out why  
12 Mr. Pirrone decided to register domains that incorporated our  
13 trademark, and it is clear, contrary to what brother counsel  
14 is saying, it is clear from the testimony that he, in fact,  
15 was at least a, if not the, decision-maker in terms of  
16 registering the domains.

17 So the very -- this case really has gotten much  
18 simpler since we saw you last, Your Honor. They don't really  
19 contest the trademarks. They don't contest potentially that  
20 they might be infringing. What they do contest is that they  
21 registered these domains with a bad-faith intent to profit.  
22 And specifically their affirmative defense number eight is  
23 that they engaged in all sorts of trademark activities trying  
24 so hard to keep the trademarks out of their portfolio that,  
25 in fact, they acted in good faith. So we have under the

1 statute 15 U.S.C. 1125(D)(B)(i) the standard which is if  
2 somebody registers a trademark-protected domain with a  
3 bad-faith intent to profit, intent, they are subject to  
4 \$100,000 per domain name, and then under -- then it gives the  
5 elements of what might be bad-faith intent.

6 And then under (2) there is an instruction that  
7 says bad-faith intent shall not be found in any case in which  
8 the court determines that the person believed and had  
9 reasonable grounds to believe that the use of the domain  
10 name -- that they had a good faith grounds for registering  
11 the domain name, and they are asserting that defense. Well,  
12 the person, the key witness in the whole case who made these  
13 final decisions appears to have been Mr. Pirrone. So we feel  
14 that we are entitled -- the person whose intent at the core  
15 of the case on at least a large number of these domain names  
16 is Mr. Pirrone.

17 So let's just take a look at what the evidence has  
18 been to date. According to Lily Stevenson, Exhibit A of our  
19 motion, on page 17 and 18 she states that Pirrone decides  
20 what goes on the black list. The black list is the  
21 do-not-register list, and supposedly, according to their  
22 witnesses, when they get notice of specific -- they already  
23 have constructive notice of our trademarks because they are  
24 in the trademark database, but when they get specific notice  
25 by the way of a UDRP or threat letter then Mr. Pirrone

1 MR. SCHAEFER: So there are lots -- this concept  
2 that somehow that he wasn't involved, there's tons of  
3 testimony that not only was he involved but he's the top of  
4 the food chain so we feel like we get to ask him about that.

5 In that Exhibit A we cite three cases that are just  
6 really directly on point here when he is the decision-maker  
7 on a key issue in the case, when bad faith, good faith is an  
8 issue, when willfulness is at issue and it is his willfulness  
9 that counts we get to ask questions about that.

10 So unlike Shelton, Your Honor, we are not going to  
11 be, and we have already told them we are not going to be,  
12 asking any questions about why did you defend this case this  
13 way, how did you decide, you know, what to do in this case  
14 once this case was filed. What we do want to ask him about  
15 is how he developed those procedures which supposedly they  
16 rely on as the backbone of their good-faith intent, whether  
17 or not they actually would ever apply because they didn't  
18 appear to be, and why he decided which domains he reviewed  
19 and how it is that he decided to keep a domain with a  
20 95 percent trademark match, for instance.

21 THE COURT: Okay. Brief, very brief, reply.

22 MR. DELGADO: Your Honor, I think the most  
23 important point for me to address is the accusation or the  
24 allegation that he's the ultimate decision-maker on these  
25 domains. That's just not accurate. The testimony that

1 the Mavi Llamas level.

2 THE COURT: All right. Thank you.

3 In reviewing this matter the Court finds that the  
4 limitations placed on Shelton in the Eighth Circuit should  
5 apply, and that is that the depositions of attorney is  
6 limited in two circumstances, when trial or litigation  
7 counsel are being deposed and when such questioning would  
8 expose litigation strategy in the pending case. Here it  
9 sounds like he's in the chain. I don't know whether you call  
10 this legal advice or not legal advice, you can argue about  
11 that, but it appears to me that this is the crux almost of  
12 this case and what he has decided, how he has decided, what  
13 procedures he has used, if he followed these procedures is  
14 critical to this case, and that we know that as a rule a  
15 party is entitled to discovery regarding any non-privileged  
16 matter that is relevant to any claim or defense and anyone,  
17 including attorneys, with relevant information may be subject  
18 to a deposition.

19 I don't find this matter as being privileged and  
20 therefore -- I mean, it happens all the time in patent cases,  
21 and therefore the Court will deny the motion for a protective  
22 order.

23 All right. We have one more matter but I only have  
24 about five minutes, so you will have to be real quick on this  
25 one, and that is whether Connexus Corporation and Firstlook