

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

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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.

VIDEOTAPED DEPOSITION OF CHRISTOPHER SCHWERZLER

Monday, December 6, 2010

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SHEILA CHASE & ASSOCIATES
REPORTING FOR:
Westlaw Reporting Service
221 Main Street, Suite 1250
San Francisco, California 94105
Phone: (415) 321-2311
Fax: (415) 321-2301

Reported by:
DAWN E. HOWARD, CSR #13201

1 worry about it. I'll rephrase it.

2 Did you ever perform any of the tasks that you
3 did as part of preparing your expert report in this
4 case?

5 A. Which tasks would you be referring to?

6 Q. Well, any of them. Let's just kind of think
7 through some of the things you've done.

8 At some point, you received the NCS database,
9 and that had to be restored, because it was a backup
10 copy, right?

11 A. Yes.

12 Q. Okay. Had you ever done that task before, of
13 restoring a database?

14 A. I had never restored the NCS database before.

15 Q. Did you ever restore any SQL database at all?

16 A. Not a Microsoft SQL database. I've primarily
17 dealt with Linux-based MYSQL, and we do our backups
18 slightly different than what was presented to us.

19 Q. Okay. Any other types of databases that you
20 restored?

21 A. Not that I can recall.

22 Q. Now, have you ever -- had you ever written a
23 string comparison program before?

24 A. Yes, I think I have. I've actually written my
25 own versions of STRCMP, S-T-R-C-M-P, at some point in my

1 education.

2 Q. Do you remember when that was?

3 A. Probably between 1991 and '96.

4 Q. And this was in connection with getting your
5 bachelor's degree?

6 A. Yes.

7 Q. Any other instances?

8 A. I may have, as a -- written some string
9 comparison logic, and probably in my high school years,
10 in regards to writing a Commodore 128 ANSI emulator,
11 which I was picking out strings and comparing them in
12 that time frame, so --

13 Q. Okay. The string comp that you did for -- when
14 you were at the University of Michigan, what would that
15 have been for?

16 A. Probably, in regards to a -- just an algorithms
17 class.

18 Q. Do you specifically remember writing one of
19 those programs, or you just think you probably did in
20 one of those classes?

21 A. I'm pretty sure we did something like that
22 in -- probably at the assembly level, just as an
23 exercise in assembly class.

24 Q. Okay.

25 A. Where you're comparing two registers and

1 walking through it, which is, pretty much, a very simple
2 character-by-character-string comparison.

3 Q. Okay. Had you ever done anything with
4 trademark matching, trademark specifically?

5 A. Probably in the time frame of when we were
6 first registering our trademarks. I think we looked
7 through the USPTO, between me and Jeff, and that would
8 be -- but not -- I'm not in the business of trying to
9 register lots of trademarks and covering our butts.

10 Q. Okay. So, when you say you went through the
11 PTO, was that in some kind of automated fashion, or you
12 just meant you kind of looked through the --

13 A. I thought it was online at that point. Jeff
14 was more involved with the initial registrations of our
15 trademarks, and I'm trying to think. I can't remember
16 how many years ago we were playing around with
17 DomainTools typo registry. But after that point, I
18 would have probably had seen typos, and I -- but that
19 doesn't have any regard to writing a comparison
20 algorithm, so --

21 Q. Have you ever held any kind of marketing jobs?

22 A. Have I held any type of marketing jobs? I've
23 stood at trade shows, handing out umbrellas.

24 Q. Okay. Anything -- well, any other type of
25 marketing responsibility at any of your jobs?

1 A. I would say that as the director of the
2 company, I have a responsibility to protect our
3 trademarks.

4 Q. Anything else?

5 A. Not that I can think of.

6 Q. And have you had any jobs in the legal field,
7 as a paralegal or a legal assistant?

8 A. I've never worked as a paralegal.

9 Q. And certainly not as a lawyer, right?

10 A. I have not worked as a lawyer.

11 Q. All right. Have you ever been accredited by
12 any organization?

13 A. Not that I can recall.

14 Q. Have you ever been licensed by any
15 organization?

16 A. Not that I can recall.

17 Q. Are you a member of any professional
18 associations?

19 A. Not that I can recall.

20 Q. Have you participated in any seminars on, like,
21 coding or software, in general?

22 A. I think in my last deposition, I referred to a
23 phone.com mobile device conference that I had been to,
24 in regards to programming for that device.

25 Q. I'm sorry. It was what .com?

1 A. Phone.

2 Q. Phone.com?

3 A. Yes.

4 Q. Any other ones that you can recall?

5 A. Can you repeat the question.

6 Q. Yeah. Have you participated in any seminars on
7 the topic of software or --

8 A. I've gone to trade shows, such as LinuxWorld,
9 and listened to people speak.

10 Q. Okay. Anything else?

11 A. Probably, a couple of Macworlds, somewhere in
12 there, some of the tech presentations, but I don't
13 recall topics off the top of my head right now.

14 Q. Had you ever conducted any research independent
15 of this litigation?

16 MR. HALL: I'm going to object; vague.

17 THE WITNESS: Yes. That would be a very vague
18 question.

19 MR. DELGADO: Q. Okay. Let's have it
20 narrowed down, then.

21 Have you conducted any research into, like,
22 computer science for string comparison algorithms,
23 independent of the litigation?

24 A. Not that I can recall.

25 Q. Had you ever conducted any research independent

1 of the litigation into trademark law?

2 A. No.

3 Q. How about with respect to Fuzzy Matching, in
4 particular; have you ever conducted any independent
5 research, prior to the litigation, into Fuzzy Matching
6 algorithms?

7 MR. HALL: I'll object to the extent that
8 you're using the term as "Fuzzy Matching" as being vague
9 and ambiguous.

10 THE WITNESS: I would say yes, in regards to
11 our attempts to take user inputs into our city search
12 box and matching them to the actual spellings and
13 various discussions and techniques that could be used
14 for that.

15 MR. DELGADO: Q. All right. So tell me a
16 little bit more about what you mean by that.

17 A. So someone types in Springfield and forgets the
18 "R," taking that phrase and trying to match it to a
19 highly likely candidate within the database of proper
20 names.

21 Q. And what was your role in kind of creating that
22 part of the website?

23 A. I didn't say I created it. I said I've had
24 discussions with --

25 Q. Okay. Do you know who did create it?

1 A. I would say that the person who's worked the
2 most on that would probably be Matt Kallio.

3 Q. And you had discussions with Mr. Kallio?

4 A. Yes. I speak with Kallio often.

5 Q. So what was your role?

6 A. Sound wall.

7 Q. Which means he bounces ideas off of you?

8 A. Yes. It's how a lot of our development works.

9 Q. Other than being a sound wall for Mr. Kallio,
10 is there anything else?

11 A. That's the only example I can think of right
12 now that would probably be along the lines that you're
13 looking for.

14 Q. Prior to the litigation, had you conducted any
15 research into domain name tasting?

16 A. I was never interested in doing domain name
17 tasting, so no.

18 Q. How about domain name monetization?

19 A. I had never researched domain name
20 monetization, other than what we do with ours.

21 Q. Okay. Have you ever given any lectures
22 anywhere?

23 A. Yes. At the university level, I had done
24 presentations with Perry Sampson there about Blue Skies,
25 and I'd also given one of his presentations in a senior

1 tech com class, so that would be about the closest thing
2 that I could think of to a lecture.

3 Q. This is while you were an undergraduate?

4 A. Yes.

5 Q. And tech com stands for what?

6 A. Technical communications.

7 Q. Anything else you can recall?

8 A. Not offhand.

9 Q. Have you ever been published?

10 A. In what form?

11 Q. Written any kind of books or magazine articles,
12 or anything like that?

13 A. No.

14 Q. Is there in any form, since you asked the
15 question?

16 A. I have had people publish things about our work
17 at The Weather Underground.

18 Q. But nothing that you yourself have written?

19 A. Not that I can recall.

20 Q. And you've never been an expert before,
21 correct?

22 A. I've never been an expert in a trial.

23 Q. Have you been an expert in some other context?

24 A. I am an expert at taking weather data and
25 putting it online and building a business out of it.

1 Q. Okay. Any other context?

2 A. I guess, expert is all relevant to what
3 you're -- what field you're talking about.

4 Q. Is there any other field that you think you're
5 an expert in?

6 A. There's topics I know a lot about.

7 Q. And those would be?

8 A. I know a lot about llamas.

9 Q. That explains the title.

10 A. Yes.

11 Q. Okay. Anything else?

12 A. Olives.

13 Q. I'm sorry?

14 A. Olives, like olive oil. Olives.

15 Q. Got it.

16 Anything else?

17 A. I'm starting to learn a fair amount about
18 guitar building.

19 Q. Okay. How about this, any topics that you drew
20 upon for purposes of preparing the expert report in this
21 case?

22 A. Just my experiences in The Weather Underground,
23 and computer science from that.

24 Q. Okay. Have you ever acted as a consultant for
25 a third party before?

1 A. Yes.

2 Q. Tell me about that.

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REDACTED

(DESIGNATED CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER)

22 Q. Have you received any awards or honors in the
23 field of computer science?

24 A. Degree.

25 Q. Your bachelor's degree?

1 A. Yes.

2 Q. Anything else?

3 A. Probably the Java Cool Tools award, circa,
4 probably '97, of Sun Microsystems.

5 Q. What was that for?

6 A. Java Weather.

7 Q. Any other ones you can recall?

8 A. Not offhand.

9 Q. Have you ever served in any organizations in
10 the field of computer science?

11 A. No.

12 Q. Had you ever seen a Fuzzy Matching program like
13 the one used by NCS prior to the litigation?

14 A. A program or the actual algorithm?

15 Q. Well, either one.

16 A. I don't think we have seen the actual algorithm
17 used by the Fuzzy Matching, nor has Navigation Catalyst
18 been able to provide it to us.

19 Q. How about any program that implements the, kind
20 of, Fuzzy Matching algorithm?

21 A. I would say that MYSQL, M-Y-S-Q-L, uses a
22 string matching in the context of the command "like."

23 Q. Is that the only one?

24 A. I don't do a lot with string matching.

25 Q. Just broadly speaking, is there any other

1 experience that you have had which relates to the
2 topics, in your expert report, anything I've left out?

3 MR. HALL: Can you repeat that question?

4 MR. DELGADO: Sure.

5 Q. Is there any other experience that you've had
6 which relates to the topics of your expert report or
7 anything that I may have left out in kind of going
8 through your background?

9 A. Not that I can recall right now.

10 Q. So would it be fair to say that your field of
11 expertise is, essentially, computer science?

12 A. Yes.

13 MR. DELGADO: Let's go through and mark this as
14 Exhibit 203. It sounds like a good place to start.

15 (Whereupon, Defendants' Exhibit No. 203
16 was marked for identification.)

17 MR. DELGADO: Q. Take a moment to look
18 through that, and let me know when you're ready.

19 It looks like my copy was a staple of page 3,
20 in front of page 2, so just don't let that confuse you.
21 Feel free to unstaple it and reorder them, if that
22 helps.

23 A. Okay.

24 Q. I'm going to ask you to look now at the page
25 that's marked page 3 of 8.

1 print out some and not others?

2 A. I do not believe I printed out any for this
3 particular request.

4 Q. Well -- okay.

5 How about just kind of along the way, as you
6 were doing your research or preparing your report; do
7 you recall printing out any of the archival whois
8 records that you were looking at?

9 A. Yes. The tickettoworkfromhome example was used
10 as an exhibit in the Misino second half deposition, so
11 that would be an example of -- that got printed, but
12 that was not done for this expert report.

13 Q. Did you do that for every single archival whois
14 record that you looked at?

15 A. No, I did not.

16 Q. Okay. Did you have conversations with your
17 attorneys about your expert report?

18 A. Without getting into privileged information, I
19 would say yes, I had conversations in regards to MYS- --
20 the time line on which I was to present them, my expert
21 findings. I had a conversation in which we discussed a
22 rough draft of my findings, and I believe we had a
23 conversation in regards to this particular third Request
24 for Production and the questions and the time line
25 involved with it.

1 Q. Okay. As far as you recall, those are the only
2 three conversations you had?

3 A. With my attorneys?

4 Q. Yes.

5 A. That I can recall currently.

6 Q. With respect to the second conversation about
7 the rough draft, do you recall what it is you said
8 during that conversation?

9 A. The conversation was a rough walk-through of
10 the rough draft, and it was basically clarifying to them
11 what I was saying in my conversations -- or in my
12 findings.

13 Q. Was this -- the draft you're referring to, was
14 this the first draft or the second supplemental draft?

15 A. It would probably be the first draft that was
16 ever recorded.

17 Q. Okay. And just so --

18 A. Which I believe is the version that you
19 originally had.

20 Q. Okay. All right. I'm still a little confused.

21 So initially, you had a draft that was kind of
22 a -- an initial draft that was provided to us with the
23 original designation. And then after that, in October,
24 I think we got a second -- a second report, the next
25 supplemental report. So I'm not talking about drafts of

1 particular ones, but rather trying to just differentiate
2 between the one that I received in September, I think,
3 and then the one -- or maybe even August, and the one
4 that we got in October.

5 A. There was an earlier expert report that was
6 prediscovery --

7 Q. Right. This was before August?

8 A. -- before the database and our initial 30(b)(6)
9 deposition of the defendants.

10 Q. Right. So the conversation where you were
11 walking through, are you referring to that earlier
12 report or are you referring to the second report?

13 A. I was referring to the second report.

14 Q. Okay. So you're --

15 A. Looking back at the original report, I would
16 say there is another conversation I had with Mr. Hall,
17 where I did the same exercise of walking him through my
18 report so he understood it fully.

19 Q. Okay. So there was one conversation with
20 Mr. Hall with respect to the very, very first report,
21 before the database was provided, correct?

22 A. Yes.

23 Q. And then, there was a separate conversation
24 with whom, about the second report?

25 A. That would have been with Mr. Hall and

1 Mr. Schaefer.

2 Q. And then -- well, did you make changes after
3 having that conversation with Mr. Hall and Mr. Schaefer?

4 A. Which draft are you referring to currently?

5 Q. Okay. So we're talking now about the second
6 conversation, about the supplemental report, the one --
7 the conversation with Mr. Hall and Mr. Schaefer. You
8 walked them through --

9 A. Yes.

10 Q. -- whatever draft you had.

11 A. And what was the question?

12 Q. And then the question was, did you make any
13 changes to the draft as a result of that conversation?

14 A. Yes. There were changes made.

15 Q. Do you recall what they were?

16 A. They recommended that I leave myself the window
17 of amending my report, which is a standard practice with
18 expert reports. They also said that I should list the
19 Berryhill materials, or the Berryhill expert report,
20 since I had perused it, but not spent as much time
21 reviewing it as I had the Korf report, K-O-R-F.

22 Q. Anything else?

23 A. In regards to my supplemental draft?

24 Q. Yeah, any other changes that were made after
25 that conversation.

1 A. There were changes made, not in regards to the
2 conversation.

3 Q. Okay. Can you my think of any other changes
4 that were made with regard to the conversation?

5 A. I believe there is a -- at one point we were
6 talking about when I was generating lists of match- --
7 near matches of your portfolio, the suggestion -- the
8 suggestion was made to include a matchup against adult
9 websites as well, which I had not originally done, but
10 wasn't any harder.

11 Q. And why -- why was that done?

12 A. I think it was done to show that your client
13 does not really focus on any one particular subset of
14 Internet properties to squat.

15 Q. I'm sorry. I don't understand the answer.

16 A. That the NCS portfolio contains near trademark
17 violations of both adult websites and nonadult websites
18 or cybersquatting, in my opinion.

19 Q. And that was included as part of the
20 supplemental report that was produced?

21 A. I do believe that there was an appendix that
22 was the top 1- or 200 Alexa adult websites matched up
23 against your portfolio for near misses.

24 MR. DELGADO: All right. Let's mark this next
25 one as 204.