



<p>THE WEATHER UNDERGROUND, INC.</p> <p>PO BOX 3605 ANN ARBOR, MI 48106-3605 USA</p> <p>(Complainant)</p> <p>v.</p> <p>NAVIGATION CATALYST SYSTEMS, INC</p> <p>2141 Rosecrans Ave. Suite 2020 El Segundo, CA 90245 USA</p> <p>(Respondent)</p>	<p>) Domain Names In Dispute:</p> <p>) Qwunderground.com, Swunderground.com,</p> <p>) Udergroundweather.com, Undegroundweather.com,</p> <p>) Undergoundweather.com, Undergroudweather.com,</p> <p>) Undergroundwaether.com, Undergroudwwaether.com,</p> <p>) Undergrounweather.com, Watherunderground.com,</p> <p>) Weaetherunderground.com, Weahterunderground.com,</p> <p>) Weartherunderground.com, Weatehrunderground.com,</p> <p>) Weatgerunderground.com, Weathernuderground.com,</p> <p>) Weatherunbderground.com, Weatherundergound.net,</p> <p>) Weatherundergriund.com, Weatherundergound.com,</p> <p>) Weatherunderground.com, Weatherundergrounf.com,</p> <p>) Weatherunderround.com, Weatherundergrpound.com,</p> <p>) Weatherundewrground.com, Weatherundreground.com,</p> <p>) Weathrunderground.com, Weatherunferground.com,</p> <p>) Wewatherunderground.com, Wetaherunderground.com,</p> <p>) Wundertground.com, Wunederground.com,</p> <p>) Wunnderground.com, Wweatherunderground.com,</p> <p>) Winderground.com, Wumderground.com,</p> <p>) Wundeerground.com, Wunderfround.com,</p> <p>) Wundergound.com, Wundergroundr.com, Wwwund.com</p>
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**COMPLAINT IN ACCORDANCE WITH
THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

A. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999 (ICANN Policy), and the Rules for Uniform Domain Name Dispute Resolution Policy (ICANN Rules), adopted by ICANN on August 26, 1999 and approved by ICANN on October 24, 1999, and the National Arbitration Forum (NAF) Supplemental Rules (Supp. Rules). ICANN Rule 3(b)(i).

B. COMPLAINANT INFORMATION

a. Name: The Weather Underground, Inc.
Attn: Jeff Ferguson

b. Address: PO BOX 3605
Ann Arbor, MI 48106-3605
US

c. Telephone: 734-994-8824

d. Fax: 734-994-8919

e. E-Mail: ferguson@wunderground.com

C. COMPLAINANT'S AUTHORIZED REPRESENTATIVE

a. Name: Brian A. Hall

b. Address: 810 Cottageview Drive, Unit G-20
Traverse City, MI 49684

c. Telephone: 231-932-0411

d. Fax: 231-932-0636

- e. E-Mail: brianhall@traverselegal.com

The Complainant's preferred method for communications directed to the Complainant in the administrative proceeding: ICANN Rule 3(b)(iii).

Electronic-Only Material

- a. Method: email
- b. Address: brianhall@traverselegal.com
- c. Contact: Brian A. Hall

Material Including Hard Copy

- a. Method: fax
- b. Fax: 231-932-0636
- c. Contact: Brian A. Hall

The Complainant chooses to have this dispute heard before a single-member administrative panel. ICANN Rule 3(b)(iv).

D. RESPONDENT INFORMATION

- a. Name: Navigation Catalyst Systems, Inc.
- b. Address: Kings Court, Bay Street
2141 Rosecrans Ave.
Suite 2020
El Segundo, CA
USA
- c. Telephone: +1 310-647-1592
- d. Fax: +1 310-617-6001
- e. E-Mail: domainadmin@navigationcatalyst.com

E. DISPUTED DOMAIN NAME

- a. The following 41 domain names are the subject of this Complaint: ICANN Rule 3(b)(vi).

< Qwunderground.com, Swunderground.com, Udergroundweather.com, Undegroundweather.com, Undergroundweather.com, Undergroudweather.com, Undergroundwaether.com, Undergroundwwaether.com, Undergrounweather.com, Watherunderground.com, Weaetherunderground.com, Weahterunderground.com, Weartherunderground.com, Weatehrunderground.com, Weatgerunderground.com, Weathernuderground.com, Weatherunbderground.com, Weatherunderground.net, Weatherundergriund.com, Weatherundergrouind.com, Weatherunderground.com, Weatherundergrounf.com, Weatherunderround.com, Weatherundergrpound.com, Weatherundewrground.com, Weatherundreground.com, Weathrunderground.com, Weatherunferground.com, Wewatherunderground.com, Wetaherunderground.com, Wundertground.com, Wunederground.com, Wunnderground.com, Wweatherunderground.com, Winderground.com, Wumderground.com, Wundeerground.com, Wunderfound.com, Wundergtound.com, Wundergroundr.com, Wwwwund.com >

- b. Registrar Information: ICANN Rule 3(b)(vii).

- 1.Registrar's Name: Basic Fusion, Inc.
- 2.Registrar Address: 335 Madison Ave., Ste. 840
New York, NY 10017
- 3.Telephone Number: 646-307-8600
- 4.E-Mail Address: info@basicfusion.com

- c. Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

WUNDERGROUND.COM Trademark Registration attached as Annex A. The goods and services include: "Computer services, namely providing on-line information services in the field of weather." THE WEATHER UNDERGROUND Trademark Registration attached as Annex B. The goods and services include: "Providing weather information via a global computer network." Complainant relies upon its common law trademark rights in WUND.COM as well.

F. FACTUAL GROUNDS

This Complaint is based on the following factual and legal grounds: ICANN Rule 3(b)(ix).

a. Jurisdictional Basis for the Administrative Proceeding

1. This dispute is properly within the scope of the Uniform Domain Name Dispute Resolution Policy and the Administrative Panel has jurisdiction to decide the dispute. The Registration Agreement, pursuant to which the domain that is subject of this Complaint is registered, incorporates the Policy. A true and correct copy of the Registrar's, Basic Fusion, Inc., Registration Agreement and domain name dispute policy that applies to the domain name in question is provided as Annex C to this Complaint.

b. Complainant's Business

1. Complainant is a Michigan Corporation and was one of the first organizations to provide users with an online weather service. In fact, Complainant has offered its services via its official web sites, www.wunderground.com, www.weatherunderground.com, and wund.com since 1995, 1998, and 2001 respectively. See Annex D, Printout of Michigan Corporate Entity Record.
2. Complainant pioneered the offering of real-time weather conditions with such features as zip code searches, severe weather warnings and advisories, international conditions, marine weather, and detailed local forecasts.
3. Complainant's innovations, service offerings, and Internet presence has continued to grow since 1995. For example, Complainant made its website multilingual in 1998, expanded from Ann Arbor, Michigan to other offices, including San Francisco, California, and invested heavily into hardware and proprietary software. See Annex E, Declaration of Jeff Ferguson. In fact, the <wunderground.com> domain has now added the language identifier, e.g. <swedish.wunderground.com>, with the corresponding language available at such website.
4. Numerous organizations utilize Complainant's technologies, hardware, and proprietary software to power their products and services, including the Chicago Tribune, State Farm Insurance, Land's End, and the Mayo Clinic. See Annex F, Printout of Chicago Tribune Weather; see also Annex E, Declaration of Jeff Ferguson.
5. While many of the weather related offerings at Complainant's website are free, Complainant generates income from its website via advertising. Such major organizations as eBay, H&R Block, VacationsToGo.com, and Classmates.com advertise on Complainant's websites. See Annex G, Printout of wunderground.com Website.

c. Complainant's Marks

1. Complainant's WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks (collectively "Complainant's Marks") are well and favorably known in their local market as well as throughout the world. See Annex H, 2002 Free Press Favorite Michigan Websites; see also Annex I, Quantcast Results for wunderground.com; Annex J, Quantcast Results for weatherunderground.com. See Annex AG, Quantcast Results for wund.com.

A. WUNDERGROUND.COM

2. The trademark WUNDERGROUND.COM was registered with the United States Patent and Trademark Office on February 29, 2000. See Annex A, Certificate of Registration for WUNDERGROUND.COM. The trademark.
3. The WUNDERGROUND.COM mark was first used, including first use in commerce, on March 16, 1995. The distinctive mark pertains to "Computer services, namely providing on-line information services in the field of weather."

4. The WUNDERGROUND.COM mark has become famous. Through its efforts, Complainant has established tremendous value and goodwill associated with its WUNDERGROUND.COM mark. For example, according to quantcast.com, nearly 15 million users visit our client's www.wunderground.com web site each month. As such, Complainant's website ranks 85th out of more than 20 million websites. See [Annex I](#), Quantcast Results for wunderground.com.

5. WUNDERGROUND.COM's popularity is further enhanced by its worldwide use. In fact, Complainant offers the services associated with the WUNDERGROUND.COM mark in countless languages, as evidenced by the [language].wunderground.com domain naming convention that resolves to a website in that particular language.

B. THE WEATHER UNDERGROUND

6. THE WEATHER UNDERGROUND was registered with the United States Patent and Trademark Office on December 7, 1999. See [Annex B](#), Certificate of Registration for THE WEATHER UNDERGROUND.

7. The THE WEATHER UNDERGROUND mark was first used, including first use in commerce, on March 16, 1995. The distinctive mark pertains to "Providing weather information via a global computer network."

8. Further, THE WEATHER UNDERGROUND mark has also become famous. A Google search for "weather underground" shows that Complainant's wunderground.com is the #1 search result. See [Annex L](#), Google Results for "weather underground." 60,000 viewers visit www.weatherunderground.com each month. See [Annex J](#), Quantcast Results for weatherunderground.com.

9. THE WEATHER UNDERGROUND's popularity is further enhanced by their worldwide use. In fact, Complainant offers the services associated with the THE WEATHER UNDERGROUND mark in countless languages, as evidenced by the [language].wunderground.com domain naming convention that resolves to a website in that particular language.

C. WUND.COM

10. Although Complainant's WUNDERGROUND.COM registered mark affords rights to the similar WUND.COM mark, Complainant also has explicit common law rights in its WUND.COM mark.

Complainant has used the WUND.COM mark in association with its weather services since at least May 29, 2003. [Annex AE](#), printout of WayBackMachine results for wund.com on May 29, 2003. See, e.g., *Hiatt v. Pers. Fan & Official Site Builders : we build great sites*, FA881460 (Nat. Arb. Forum Feb. 21, 2007) ("Registration with a trademark authority is unnecessary under Policy ¶ 4(a)(i) in instances where a mark has gained secondary meaning through extensive commercial use and common law rights have been established"); see also *Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA894477 (Nat. Arb. Forum Mar. 8, 2007) (finding that Policy ¶ 4(a)(i) does not require registration if common law rights have been established through extensive use).

11. In addition, the top results of a Google search of "wund" refers to Complainant. See [Annex AF](#), Google Results for "wund."

12. WUND.COM has also become famous. Over 108,000 people visit wund.com every month. See [Annex AG](#), Quantcast Results for wund.com.

13. In addition, Complainant has received press from such major publications as Forbes, People Magazine, Wired, the Wall Street Journal, U.S.A. Today, and the New York Times. See e.g., [Annex M](#), New York Times Article, Hobbyist Fill Out the Map; see also [Annex N](#), USA Today Article.

d. Complainant's Use of the Internet

1. Complainant has exclusively provided its computer services and weather-related information over the Internet. In fact, Complainant has owned and used wunderground.com since 1995, weatherunderground.com since 1998, and wund.com since 2001. See [Annex O](#), WHOIS for wunderground.com; see also [Annex P](#), WHOIS for weatherunderground.com; see also [Annex AG](#), WHOIS for wund.com.

2. Internet users can find weather for any city, state, zip code, airport code, or country. Users can also customize the website by selecting a language, a timezone, units (metric or English), and site appearance (e.g. show favorites, photos, promos). Moreover, users can listen to local weather radio stations, track radar, and even customize and print a Forecast Flyer. See [Annex Q](#), Forecast Flyer.

3. Users can also participate in blogs with other users to post, share, and comment on weather related information and discussions.
4. In addition, Internet users can become members to the website, <http://www.wunderground.com/members/signup.asp#benefits>, which provides greater access to features of the wunderground.com/weatherunderground.com website. Moreover, users may opt to pay for a one year membership giving them longer radar animations, ad-free weather, universal favorites, and U.S. forecasts and alerts through email.
5. Complainant even offers its services through mobile devices, such as T-Mobile and the Apple iPhone cell phones. See Annex E, Declaration of Jeff Ferguson; see also <http://www.apple.com/webapps/weather/weatherunderground.html>.
6. The Internet has become an indispensable tool through which Complainant communicates, markets, and services its customers.

e. Respondent's Unauthorized Use of Complainant's Marks

1. This is yet another cybersquatting case against a known domain warehouser. Respondent has been ruled against several times by NAF and WIPO panels. See *The Royal Bank of Scotland Group plc v. Navigation Catalyst Systems, Inc.*, FA813065 (Nat. Arb. Forum Nov. 21, 2006) (Panel orders <rbsdigital.com> domain name be transferred); see also *Talecris Biotherapeutics, Inc. v. Navigation Catalyst Systems, Inc.*, FA1170019 (Nat. Arb. Forum May 7, 2008) (Panel orders <talecrisbenefitsnow.com> domain name be transferred); see also *The Carphone Warehouse Limited and The Phone House B.V. v. Navigation Catalyst Systems, Inc.*, D2008-0483 (WIPO June 20, 2008) (Panel orders <thecarphonewarehouse.com>, <caphonewarehouse.com>, <carphonewarehouse.com>, <carhponewarehouse.com>, <carphoewarehouse.com>, <carphonewaarehouse.com>, <carphonewarehouseireland.com>, <carphonewarehpuse.com>, <carphonewarehouse.com>, <carphone-wharehouse.com>, <carphonewraehouse.com>, <carwarehousephone.com>, <craphonewarehouse.com>, <mycarephonewarehouse.com>, <mycarphonecarewarehouse.com>, <phonehouse.com>, <thephonehpuse.com> domain names be transferred); see also *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, D2007-1141 (WIPO Nov. 30, 2007) (Panel orders <imyxr.com>, <musicmyxr.com>, <mymyxers.com>, <mymyxertone.com>, <mymyxer.com>, <myxercode.com>, <my-xer.com>, <myxerger.com>, <myxerones.com>, <myxer.org>, <myxerotnes.com>, <myxerringtones.com>, <myxers.net>, <myxersringtones.com>, <myxerstones.com>, <myxertone.com>, <myxertonees.com>, <myxertone.net>, <myxertones.net>, <myxertones.org>, <myxertonez.com>, <myxertonse.com>, <myxertonz.com>, <myxertoones.com>, <myxertpnes.com>, <myxertyones.com>, <myxere.com>, <myxereones.com>, <myxerjams.com>, <myxerringbacktones.com>, <myxerringers.com>, <myxerspace.com>, <mymyxer.com>, <myxerpones.com>, and <themixxer.com> to be transferred).
2. Respondent has been sued in federal court by famous trademark holders for its typosquatting and cybersquatting activities, including Verizon, Kaplan, Virgin, Wachovia, and Federated Western. Respondent has registered thousands of domain names incorporating famous marks. See Annex R, Printout of <justia.com> docket search; see also Annex AH, printout of Exhibit 7, a sampling of Navigation Catalyst System's domains, from Verizon v. Navigation Catalyst Systems lawsuit.
3. Respondent is a typosquatter. See Annex AC, Spreadsheet of Infringing Domains. Respondent's earliest registration, <udergroundweather.com>, was on or near July 7, 2004. See Annex S, WHOIS for <udergroundweather.com>. Respondent's earliest registration of an Infringing Domain was about 9 years after Complainant had registered and used wunderground.com. about 10 years after Complainant had registered and used weatherunderground.com. over 4 years after Complainant received its certificate of registration with the USPTO for WUNDERGROUND.COM. and over 9 years after Complainant received its certificate of registration for THE WEATHER UNDERGROUND. See Annex AD, WHOIS Printout of Infringing Domains.
4. Respondent's earliest registration of a domain identical or confusingly similar to Complainant's WUND.COM mark, <wwwund.com>, was on or near Sept. 8, 2004. Respondent's registration of <wwwund.com> occurred at least one year after Complainant registered and used <wund.com>. See Annex AE, WayBackMachine results for <wund.com>.
5. It is impossible to tell the earliest date upon which a website appeared at the earliest registered Infringing Domain since Respondent refers the Infringing Domains to external pay-per-click parking pages or paid search

engines. The Internet Archive contains no entries for the majority of sites that are redirected to pay-per-click or paid search sites by Respondent's domains. See Annex T, WayBackMachine Internet Archive Results for <findweather.net>, <findweather.us>, and <volunteerswork.biz>. The earliest entry for <train-travel.us>, the only site listed in the Internet Archive's database, shows its use as a pay-per-click parking page on Dec. 14, 2005, 5 years after Complainant had registered its WUNDERGROUND.COM trademark with the USPTO, 6 years after THE WEATHER UNDERGROUND mark was registered, 10 years after its <wunderground.com> domain was first used in association with its services, 7 years after <weatherunderground.com> was first used, and 2 years after <wund.com> was first used.

6. Regardless, the websites currently redirected to by the Infringing Domains consist of either contextual pay-per-click parking pages or paid search engine listings. See Annex U, Printout of <new.net> pay search engine; see also Annex V Printout of <findweather.us> pay-per-click parking, Annex W Printout of <findweather.net> pay-per-click parking, Annex X Printout of <train-travel.us> pay-per-click parking, Annex Y Printout of <volunteerswork.biz> pay-per-click parking.

7. When an Internet user arrives at one of the Infringing Domains, the Internet user is redirected to one of several sites that generate revenue for Respondent. See Annex U, Printout of <new.net> pay search engine; see also Annex V Printout of <findweather.us> pay-per-click parking, Annex W Printout of <findweather.net> pay-per-click parking, Annex X Printout of <train-travel.us> pay-per-click parking, Annex Y Printout of <volunteerswork.biz> pay-per-click parking.

8. The majority of the links on the websites redirected to by the Infringing Domains are those of Complainant's competitors, including WeatherBug, Top-Weather.net, ALOT Weather, DTN Meteorlogix, and others. See, e.g., Annex Z, WeatherBug, Top-Weather, and ALOT Weather Websites Linked from <undergroundweather.com>; see also Annex AA, DTN Meteorlogix and WeatherBug linked from <wundeerground.com>.

9. Respondent's websites redirected to by the Infringing Domains are simply pay-per-click parking pages or paid search engine listings that generate revenue for Respondent from consumer confusion with and typographical errors of Complainant's mark.

10. Respondent does not appear to be doing business as WUNDERGROUND.COM, THE WEATHER UNDERGROUND, or WUND.COM, or anything similar, as evidenced by the About Us page on its website located at <http://www.navigationcatalyst.com>. See Annex AB, Printout of Navigation Catalyst Systems About Us page.

G. LEGAL GROUNDS

a. **The Infringing Domains are Identical and Confusingly Similar to Complainant's Marks in which Complainant Has Rights.** ICANN Rule 3(b)(ix)(1); ICANN Policy ¶ 4(a)(i).

1. Complainant is the owner of the trademarks WUNDERGROUND.COM and THE WEATHER UNDERGROUND, which are registered with the USPTO. As such, Complainant has trademark rights in WUNDERGROUND.COM and THE WEATHER UNDERGROUND. See *Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive."); see also *Vivendi Universal Games. V. XBNetVentures Inc.*, FA198803 (Nat. Arb. Forum Nov. 11, 2003) ("Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark."). Complainant's rights in WUNDERGROUND.COM have been recognized by NAF panelists. WUNDERGROUND.COM has been found to be distinctive by NAF panelists in a similar typosquatting case. *The Weather Underground, Inc. v. Click Cons. Ltd.*, FA1152428 (Nat. Arb. Forum April 2, 2008).

2. Moreover, Complainant's continuous and exclusive use of its marks in connection with its weather-related services for over 12 years would in and of itself be sufficient to establish common law rights, which are sufficient under the Policy. See *Great Plains Metromall, LLC v. Creach*, FA97044 (Nat. Arb. Forum May 18, 2001) ("The Policy does not require that a trademark be registered by a governmental authority for such rights to exist."); see also *Valiant Trust Company v. Valiant Trust*, FA844658 (Nat. Arb. Forum Jan. 11, 2007) (finding common law trademark rights for the Complainant's VALIANT TRUST CO. mark due to its continuous and extensive use of the mark in connection with its financial services business since October 1, 1999).

3. Complainant has also used WUND.COM in association with its weather services for over 5 years. Not only have NAF panels recognized that 5 years is enough time to establish secondary meaning, but the Lanham Act presumes that secondary meaning has been established after 5 years. *See Global IT Profiles, LLC v. IT Sales Leads, LLC*, [FA1198689](#) (Nat. Arb. Forum July 7, 2008) (finding secondary meaning where an extensive amount of consumers associate the mark with the complainant); *see also Laurel Eastman v. HWR Design c/o Greg Reemers*, [FA1195214](#) (Nat. Arb. Forum July 11, 2008) (finding secondary meaning after 5 years); *see also* 15 U.S.C. §1052(f).

4. In addition, although not necessary, Complainant has established secondary meaning in its WUNDERGROUND.COM and THE WEATHER UNDERGROUND marks. This is true given the nature and extent of consumer and media recognition. Not only is Complainant's business, marks, and website featured in numerous publications, it is also highly ranked by various media outlets, as noted in the background section above. *See Smooth Corp. v. Cambridge Capital, Ltd.*, [FA731652](#) (Nat. Arb. Forum July 27, 2006) (holding that "Complainant's prominent use of the IFLOOR.COM mark in the marketing and advertising of its products and services, as well as the media coverage of the mark in several publications, created the necessary secondary meaning in the mark").

5. Complainant has rights in WUNDERGROUND.COM. Complainant actually used WUNDERGROUND.COM as its domain name at least 9 years before Respondent registered the earliest registered infringing domain at < udergroundweather.com > in July 2004. Complainant continues to use the distinctive mark today.

6. Complainant also has rights in THE WEATHER UNDERGROUND. Complainant actually used <weatherunderground.com> 7 years prior to Respondent's earliest registered infringing domain. Complainant continues to use the distinctive mark today.

7. And Complainant has rights in WUND.COM. Complainant actually used <wund.com> at least one year prior to Respondent's earliest registered infringing domain of the WUND.COM mark. Complainant continues to use the distinctive mark today.

8. Not only does Complainant have rights in WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM, but also Respondent's Infringing Domains are identical to Complainant's WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks because the domain names fully incorporate the likeness of Complainant's marks. Respondent's Infringing Domains differ from Complainant's marks only by minor typographical errors or by the addition of the article "the" or the prefix "www." The addition of "the" to a domain does not prevent it from being confusingly similar. *See Cavaliers Operating Company LLC v. Web Advertising Corp.*, [FA1181065](#) (Nat. Arb. Forum June 5, 2008) (finding "the addition of the word "the" could not be said to provide any meaningful semblance of distinction for the disputed domain name. The wholly dominant and prominent feature of the disputed domain name undoubtedly remains Complainant's mark."). And the meaningless addition, subtraction, or replacement of characters does not affect the domain name for purposes of determining whether it is confusingly similar. *See Musicmatch, Inc. v. Cupcake Patrol*, [FA971115](#) (Nat. Arb. Forum June 13, 2001) (finding <musimatch.com> domain confusingly similar to MUSICMATCH mark); *see also Hewlett-Packard Co. v. Zuccarini*, [FA94454](#) (Nat. Arb. Forum May 30, 2000) (finding the domain name <hewlitpackard.com> to be identical or confusingly similar to Complainant's HEWLETT-PACKARD mark); *Geociites v. Geociites.com*, [D2000-0326](#) (WIPO June 19, 2000) (finding that the domain name <geociites.com> is confusingly similar to Complainant's GEOCITIES mark); *Bama Rags v. John Zuccarini d/b/a Cupcake Patrol*, [FA102943](#) (Nat. Arb. Forum Feb. 4, 2002) (finding common misspellings of DAVE MATTHEWS mark confusingly similar). It has been held that "[t]he prefix "www" is not distinctive when dealing with domain names." *See MAIF v. Click Cons. Ltd.*, [D2007-1178](#) (WIPO Nov. 5, 2007) (citing *Crédit Industriel et Commercial v. Domain Drop S.A.*, [WIPO Case No. D2007-0666](#); *American Automobile Association, Inc. v. Bladimir Boyiko and Andrew Michailov*, [WIPO Case No. D2006-0252](#)); *see also Bank of Am. Corp. v. InterMos*, [FA95092](#) (Nat. Arb. Forum Aug. 1, 2000) (finding that the respondent's domain name <wwwbankofamerica.com> is confusingly similar to the complainant's registered trademark BANK OF AMERICA because it "takes advantage of a typing error (eliminating the period between the www and the domain name) that users commonly make when searching on the Internet").

9. Respondent has also inverted Complainant's trademark in several of its domain registrations. This does nothing to distinguish a disputed domain name from Complainant's mark. *See Reed Elsevier Properties Inc. and Reed Elsevier Inc. v. Weekly Publishers*, [FA151536](#) (May 5, 2003) ("Inverting or transposing words in a trademark is not sufficient to avoid confusing similarity because the two words create the same commercial

impression and meaning.”); *see also* *NCRAS Management, LP v. Cupcake City*, D2000-1803 (WIPO Feb. 26, 2001) (finding inverting trademark not enough to dispel likelihood of confusion); *Playboy Enterprises v. Movie Name Company*, D2001-1201 (WIPO Feb. 26, 2002) (finding <channelplayboy.com> to be confusingly similar);

10. Based on the foregoing, not only does Complainant have rights in the WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks, but Respondent’s Infringing Domains are confusingly similar to Complainant’s WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks and are clearly causing actual consumer confusion. Simply put, there is no way that Respondent’s websites could exist but for Complainant’s WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks, business, and website, all of which predated Respondent’s Infringing Domains. See Annex AI, printout of domain registration timeline.

b. The Respondent Has No Rights or Legitimate Interests in Respect of the Infringing Domain Names.
ICANN Rule 3(b)(ix)(2); ICANN Policy ¶ 4(a)(ii).

1. Once the Complainant establishes a *prima facie* case in support of its allegations, the burden shifts to Respondent to show that it does have rights or legitimate interests pursuant to Policy ¶ 4(a)(ii). *See G.D. Searle v. Martin Mktg.*, FA118277 (Nat. Arb. Forum Oct. 1, 2002) (holding that, where the complainant has asserted that respondent does not have rights or legitimate interest with respect to the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting the same because this information is “uniquely within the knowledge and control of the respondent”); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that the mere assertion by the Complainant that the Respondent has no right or legitimate interest in the domain name can be sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest does exist).

2. Respondent has not been commonly known by the domain names, and Respondent has acquired no trademark or service mark rights in WUNDERGROUND.COM, THE WEATHER UNDERGROUND, WUND.COM, or any variation thereof. *See Gallup Inc. v. Amish Country Store*, FA96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark). Complainant could not identify anything showing that Respondent carries on its own business as WUNDERGROUND.COM, THE WEATHER UNDERGROUND, or WUND.COM. To the contrary, Respondent’s company name and contact information, as noted above, clearly indicates that it carries on its business as Navigation Catalyst Systems, Inc.

3. Complainant never authorized, licensed, or otherwise permitted Respondent to use its WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks or allowed Respondent to associate itself with Complainant in any way. See Annex E, Declaration of Jeff Ferguson.

4. Respondent is engaged in typosquatting, which is in and of itself evidence that Respondent lacks rights or legitimate interests pursuant in the Infringing Domains, by registering the Infringing Domains. Respondent simply registered common typographical errors of Complainant’s mark, which evidences an attempt to divert Internet users away from their intended website. *See Skechers U.S.A., INC. II v. David Bergstein c/o Graybox, LLC*, FA100309, (Nov. 19, 2001) (finding that the “practice of “typosquatting” has been recognized as a bad faith use of a domain name under the UDRP.”); *see also* *See, e.g., AltaVista Co. v. Stoneybrook*, D2000-0886 (WIPO Oct. 26, 2000); *Dow Jones & Co., Inc. and Dow Jones, L.P. v. Powerclick, Inc.*, D2000-1259 (WIPO Dec. 1, 2000). Typosquatters have targeted Complainant’s domain in the past because it draws a large amount of web traffic, which makes pay-per-click ads hosted at typographical errors of Complainant’s domain name extremely lucrative. *The Weather Underground, Inc. v. Click Cons. Ltd.*, FA1152428 (Nat. Arb. Forum April 2, 2008).

5. Respondent is clearly using the Infringing Domains to redirect Internet users to Respondent’s websites, where it features links to third-party websites and paid search engine listings offering services that compete with Complainant’s services. Respondent’s use of the Infringing Domains to link to websites that offer similar goods and services that compete with Complainant is not a use in connection with a *bona fide* offering of goods or services under Policy ¶ 4I(i), or a legitimate noncommercial or fair use of the Infringing Domains under Policy ¶ 4I(iii). *See Computerized Sec. Sys., Inc. v. Hu*, FA157321 (Nat. Arb. Forum June 23, 2003) (finding Respondent’s use of a domain name confusingly similar to Complainant’s mark to sell goods in direct competition with Complainant’s goods is not a *bona fide* offering or fair use); *see also DLJ Long Term Inv. Corp. v. BargainDomainNames.com*, FA104580 (Nat. Arb. Forum Apr. 9, 2002) (“Respondent is not using the

disputed domain name in connection with a bona fide offering of goods and services because Respondent is using the domain name to divert Internet users to <visual.com>, where services that compete with Complainant are advertised.”); *see also The Weather Underground, Inc. v. Click Cons. Ltd.*, [FA1152428](#) (Nat. Arb. Forum April 2, 2008) (“The website that resolves from the <www-wunderground.com> domain name displays a list of hyperlinks, many of which advertise competing weather informational and advisory services. This use is likely to disrupt Complainant’s business by diverting customers to the websites of Complainant’s competitors.”).

6. The fact that Respondent also offers non-competing goods and services does not make it *bona fide*. *See Diners Club International Ltd. v. Domain Administration Limited c/o David Halstead*, [FA853706](#) (Nat. Arb. Forum Jan. 15, 2007) (“Offering non-competing goods and services and subjecting Internet users to pop-up advertisements are not considered *bona fide* offerings of goods or services pursuant to Policy ¶ 4I(i), nor are they legitimate noncommercial or fair uses of the domain name pursuant to Policy ¶ 4I(iii).”); *see also Wells Fargo & Co. v. Lin Shun Shing*, [FA205699](#) (Nat. Arb. Forum Dec. 8, 2003) (finding that using a domain name to direct Internet traffic to a website featuring links to various third-party websites is not *bona fide* or legitimate).

7. Thus, since Respondent is using the Infringing Domains as link sites to generate click through revenue by preying upon Internet users’, who are intend to arrive at Complainant’s weather-related website and services but instead make typographical errors in the URL of a web browser and end up at Respondent’s website, Respondent has no rights to WUNDERGROUND.COM, THE WEATHER UNDERGROUND, or WUND.COM or a legitimate interest in the Infringing Domains.

c. **The Domain Name Was Registered and Is Being Used in Bad Faith.** ICANN Rule 3(b)(ix)(3); ICANN Policy ¶ 4(a)(iii).

1. Respondent is typosquatting on Complainant’s WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM trademarks. Respondent was simply trying to take advantage of common typing errors when it registered the Infringing Domains. *See Black & Decker Corp. v. Khan*, [FA137223](#) (Nat. Arb. Forum Feb. 3, 2003) (finding the <wwwdewalt.com> domain name was registered to “ensnare those individuals who forget to type the period after the ‘www’ portion of [a] web-address,” which was evidence that the domain name was registered and used in bad faith); *see also Sports Auth. Mich., Inc. v. Skander*, [FA135598](#) (Nat. Arb. Forum Jan. 7, 2002) (stating that “[b]y registering the ‘typosquatted’ domain name in [Complainant’s] affiliate program, Respondent profits on the goodwill of [Complainant’s] protected marks and primary Internet domain names,” which is evidence of bad faith registration and use).

2. Moreover, typosquatting is evidence of bad faith pursuant to Policy ¶ 4(a)(iii). *See Little Six Inc dba Mystic Lake Casino Hotel v. Iggi Networks Inc.*, [FA101812](#) (finding registration of <clubingo.com>, a misspelling of CLUB BINGO mark, bad faith typosquatting); *see also Bank of America Corporation v. Netchem, Inc.*, [FA102615](#) (Nat. Arb. Forum Jan. 7, 2002) (finding that “by registering and using likely misspellings of Complainant’s mark to ensnare Internet users who intended to visit Complainant’s website, a practice known as “typosquatting,” Respondent has also demonstrated bad faith.”).

3. Respondent’s registration of domain names that are confusingly similar to Complainant’s distinctive WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks, more than 9 years after Complainant had registered and used <wunderground.com>, more than 7 years after <weatherunderground.com>, and more than 1 year after <wund.com> could not have been in good faith. Instead, Respondent’s use of the Infringing Domains to “intentionally attract Internet users to its website[s] for commercial gain by creating a likelihood of confusion as to Complainant’s affiliation of the website and dispute domain name” qualifies as bad faith registration under the Policy. *See Continental Airlines Inc. v. Liang Tu Hui*, [FA117471](#) (Nat. Arb. Forum Jan. 15, 2008).

4. Furthermore, Respondent’s use of the Infringing Domains to receive click-through fees for diverting Internet users to competing websites qualifies as bad faith use. *See Kmart v. Khan*, [FA127708](#) (Nat. Arb. Forum Nov. 22, 2002) (finding that if the respondent profits from its diversionary use of the complainant’s mark when the domain name resolves to commercial websites and the respondent fails to contest the complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv)).

5. Taking into consideration that Complainant’s company name and trademarks are known worldwide and well established, the Respondent knew or should have known of the Complainant’s trademark rights when it

decided to place content on the Infringing Domains. *See Zale Canada Co. v. Interpos*, FA117381 (Nat. Arb. Forum Sept. 17, 2002) (“Based on the fact that Respondent used a common misspelling of Complainant’s PEOPLES JEWELLERS mark it can be inferred that Respondent had actual knowledge of Complainant’s rights in the mark when it registered the infringing domain name.”). Even if Respondent did not have actual knowledge of Complainant prior to its registration of the disputed domain name, Respondent can not escape the fact that it had constructive notice, namely because of the Complainant’s prior content on the <wunderground.com>, <weatherunderground.com>, and <wund.com> websites along with the trademark registrations for WUNDERGROUND.COM and THE WEATHER UNDERGROUND with the USPTO before Respondent ever placed any content on the domains redirected to by the Infringing Domains. This constructive knowledge is sufficient to support a finding of bad faith. *See eBay, Inc. v. SGR Enterprises and Joyce Ayers*, D2001-0259 (WIPO Apr. 11, 2001) (noting that actual or constructive knowledge of Complainant’s rights in its trademark supports a finding of bad faith); *see also Kate Spade LLC v. Darmstadter Designs*, D2001-1384 (WIPO Jan. 3, 2002) (applying the principles of constructive notice to a finding of bad faith); *see also Digi Int’l v. Digi Sys.*, FA124506 (Nat. Arb. Forum Oct. 24, 2002) (holding that there is a legal presumption of bad faith when Respondent reasonably should have been aware of Complainant’s trademark, actually or constructively). Thus, Respondent should have reasonably been aware of Complainant’s WUNDERGROUND.COM, THE WEATHER UNDERGROUND, and WUND.COM marks not only because of its selection of the confusingly similar marks for its domain names, but also because of the prior presence of Complainant at the identical domain names, save the minor added, subtracted, inversed, or substituted characters. Furthermore, Respondent’s past registration of other infringing domain names and typosquatting is evidence of its bad faith. *See Little Six Inc dba Mystic Lake Casino Hotel v. Iggi Networks Inc.*, FA101812 (Nat. Arb. Forum Dec. 11, 2001) (finding “that a pattern of such conduct is evidence of bad faith.”).

6. Based on the foregoing, Respondent has registered and is using the Infringing Domains in bad faith.

H. REMEDY SOUGHT

The Complainant requests that the Panel issue a decision that all 41 of the domain-name registrations be “transferred.” ICANN Rule 3(b)(x); ICANN Policy ¶ 4(i).

I. OTHER LEGAL PROCEEDINGS

No other legal proceedings have been commenced or terminated in connection with or relating to the domain name that is the subject of this Complaint. ICANN Rule 3(b)(xi).

J. COMPLAINANT TRANSMISSION

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by NAF’s Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with ICANN Rule 2(b) and to the Registrar(s) of the domain name(s), in accordance with NAF Supp. Rule 4(e). ICANN Rule 3(b)(xii); NAF Supp. Rule 4(c).

K. MUTUAL JURISDICTION

The Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the principal office of the concerned registrar. ICANN Rule 3(b)(xiii).

L. CERTIFICATION

Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute’s resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the National Arbitration Forum and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

The Weather Underground, Inc.

By its attorneys,



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Dated: August 18, 2008

SCHEDULE OF ANNEXES ICANN Rule 3(b)(xv).

Annex A	Printout of WUNDERGROUND.COM Trademark Registration
Annex B	Printout of THE WEATHER UNDERGROUND Trademark Registration
Annex C	GoDaddy Registration agreement
Annex D	Printout of Michigan Corporate Entity Record
Annex E	Declaration of Jeff Ferguson
Annex F	Printout of Chicago Tribune Weather
Annex G	Printout of wunderground.com Website.
Annex H	2002 Free Press Favorite Michigan Websites
Annex I	Quantcast results for wunderground.com
Annex J	Quantcast results for weatherunderground.com
Annex K	Google results for “wunderground”
Annex L	Google results for “weather underground”
Annex M	New York Times article “Hobbyist Fill Out the Map”
Annex N	USA Today article
Annex O	WHOIS for wunderground.com
Annex P	WHOIS for weatherunderground.com
Annex Q	Forecast Flyer
Annex R	Printout of justia.com docket search
Annex S	WHOIS for <udergroundweather.com>
Annex T	WayBackMachine Internet Archive Results for <findweather.net>, <findweather.us>, and <volunteerswork.biz>
Annex U	Printout of <new.net> pay search engine
Annex V	Printout of <findweather.us> pay-per-click parking
Annex W	Printout of <findweather.net> pay-per-click parking
Annex X	Printout of <train-travel.us> pay-per-click parking
Annex Y	Printout of <volunteerswork.biz> pay-per-click parking.

SCHEDULE OF ANNEXES ICANN Rule 3(b)(xv).

Annex Z	WeatherBug, Top-Weather, and ALOT Weather Websites Linked from <undergroundweather.com>
Annex AA	DTN Meteorlogix and WeatherBug linked from <wundeerground.com>
Annex AB	Printout of Navigation Catalyst Systems About Us page.
Annex AC	Spreadsheet of Infringing Domains
Annex AD	WHOIS Printout of Infringing Domains
Annex AE	Printout of WayBackMachine results for wund.com on May 29, 2003
Annex AF	Printout of Google search for “wund”
Annex AG	WHOIS for wund.com
Annex AH	Printout of Exhibit 7, a sampling of Navigation Catalyst System’s domains, from Verizon v. Navigation Catalyst Systems lawsuit.
Annex AI	Printout of THE WEATHER UNDERGROUND, WUNDERGROUND.COM, WUND.COM, and Infringing Domains registration timeline