

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

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-CV-10756-MOB-VMM
Hon. Marianne O. Battani

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.

Enrico Schaefer (P43506)
Brian A. Hall (P70865)
TRAVERSE LEGAL, PLC
810 Cottageview Drive, Unit G-20
Traverse City, MI 49686
231-932-0411
enrico.schaefer@traverselegal.com
brianhall@traverselegal.com
Lead Attorneys for Plaintiff

Anthony P. Patti (P43729)
HOOPER HATHAWAY, PC
126 South Main Street
Ann Arbor, MI 48104
734-662-4426
apatti@hooperhathaway.com
Attorneys for Plaintiff

John P. Jacobs (P15400)
JACOBS AND DIEMER, PC
500 Griswold Street, Suite 2825
Detroit, MI 48226-3480
(313) 965-1900
jpi@jpijpc.com
Local Counsel for Defendants

William A. Delgado (admission pending)
WILLEKEN WILSON LOH & LIEB, LLP
707 Wilshire Boulevard, Suite 3850
Los Angeles, CA 90017
(213) 955-9240
williamdelgado@willenken.com
Lead Counsel for Defendants

AFFIDAVIT OF JEFF FERGUSON

Jeff Ferguson, being first duly sworn, deposes and states as follows:

1. I am Director of Communications and Corporate Treasurer for The Weather Underground, Inc (“Wunderground”). I am also a member of the Board of Directors.
2. Wunderground maintains its principal office in Ann Arbor, Michigan. I work in Wunderground’s principal office and reside in Ann Arbor, Michigan.
3. The Weather Underground, Inc. was incorporated in 1995, more than four years after the original program to display real-time weather information had been developed by co-founder Jeff Masters at the University of Michigan.
4. Wunderground offers the world’s largest network of personal weather stations, which total approximately 10,000 weather stations in the United States and an additional 3,000 weather stations in the rest of the world. There are approximately 288 personal weather stations reporting in Michigan, with approximately 983 that have signed up in Michigan.
5. Wunderground employs two full-time employees and two part-time employees at its principal office in Ann Arbor, Michigan. Wunderground also routinely employs part-time students from the University of Michigan and funds an annual scholarship at the University of Michigan.
6. Our services are exclusively offered online, and as a result, the Internet is the means by which we market our services, offer our services, communicate, and generate revenue. Approximately 28% of Wunderground’s 2008 revenue was derived from Michigan.

7. Our official website is housed at the domain name <wunderground.com>, and <weatherunderground.com> redirects to that website. Our official website for mobile devices is housed at <wund.com>.

8. Wunderground generates revenue from our various web sites via advertising. Many companies that advertise on Wunderground's web site are located within Michigan, including, for example, Ford Motor Co., Domino's Pizza, Verizon, SBC, Best Western, and McDonalds.

9. Wunderground has received unsolicited press from such Michigan based publications as *The Detroit Free Press*, *Ann Arbor Observer*, *Ann Arbor News*, *Oakland Press*, *Manchester Enterprise*, *Holland Sentinel*, and *Kalamazoo Gazette*.

10. Wunderground employs four Michigan based accounting firms and two Michigan based law firms; maintains bank accounts with two Michigan banks; and leases data center space from a Michigan company.

11. Wunderground has been using both the THE WEATHER UNDERGROUND and WUNDERGROUND.COM marks in United States commerce continuously, without interruption, since 1995.

12. Wunderground has also used the WUNDERSEARCH, WUNDERMAP, WUNDERRADIO, WUNDERPHOTOS, WUNDERBLOG, and WUND marks in United States commerce.

13. Wunderground has invested substantial money into the creation of, marketing of, and protection of our marks.

On this 18th day of May, 2009, personally appeared Jeff Ferguson, to me known to be the same person who signed the foregoing Affidavit in my presence, and acknowledged the statements contents therein to be true to the best of his knowledge, information and belief.

Kathleen A. Roberts
Notary Public: *Kathleen A. Roberts*
Manchester, MI
My commission expires: 11-6-14

KATHLEEN A. ROBERTS
Notary Public, Washtenaw Co., MI
My Comm. Expires Nov. 6, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2009, I electronically filed the foregoing **AFFIDAVIT OF JEFF FERGUSON** with the Clerk of the Court using the CM/ECF System on the following:

John P. Jacobs (P15400)
JACOBS AND DIEMER, PC
500 Griswold Street, Ste. 2825
Detroit, MI 48226-3480
(313) 965-1900
jpj@jpjpc.com
Local Counsel for Defendants

Enrico Schaefer (P43506)
Brian A. Hall (P70865)
TRAVERSE LEGAL, PLC
810 Cottageview Drive, Unit G-20
Traverse City, MI 49686
(231) 932-0411
enrico.schaefer@traverselegal.com
brianhall@traverselegal.com
Lead Attorneys for Plaintiff

And via U.S. Mail, postage paid, on the following:

William A. Delgado (admission pending)
WILLENKEN WILSON LOH & LIEB, LLP
707 Wilshire Boulevard, Ste. 3850
Los Angeles, CA 90017
(213) 955-9240
williamdelgado@willenken.com
Lead Counsel for Defendants

/s/ Leslie N. Wolfolk