

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
Hon. Marianne O. Battani

NAVIGATION CATALYST SYSTEMS, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; FIRSTLOOK, INC.,
a Delaware corporation; and EPIC MEDIA
GROUP, INC., a Delaware corporation,

Defendants.

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**CONNEXUS CORPORATION, FIRSTLOOK, INC., NAVIGATION CATALYST
SYSTEMS, INC. AND EPIC MEDIA GROUP, INC.'S ANSWER TO FIRST AMENDED
COMPLAINT**

Defendants Connexus Corporation, Firstlook, Inc., Navigation Catalyst Systems, Inc. and Epic Media Group, Inc. (“Answering Defendants”) for their Answer to Plaintiff’s First Amended Complaint state as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

2. Answering Defendants admit that Navigation Catalyst Systems, Inc. (“NCS”) is a for profit corporation organized and existing under the laws of the State of Delaware with a principal place of business at 2141 Rosecrans Avenue, #2020, El Segundo, CA 90245. Except as expressly admitted, the allegations in this paragraph are denied.

3. Answering Defendants admit that Connexus Corporation is a for profit organization organized and existing under the laws of the State of Delaware with its principal place of business at 2141 Rosecrans Avenue, #2020, El Segundo, California 90245. Except as expressly admitted, the allegations in this paragraph are denied.

4. Answering Defendants admit that Firstlook, Inc. is a for profit organization organized and existing under the laws of the State of Delaware with its principal place of business at 2141 Rosecrans Avenue, #2020, El Segundo, California 90245 and that Firstlook is a wholly owned subsidiary of Connexus. Except as expressly admitted, the allegations in this paragraph are denied.

5. Answering Defendants admit that Epic Media Group, Inc. is a for profit organization organized and existing under the laws of the State of Delaware. Except as expressly admitted, the allegations in this paragraph are denied.

6. Answering Defendants admit that NCS does not pay employees, have bank accounts or tangible assets. Except as expressly admitted, the allegations in this paragraph are denied.

7. Answering Defendants admit that NCS acts as a registrant for domain names. Except as expressly admitted, the allegations in this paragraph are denied.

8. Answering Defendants admit that Epic Media continues to operate a business using that name. Answering Defendants admit that Connexus continues to operate a business using that name. Except as expressly admitted, the allegations in this paragraph are denied.

9. Denied.

10. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Answering Defendants admit that Plaintiff purports to bring a lawsuit pursuant to the Trademark Act of 1946 but deny any liability thereunder or that Plaintiff is entitled to any relief.

20. Admitted.

21. Admitted.

22. Denied.

23. Denied.

II. PLAINTIFF'S BUSINESS AND USE OF THE INTERNET

24. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

25. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

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38. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

III. PLAINTIFF'S TRADEMARKS AND SERVICE MARKS

39. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

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IV. DEFENDANTS' BUSINESS

54. Answering Defendants admit that "direct navigation" describes the method of typing a domain name or URL directly into the browser address bar in order to arrive at a specific website. Answering Defendants are without sufficient knowledge or belief as to the truth of the remaining allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

55. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

56. Denied.

57. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

58. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

59. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Answering Defendants admit that NCS and Firstlook used, in part, an automated software system to register and monetize domain names. Except as expressly admitted, the allegations of this paragraph are denied.

65. Denied.

66. Denied.

67. Denied.

V. DEFENDANTS' UNLAWFUL ACTIONS

(Answering Defendants deny that any action taken by them, or any of them, was unlawful.)

A. Registration, Trafficking, and Use of Infringing Domain Names.

(Answering Defendants deny any domain name registered or used by them infringed the rights of any party.)

68. Answering Defendants admit that NCS was the registrant of various domain names that are the subject of this litigation. Except as expressly admitted, the allegations of this paragraph are denied.

69. Denied.

70. Denied.

71. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

72. Answering Defendants admit that it appears that the earliest registration of a domain name that is at issue in this matter was on or near July 7, 2004. Except as expressly admitted, the allegations of this paragraph are denied.

73. Denied.

74. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

75. Answering Defendants admit that the UDRP Complaint contained the 41 domain names listed in the paragraph. Except as expressly admitted, the allegations of this paragraph are denied.

76. Admitted.

77. Admitted.

78. Denied.

79. Answering Defendants are without sufficient knowledge or belief as to the truth of the allegations contained in this paragraph and, on that basis, deny each and every allegation contained in this paragraph.

B. Continued Mass Cybersquatting Evidences Defendants' Unlawful Business Model and Bad Faith Intent to Profit.

(Answering Defendants deny that they have engaged in any cybersquatting, that they have engaged in any unlawful business practice or that they have any bad faith intent to profit.)

80. Denied.

81. Answering Defendants admit that NCS and Firstlook use, in part, an automated software system to register and monetize domain names. Except as expressly admitted, the allegations in this paragraph are denied.

82. Answering Defendants admits that NCS has been sued in federal court, including the lawsuits listed in this paragraph. Except as expressly admitted, the allegations in this paragraph are denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Answering Defendants admit that Domain Name Proxy provides privacy protection against immediately public disclosure of registrant information. Except as expressly admitted, the allegations in the paragraph are denied.

COUNT I

DIRECT & CONTRIBUTORY CYBERSQUATTING UNDER THE ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT – 15 U.S.C. § 1125(d)

88. Answering Defendants incorporate their responses to paragraphs 1-87 above as though fully set forth herein.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

- 101. Denied.
- 102. Denied.
- 103. Denied.
- 104. Denied.
- 105. Denied.
- 106. Denied.
- 107. Denied.
- 108. Denied.
- 109. Denied.
- 110. Denied.

COUNT II

DIRECT & CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER THE

LANHAM ACT – 15 U.S.C. § 1114(1)

111. Answering Defendants incorporate their responses to paragraphs 1-110 above as though fully set forth herein.

- 112. Denied.
- 113. Denied.
- 114. Denied.
- 115. Denied.
- 116. Denied.
- 117. Denied.
- 118. Denied.

119. Denied.

120. Denied.

COUNT III

DIRECT & CONTRIBUTORY FALSE DESIGNATION OF ORIGIN UNDER THE

LANHAM ACT – 15 U.S.C. § 1125(a)

121. Answering Defendants incorporate their responses to paragraphs 1-120 above as though fully set forth herein.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

COUNT IV

DIRECT AND CONTRIBUTORY DILUTION UNDER 15 U.S.C. § 1125(c)

130. Answering Defendants incorporate their responses to paragraphs 1-129 above as though fully set forth herein.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

COUNT V

UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT UNDER STATE

COMMON LAW

139. Answering Defendants incorporate their responses to paragraphs 1-138 above as though fully set forth herein.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

COUNT VI

VICARIOUS TRADEMARK INFRINGEMENT, DILUTION, AND

CYBERSQUATTING

149. Answering Defendants incorporate their responses to paragraphs 1-148 above as though fully set forth herein.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

COUNT VII

CIVIL CONSPIRACY

159. Answering Defendants incorporate their responses to paragraphs 1-158 above as though fully set forth herein.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

COUNT VIII

DECLARATORY JUDGMENT

168. Answering Defendants incorporate their responses to paragraphs 1-167 above as though fully set forth herein.

169. Denied.

170. Denied.

171. Denied.

RESPONSE TO PRAYER FOR RELIEF

Wherefore Answering Defendants deny all requested relief by Plaintiff and pray for judgment on all counts as set forth above, further requesting that they be entitled to recover for its costs and reasonable attorneys' fees and whatever further relief as the Court deems just in this matter.

AFFIRMATIVE DEFENSES

For their Affirmative Defenses, Answering Defendants state as follows:

First Affirmative Defense

The complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

The complaint has been rendered moot and not justiciable as a result of the UDRP proceeding which preceded the filing of this lawsuit.

Third Affirmative Defense

The court lacks personal jurisdiction over Answering Defendants.

Fourth Affirmative Defense

This court is not the proper venue for the claims raised in the complaint.

Fifth Affirmative Defense

Plaintiff's claims or recovery thereon are barred, in whole or in part, because Answering Defendants believed and had reasonable grounds to believe that any use of Plaintiff's marks was a fair use, nominative use, comparative use, or otherwise lawful.

Sixth Affirmative Defense

Plaintiff's claims or recovery thereon are barred, in whole or in part, because Answering Defendants' actions constitute fair competition.

Seventh Affirmative Defense

Plaintiff is barred from obtaining any relief from Answering Defendants in this action because Plaintiff has suffered no injury or damage as a result of any act or conduct by Answering Defendants.

Eighth Affirmative Defense

Plaintiff's claims, including its request for statutory damages, are barred, in whole or in part, because all of Answering Defendants' actions were in good faith without malice and/or did not result in any false or misleading statements, infringement, or confusion.

Ninth Affirmative Defense

Plaintiff's claim for injunctive relief is barred as a matter of law because Plaintiff has not suffered any irreparable harm as a result of the acts alleged in the complaint.

Tenth Affirmative Defense

Plaintiff's claim for damages is barred, in whole or in part, because the purported damages are too speculative or uncertain.

Eleventh Affirmative Defense

The injuries and damages alleged by Plaintiff, if any, were proximately caused by persons or entities other than Answering Defendants, whether named or not named in this action, over whom Answering Defendants had no authority or control.

Twelfth Affirmative Defense

Plaintiff has failed to mitigate its damages.

Thirteenth Affirmative Defense

Plaintiff does not have exclusive rights to the words WUND, WUNDER, or any words containing these letters in this order.

Additional Affirmative Defenses

Answering Defendants reserve the right to assert such additional affirmative defenses as necessary based on such ongoing investigation and discovery.

RESPECTFULLY SUBMITTED this 19th day of July, 2011.

/s/William A. Delgado _____

William A. Delgado

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Lead Counsel for Defendants

DEMAND FOR JURY TRIAL

Answering Defendants hereby demand trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 19th day of July, 2011.

/s/William A. Delgado _____

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Lead Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2011, I electronically filed the foregoing paper with the Court using the ECF system which will send notification of such filing to the following:

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