

EXHIBIT W

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

3 WEATHER UNDERGROUND,
4 INCORPORATED,

5 Plaintiff,

6 v

7 NAVIGATION CATALYST SYSTEMS,
8 INCORPORATED,

9 Defendant.

Case No. 09-CV-10756
U.S. Magistrate Judge
Virginia M. Morgan
Detroit, Michigan
May 19, 2010
2:29 p.m.

10 Ordered By:

ENRICO SCHAEFER, ESQ.

11 MOTION HEARING

12 APPEARANCES:

13 For the Plaintiff:

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19 Court Recorder:

N/A

20 Transcriber:

Deborah Kremlick

23 Proceedings recorded by electronic sound recording, transcript
24 produced by transcription service.
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1 are famous at the time of registration of such domain names
2 without regard to the goods or services of the party.

3 So your position that it would be limited only to ones
4 that are confusingly similar to the 51 domain names or
5 whatever at issue here, I think reads out the clear language
6 of -- of eight. So what I'm -- I'm willing to do is ask him
7 to give you say another 50 names and then you give us all the
8 domain names that are registered like that.

9 MR. SCHAEFER: Well, here's what -- here's the
10 problem. Part of it is we asked them for the other domains
11 that infringe our trademarks, okay. They said zero. We just
12 by kind of random searching just last week found 11 more. So
13 if we can't get the data base --

14 MR. DELGADO: No, that's not true.

15 MR. SCHAEFER: If we can't get the --

16 MR. DELGADO: That's not true.

17 MR. SCHAEFER: -- if we can't get the data base,
18 Your Honor, we aim to identify the domains at issue in this
19 case. These are examples of the ones we found last week.
20 Thewunderground.com. Keep in mind our trademark is
21 wunderground. So this is registered to them.
22 Tropicalweatherunderground.com. So without the data base for
23 us to search on, it's impossible for us to -- and they refuse
24 to tell us what other domains they have of ours and they've
25 said none and we know it's not true.

1 The other thing is, Your Honor, it's just data. They
2 have affidavits from their people Seth Jacoby that said they
3 had 300,000 domain names as of two years ago. And now they're
4 down to something like 70,000 domain names as of this year.
5 So there's --

6 THE COURT: I thought they had 16,000,000.

7 MR. SCHAEFER: Well, that's what he said, but I got
8 an affidavit that says completely otherwise as of -- as of a
9 couple years ago.

10 MR. DELGADO: Your Honor, can I respond to that? I
11 disagree with a lot of what Mr. Schaefer is --

12 MR. SCHAEFER: I think he was talking about the ad
13 grace Co. names. Because that blossoms -- that blossoms the
14 number.

15 THE COURT: Okay. All right. Stop talking. He's
16 already on the phone. If you don't stop and give him a break,
17 he can't be heard. It's already frustrating enough without
18 the telephone line, okay? Mr. Delgado.

19 MR. DELGADO: Okay. So here's what I was going to
20 say. Mr. Schaefer made the statement that they asked us to
21 identify other domain names and we said zero. That is not the
22 case. What happened was there is -- there was a good faith
23 dispute as to how domain names at issue would be defined from
24 these requests. I have proposed to Mr. Schaefer and to
25 resolve this dispute. If you want me to identify other domain

1 names that you know, are possibly violative of your client's
2 mark, I will do that. I will run, you know, as many searches
3 for as many -- as many strings to capture as many possible
4 names to -- to basically disclose to them what it is that we
5 think that might arguably even be close to that.

6 You know, so for example, if he wants to run a search for
7 under, you know, we'll disclose any domain name that has the
8 phrase under. If he wants to run it for you know what I would
9 call the string eather, E-a-t-h-e-r which would capture
10 Weather, you know, Qeather, and it's the Q next to the W on
11 the keyboard. Will be do that. That -- you know, that is not
12 an issue. We will happily do that. The question or the
13 problem for us has always been you know, to go back six years
14 and divulge statistics for -- you know, for 16,000,000 and
15 that 16,000,000 number is essentially from 2004 forward,
16 that's why that number is as high as it is.

17 THE COURT: Okay. Here's what -- here's --

18 MR. DELGADO: And we can't do that without shutting
19 down the system.

20 THE COURT: Okay. You have some choices here, Mr.
21 Schaefer. You can have fewer domain names with all this crap
22 in 38, or you can just have a list of domain names without any
23 of this crap.

24 MR. SCHAEFER: We'll take the domain names, Your
25 Honor. And I think I'm -- I'm entitled to them under that

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872

Dated: 6-14-10