

EXHIBIT S

CASE No. 2:09-CV-10756
Los Angeles, California

RICHARD E. KORF, PH.D.
Wednesday, December 8, 2010



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND,
INC., A MICHIGAN CORPORATION,

PLAINTIFF,

VS.

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.

**CERTIFIED
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CASE No. 2:09-CV-
10756

DEPOSITION OF
RICHARD E. KORF, PH.D.
Volume 1
Los Angeles, California
Wednesday, December 8, 2010

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Exhibits Bound Separately**

Reported By:
Judy Samson
CSR No. 6916
NDS Job No. 140368

1 possible, okay, the registration of
2 domain names which are trademarks
3 or confusingly similar to
4 registered or common law
5 trademarks.")

6 BY MR. HALL:

7 Q Why do you say "to the extent possible"? 01:40:29

8 A It -- it can't be done with a hundred 01:40:31

9 percent accuracy. 01:40:36

10 Let me back up. 01:40:37

11 If you registered nothing, you could 01:40:38

12 achieve a hundred percent accuracy of never 01:40:40

13 registering something which is confusingly similar 01:40:42

14 to a trademark. 01:40:45

15 But given that you're going to be 01:40:46

16 registering some trademarks, this system -- or, in 01:40:48

17 fact, any system designed to do this -- is not going 01:40:51

18 to be a hundred percent accurate. 01:40:54

19 It's going to -- in some cases probably it 01:40:56

20 may register domain names which would be considered 01:40:59

21 confusingly similar to trademarks. It probably will 01:40:44

22 fail to register trademarks which will not be 01:41:07

23 confusingly similar to trademarks. 01:40:44

24 So the goal of this system is not 01:41:11

25 something -- either as an automated system or a 01:41:13

1 manual system or a combination, there isn't a goal 01:41:17
2 here which can be achieved with a hundred percent 01:41:19
3 accuracy unless, of course, you were to simply not 01:41:21
4 register domains at all. 01:41:24

5 Q So you're telling me that it's impossible 01:41:26
6 to register domain names in bulk without -- 01:41:30

7 A If you're registering a large number of 01:41:41
8 domains, okay, I don't believe it would be possible, 01:41:44
9 okay, to have a system which registered a very large 01:41:49
10 number of -- of domain names, particularly in bulk, 01:41:53
11 and be guaranteed that none of those names would be 01:41:55
12 confusingly similar -- might be determined to be 01:40:44
13 confusingly similar to a trademark. 01:40:44

14 Q But certainly you would agree that domain 01:42:05
15 names can be registered without -- strike that. 01:42:09

16 You would agree that you can register a 01:42:13
17 domain name and ensure that it does not infringe the 01:42:16
18 trademark of another? 01:42:21

19 A I think there would -- there could be 01:42:24
20 examples that one could construct of individual 01:42:26
21 domains where one could say with -- with a high 01:42:31
22 degree of certainty that this does not infringe a 01:42:33
23 trademark. 01:42:36

24 Q And why can't that be extrapolated to 01:42:36
25 larger-scale domain registrations? 01:42:42

1	A	That's correct.	05:01:45
2	Q	So you're not offering any opinion as it	05:01:46
3		relates to prior versions of this system?	05:01:48
4	A	In general, no.	05:01:52
5	Q	Anything besides "in general"?	05:01:52
6	A	So I -- I've not been asked, nor have I	05:01:58
7		made it my business, to sort of investigate a	05:02:01
8		timeline of what the system looked like at various	05:02:05
9		stages. I wasn't asked to do that.	05:02:09
10		It's a much more complex task. It involves	05:02:12
11		determining, you know, all the different intervals	05:02:15
12		where significant changes were made. And	05:02:17
13		effectively one would -- would multiply the volume	05:02:19
14		of this report by the number of the different	05:02:23
15		systems that were in place along the way.	05:02:25
16		And I've -- in fact, I've specifically --	05:02:27
17		I've -- I've not been asked to do that, and I have	05:02:32
18		not tried to determine an, you know, archaeology	05:02:34
19		here of what the history of this system has been.	05:02:37
20		I've been asked to focus on the current	05:02:40
21		system.	05:02:42
22	Q	The next sentence says:	05:02:42
23		"While no such system can	05:02:43
24		operate flawlessly..."	05:02:45
25		What is your basis for that opinion?	05:02:47

1 A The problem is hard. And as I said 05:02:49
2 probably in the beginning this morning, is that if 05:02:52
3 you want to be in this business and you are going to 05:02:54
4 be registering domain names and if you're going to 05:02:58
5 be registering a significant number of them, the 05:03:01
6 problem of excluding matches which are confusingly 05:03:04
7 similar to trademarks is -- is not a trivial 05:03:09
8 problem, and it can't be reduced to a simple 05:03:14
9 algorithm that will always be correct because it 05:03:17
10 involves issues of context, it involves issues of 05:03:19
11 the meaning of words and the meaning of words in 05:03:23
12 different contexts. 05:03:26
13 And so the problem in some sense is just 05:03:27
14 too difficult to accomplish with a hundred percent 05:03:31
15 accuracy with the exception of simply not 05:03:35
16 registering anything. 05:03:39
17 So I don't register anything. I'm not in 05:03:40
18 this business. So I don't run afoul of this 05:03:42
19 problem. 05:03:46
20 But if one wants to be in this business and 05:03:46
21 one wants to -- to have a business of it and be 05:03:48
22 profitable, this is -- this is an important task, 05:03:52
23 but it can't be accomplished with a hundred percent 05:03:55
24 accuracy. 05:04:00
25 Q And you said right there "without 05:04:00

1 STATE OF CALIFORNIA)
) ss:
2 COUNTY OF LOS ANGELES)
3

4 I, JUDY SAMSON, do hereby certify:

5 That I am a duly qualified Certified Shorthand
6 Reporter, in and for the State of California, holder of
7 certificate number 6916, which is in full force and
8 effect and that I am authorized to administer oaths and
9 affirmations;

10 That the foregoing deposition testimony of the
11 herein named witness was taken before me at the time and
12 place herein set forth;

13 That prior to being examined, the witness named
14 in the foregoing deposition, was duly sworn or affirmed
15 by me, to testify the truth, the whole truth, and
16 nothing but the truth;

17 That the testimony of the witness and all
18 objections made at the time of the examination were
19 recorded stenographically by me, and were thereafter
20 transcribed under my direction and supervision;

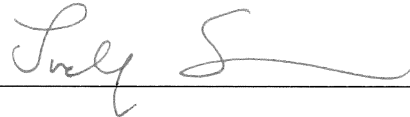
21 That the foregoing pages contain a full, true
22 and accurate record of the proceedings and testimony to
23 the best of my skill and ability;

24 That prior to the completion of the foregoing
25 deposition, review of the transcript was requested.

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I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 18th day of December, 2010.



JUDY SAMSON, CSR No. 6916