

**Christopher Schwerzler
Confidential**

4/29/2010

1

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

3
4 THE WEATHER UNDERGROUND, INC.,
5 a Michigan corporation

6 Plaintiff,

7 vs.

No. 2:09-CV-10756

8 NAVIGATION CATALYST SYSTEMS, INC.,
9 a Delaware corporation; BASIC FUSION
10 INC., a Delaware corporation;
11 CONNEXUS CORP., a Delaware
12 corporation; and FIRSTLOOK INC., a
13 Delaware corporation,
14 Defendants.

15 CONFIDENTIAL

16
17 DEPOSITION OF CHRISTOPHER SCHWERZLER

18 Thursday, April 29, 2010

19 SHEILA CHASE & ASSOCIATES

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Reported by:

JANIS JENNINGS, CSR, CRP, CLR

1 Q. Okay.

2 A. I have just seen the estimate of where I
3 thought I was recalling the 20-percent search fed --

4 Q. Okay.

5 A. -- number at one point. I don't like the tool
6 because I find it confusing, compared to Quantcast.

7 Q. Okay. Would you say you deal primarily with
8 Quantcast?

9 A. Yes.

10 Q. Do you personally use Quantcast?

11 A. I go to their site to look at our daily
12 metrics.

13 Q. Okay. Can you tell how many people visit your
14 website on a daily basis?

15 A. We can tell the uniques presented by
16 Quantcast.

17 Q. Other than by looking at what Quantcast is
18 telling you in terms of unique visitors, is there any
19 other way to tell?

20 A. There's other services, such as comScore, out
21 there. We aren't currently a comScore customer so I
22 have limited access to ever seeing the numbers that they
23 claim we have, but, you know...

24 Q. How many unique visitors does Quantcast say
25 you have today on a daily basis?

1 A. It's usually grouped on a monthly basis.

2 Q. Okay.

3 A. I'm more familiar with the monthlies than I am
4 the dailies.

5 Q. That's fine.

6 A. It's just in the Internet how much people
7 think of audiences. And this month it's around, I
8 believe, maybe 10 to 11 million uniques in the United
9 States, and I believe our overall arching Weather
10 Underground domain -- that includes Weather Underground
11 and Wunderground -- globally would be more in the scale
12 of 18 million uniques.

13 Wunderground, W-u-n-d-e-r-g-r-o-u-n-d. Make
14 sure you get that right.

15 Q. If I were to ask you to go back in time on
16 kind of a yearly basis, could you tell me -- you know,
17 give me estimates as to how that number has changed over
18 time?

19 A. With Quantcast I could probably get you pretty
20 accurate ideas going back two years --

21 Q. Okay.

22 A. -- when we first started using their tagging
23 mechanisms.

24 Q. Okay.

25 A. Prior to that, probably in '95, it was close

1 to zero and now it's all the way up 'til I think we hit
2 about 14 million in the United States in January, being
3 a high water mark. It can change from month to month.

4 Q. Do you have any estimate between 2004 and
5 2006?

6 A. I could probably make an educated guess.

7 Q. What would that guess be?

8 A. 2004 to 2006 would probably in the ballpark of
9 6 to 7 million uniques in the United States. It's been
10 fairly linear in growth in the company's history.

11 Q. Okay. And that would be -- since it's been
12 linear, would you say like 6 million in 2004 growing up
13 to 7 million in 2006?

14 A. I would have to actually do the math on a
15 piece of paper, which I don't have in front of me, to
16 try to make a good estimate.

17 Q. Okay.

18 A. And it can be greatly affected also by the
19 weather.

20 Q. Sure.

21 A. An example would be 2005. We had three major
22 hurricanes hit the United States, in which case we saw
23 very large spikes in the user base as people became very
24 interested in Katrina, Rita, and Wilma.

25 Q. So any time there's a weather phenomenon --

1 A. Snowpocalypse. Sorry to interrupt.

2 Q. No. Like I said, sometimes that happens.

3 So any time there is a weather phenomenon, the
4 number of hits in your page go up; right?

5 A. Number of hits and the unique audience.

6 Q. Okay. But in terms of kind of average
7 numbers, we're talking about 6 to 7 million between 2004
8 and 2006 --

9 A. I can't really --

10 Q. -- best estimate?

11 A. Yes. It's an estimate only. I could be off.

12 Q. Are there any documents you can look at to
13 kind of refresh your memory or that would have
14 quantified it for that time period?

15 A. I can probably take the tallies that we
16 presented to you, I believe -- is that correct,
17 Brian? -- to come up with an estimate as to the number
18 of pages that we're serving to the uniques for that time
19 frame because I believe our tallies go back more years
20 than our accounts with Quantcast.

21 Q. Do you remember the first date of the tallies?

22 A. No. It's probably going back into the early
23 2000s, 2002 or 2003.

24 Q. I have no idea what document you are talking
25 about so --

1 A. Okay.

2 Q. -- what does this tallies document look like?

3 A. It's in a format referred to as HDF,
4 Hierarchical Data Format.

5 Q. Okay.

6 A. And it would have things such as city page
7 with a number next to it for a given day. It would
8 represent the total number of pages that match that
9 category on that date. That would not be a
10 representation of uniques, but there may be a
11 correlation of number of pages to uniques that would
12 allow you to come up with a guesstimate, at best, of the
13 time frame you're looking at.

14 MR. DELGADO: Counsel, do you know what
15 document or what Bates number that document is?

16 MR. HALL: I do not. I know it was produced
17 in batch 2. It was one of the ones that you referenced
18 in a recent letter asking what this was.

19 MR. DELGADO: Oh, okay.

20 MR. HALL: And new formatting has since been
21 produced.

22 MR. DELGADO: Okay. Let's mark this as
23 Exhibit 3.

24 (Whereupon, Defendants' Exhibit 3 was
25 marked for identification.)

1 quick blurb on Weather Underground in there.

2 THE WITNESS: Okay.

3 BY MR. DELGADO:

4 Q. You see this is an article from the Wall
5 Street Journal from February 2001; correct?

6 A. Correct.

7 Q. Okay. On the second page there's a blurb in
8 here about Weather Underground. That's in the second
9 column.

10 Do you see that?

11 A. I see that.

12 Q. Okay. The article states -- they are talking
13 about your servers -- "The servers labeled with
14 meteorological names such as 'tornado' dish up about 2.5
15 million page views a day to web surfers."

16 Do you see that, as well?

17 A. Uh-huh.

18 Q. Do you know if that 2.5 million page views a
19 day back in 2001 is an accurate number?

20 A. I was not quoted in this so I would have to
21 actually research it further. It's believable.

22 Q. All right. Sitting here today, do you have
23 any reason to believe that that number is inaccurate?

24 A. No, I do not. Okay. I will rephrase that. I
25 will say that I would be a little bit skeptical, in that

1 it's coming from our chief meteorologist and not someone
2 who is actually day-to-day hands on with the technical
3 implementation of the site. But 2.5 million would not
4 be out of line for about 2001.

5 MR. DELGADO: Okay. Mark this as Exhibit 5.

6 (Whereupon, Defendants' Exhibit 5 was
7 marked for identification.)

8 BY MR. DELGADO:

9 Q. Take a moment to look at that document and
10 familiarize yourself with it.

11 A. Okay.

12 Q. Do you recognize this document?

13 A. It appears to be an Alexa traffic report page.

14 Q. Okay. And the date for this is March 30th of
15 1995? I'm looking at the top.

16 A. I'm having trouble reading it. Okay. Yes.

17 Q. Do you see that?

18 A. Yes, I see that.

19 Q. Had Weather Underground launched a website by
20 March 30th, 1995?

21 A. I can't be certain as to whether it's the
22 first days of our company's existence, as to when in
23 1995 we launched the domain wunderground.com. It's
24 probably in the record if you would like a more accurate
25 representation.

1 A. I have no reason to believe that.

2 Q. Okay. Let's look at the next page, which
3 gives us some more graphics about addicts, regulars, and
4 passerbys, and a little bit more clarity in terms of it
5 being easier to read.

6 It shows here -- and I'm looking at the middle
7 of the page -- monthly people, global, of 10.3 million;
8 is that correct?

9 A. That is what the page says.

10 Q. Okay. U.S. has 7.6 million; right?

11 A. That is correct.

12 Q. And that's their average number that they --

13 A. It appears to be a monthly average from
14 January.

15 Q. And now their bar graph suggests that
16 2 percent of addicts account for 38 percent of the
17 visits. Do you see that?

18 A. Yes, I see that.

19 Q. 38 percent of regulars account for 46 percent
20 of the visitors -- visits?

21 A. Uh-huh.

22 Q. And 60 percent of passerbys account for
23 16 percent of visits.

24 Do you see that?

25 A. That's correct.

1 Q. Do you have any reason to believe that these
2 numbers are inaccurate?

3 A. No, I do not.

4 Q. So roughly about 40 percent, in terms of
5 addicts and regulars, account for 84 percent of the
6 traffic to your website; right?

7 A. Can you repeat the statement?

8 Q. Yeah. 40 percent of visitors, the sum of
9 38 and 2, account for 84 percent of the traffic to your
10 website?

11 A. Yes, your math is correct.

12 Q. Okay. Look down at business activity, where
13 it divides the U.S. into business and home.

14 Do you know what this means, in terms of
15 36 percent business, 64 percent home?

16 A. It's probably their best guess as to whether
17 you're coming from a business IP address or a home IP
18 address, such as something like a home DSL versus your
19 office.

20 MR. DELGADO: Mark this next exhibit as 11.

21 (Whereupon, Defendants' Exhibit 11 was
22 marked for identification.)

23 THE WITNESS: Can we take a break after
24 this --

25 MR. DELGADO: Yes.

1 THE WITNESS: -- or right now?

2 MR. DELGADO: Absolutely. We can take a break
3 now.

4 (Off the record.)

5 BY MR. DELGADO:

6 Q. Do you recognize Exhibit 11?

7 A. It appears to be a Quantcast top 100. I can't
8 tell the exact date because the exhibit sticker has
9 covered up the --

10 DEPOSITION REPORTER: No, it didn't cover it
11 up.

12 THE WITNESS: It's 1/19/2009. It's on the
13 second page. It appears to be from 1/19/2009.

14 BY MR. DELGADO:

15 Q. Okay. Look at the last page.

16 A. Okay.

17 Q. Number 91 is wunderground.com.

18 Do you see that?

19 A. I see that.

20 Q. It has 9.5 million plus U.S. monthly people.

21 Do you see that, as well?

22 A. Yes, I see that.

23 Q. Any reason to believe that that number is
24 inaccurate?

25 A. No, I do not have any reason to believe that.

1 Q. And then it states, "The site attracts a more
2 educated, slightly male slanted, mostly Caucasian, more
3 affluent audience."

4 A. Correct.

5 Q. Any reason to believe that any of that is
6 inaccurate?

7 A. I believe that's a view gleaned from their
8 demographics.

9 Q. You don't have any internal demographic
10 information that would contradict what that says;
11 correct?

12 A. No, I do not.

13 MR. DELGADO: Okay. Mark this as 12.

14 (Whereupon, Defendants' Exhibit 12 was
15 marked for identification.)

16 MR. DELGADO: Brian, as he's looking at that,
17 just so that you know, the surveys he's testified about,
18 I think those should have been produced and I would want
19 to see them, to the extent that he's retained them.

20 BY MR. DELGADO:

21 Q. Are you ready?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. I'm not particularly familiar with the format
25 of it, but I assume it's another Quantcast Audience

1 Profile is what it says, generated apparently on
2 December 17th, 2009.

3 Q. Look at the bottom of the first page and then
4 it continues on to the second page, where it has a list
5 of businesses. Do you see those?

6 A. I see where it's staggered and there's a small
7 business of note, medium business of note, and large
8 business of note.

9 Q. Okay. Keep going. It says "business" and
10 then it's got a --

11 A. Okay.

12 Q. It's a chart that says "business, uniques,
13 unique percentage, unique index, visitor percentage,
14 visitor index."

15 Do you see that?

16 A. Yes.

17 Q. Do you know what this chart means?

18 A. No, I do not.

19 MR. DELGADO: Let's mark this as 13.

20 (Whereupon, Defendants' Exhibit 13 was
21 marked for identification.)

22 BY MR. DELGADO:

23 Q. Is there somebody at your company -- before
24 you get to Exhibit 13 -- that is more familiar with
25 Quantcast?