

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - -

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

Case No. 09-10756

vs.

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.

-----/

MOTION HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, September 15, 2011

APPEARANCES:

For the Plaintiff: ANTHONY P. PATTI
Hooper Hathaway, P.C.
126 South Main Street
Ann Arbor, MI 48104
(734) 662-4426

C. ENRICO SCHAEFER
MARK G. CLARK
Traverse Legal, P.L.C.
810 Cottage View Drive, Ste. G20
Traverse City, MI 49684
(231) 932-0411

1 names to trademarks in the U.S. PTO database. The
2 alternative system that Mr. Schwerzler put in place compares
3 our domain names to other domain names that happen to exist
4 on the Internet. They may or may not be trademark protected,
5 they may or -- quite honestly, I think he got them because
6 they were highly trafficked but they may or may not be
7 comprised of generic words. So for example think about
8 delta.com, that's an example that Mr. Schwerzler gave earlier
9 with respect to the first motion. Delta could refer to an
10 airline, a faucet, I think there is a dental insurance
11 company, it is a mathematical computation as the difference
12 between two things. Comparing a domain name that has the
13 word delta in it to the trademark database is a much
14 different exercise than just comparing it to a bunch of other
15 domain names that also have the word delta in it because as
16 it turns out I may be very well within my rights to register
17 a domain name with the word delta in it so long as I'm not
18 infringing on the rights of someone else, and that's a
19 problem with his methodology that again it is not just a
20 function of bias, it is the methodology in what he did that
21 is problematic. And, of course, what they don't talk about
22 is they could have selected somebody else to do all of these
23 things and we wouldn't be here talking about these things,
24 but they didn't.

25 THE COURT: Let me say on the expert, I agree, this

1 gentleman is way too far involved in this case -- in this
2 business to be unbiased which, of course, every expert has a
3 certain bias or he wouldn't be selected as an expert, we all
4 know this, but this person has a bias that is beyond the
5 subject, it is an interest in the outcome of the case, and
6 because he has an interest in the outcome of this case the
7 Court is not going to allow him to testify as an expert. I
8 don't know what he's going to say as a fact witness, I'm not
9 barring his testimony as a fact witness, but we'll have to
10 deal with that at trial, his expert testimony. I would
11 believe that this other development that he had, that he made
12 this other program, would be an area of expertise because it
13 didn't exist at the time that this went on, so therefore he
14 could not be a fact witness as to the facts in the underlying
15 case. So we will see where we go with it at trial.

16 MR. DELGADO: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. DELGADO: My motion is coming up next. I'm
19 just going to stay up here if you don't mind?

20 THE COURT: Go ahead.

21 MR. DELGADO: I think the last motion that we were
22 talking about today is the Epic Media Group's motion for
23 summary judgment as to all claims.

24 Before I get into my three points with respect to
25 that motion let me just give the Court a 30-second reminder