

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

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

Case No. 2:09-cv-10756
Hon. Marianne O. Battani

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,

Defendant.

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**PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF
AND THE EXPERT REPORTS OF DEFENDANTS' EXPERT RICHARD E. KORF
AND BRIEF IN SUPPORT**

NOW COME Plaintiff, by and through counsel, TRAVERSE LEGAL, PLC and HOOPER HATHAWAY, P.C., and hereby submits its Motion in Limine to exclude testimony of and the expert reports of Defendants' Expert Richard E. Korf and states as follows:

1. Plaintiff has sued Defendants under the Anti-Cybersquatting Consumer Protection Act ("ACPA"). The ACPA requires that the Plaintiff prove by a preponderance of the evidence that Defendants (1) registered, used, or trafficked in a domain name; (2) that is confusingly similar to; (3) a trademark in which Plaintiff has rights; and (4) with a bad faith intent to profit from that mark. 15 U.S.C. §1125(d)(1).

2. Defendants' expert, Richard E. Korf ("Korf"), concluded that Defendants' system of automated computer algorithms and manual reviews "indicates to me a good faith effort to prevent the registration of trademarks, rather than a deliberate attempt to target them." Expert Report ¶ 4. In doing so, Korf offers a legal conclusion about the threshold issue in the case, which is whether Defendants had the requisite bad faith intent to profit from Plaintiff's trademarks as set forth in 15 U.S.C. §1125(d)(1)(B).

3. Allowing testimony by Korf or admitting any evidence from his Expert Report or Supplemental Expert Report at trial about the good faith, or alternatively lack of bad faith, intent of the Defendants embraces an ultimate issue reserved for the trier of fact. Accordingly, such testimony should be excluded from trial under FRE 704.

4. In addition, Korf offers opinions about the ACPA's meaning of "confusingly similar" and the semantics associated with it. Korf's testimony about an ultimate issue for the trier of fact should be excluded under FRE 704. Korf is not a trademark lawyer and has no trademark expertise. Moreover, Korf's opinions regarding the semantics of a "confusingly

similar” determination, as included in his Supplemental Expert Report, do not satisfy FRE 702 and *Daubert* and thus should be excluded.

5. Finally, Korf’s opinions are limited to the current version of Defendants’ system of automated computer algorithms and manual reviews. However, the current version of Defendants’ system was not implemented or used at the time Defendants registered the infringing domain names. Accordingly, Korf’s opinions regarding the current version of the system, including those set forth in his expert reports, should be excluded as irrelevant under FRE 401, 402, and alternatively as prejudicial under FRE 403.

6. Counsel exchanged intended motions in limine by e-mail, setting forth the nature of the motion and its legal basis. No concurrence regarding this motion was obtained.

Respectfully submitted this 24th day of February, 2012.

/s/Enrico Schaefer

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BRIEF IN SUPPORT

Concise Statement of Issues Presented

1. Whether the Court should exclude Defendants' expert Korf's testimony on an ultimate issue in the case, namely whether Defendants had a bad faith intent to profit from Plaintiff's trademarks, under FRE 704 because such determination is a legal conclusion reserved for the trier of fact?

Plaintiff answers: YES

Defendants answer: NO

2. Whether the Court should exclude Defendants' expert Korf's testimony on an ultimate issue in the case, namely whether Defendants' domains are confusingly similar to Plaintiff's or other third party trademarks, under FRE 704 because such determination is a legal conclusion reserved for the trier of fact?

Plaintiff answers: YES

Defendants answer: NO

3. Whether the Court should exclude Defendants' expert Korf's testimony regarding the semantics involved with a "confusingly similar" determination under FRE 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) because Korf is not an expert in semantics let alone the ACPA?

Plaintiff answers: YES

Defendants answer: NO

4. Whether the Court should exclude Defendants' expert Korf's testimony and reports under FRE 401 and 402 because his opinions relate to Defendants' current system of automated software and manual procedures rather than the system(s) that was/were at issue at the time Defendants registered the alleged infringing domain names of Plaintiff?

Plaintiff answers: YES

Defendants answer: NO

5. Alternatively, whether the Court should exclude Defendants' expert Korf's testimony and reports under FRE 403 because the presentation of such information would be confusing, misleading, prejudicial, and a waste of time?

Plaintiff answers: YES

Defendants answer: NO

Controlling or Most Appropriate Authority for the Relief Sought

FRE 40110

FRE 40210

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I. Factual Background

Defendants' expert, Richard E. Korf, is a computer science professor who was retained to "provide my opinion on whether Firstlook's automated and manual filtering systems are designed to prevent the registration of internet domain names that may be confusingly similar to or identical to registered trademarks." *See Exhibit A*, Expert Report, ¶ 1.2. Korf submitted an Expert Report on September 10, 2010, submitted a Supplemental Expert Report on November 19, 2010, was deposed on December 8, 2010, and issued a "corrected" Expert Report on December 10, 2010. His conclusion "is that they have put in place procedures, both automated and manual, that are designed to avoid cybersquatting." *See Exhibit B*, Korf Deposition at pg. 320, lines 18-20.¹

The entirety of his opinion is limited to the design goal of the system. *See Exhibit B*, Korf Deposition at pg. 127, lines 20-22. He does not offer an opinion as to whether the system actually prevented cybersquatting (*See Exhibit B*, Korf Deposition at pg. 127, lines 16-22), the operation of the system, the reliability of the system, whether bugs or problems existed in the system, the performance of the system (*See Exhibit B*, Korf Deposition at pg. 196, lines 4-17), the effectiveness of the system (*See Exhibit B*, Korf Deposition at pg. 221, lines 6-7), or the success of the system (*See Exhibit B*, Korf Deposition at pg. 321, lines 15-25). He does, however, opine about the good faith intent of Defendants based solely upon its present system, whether domain names are confusingly similar to trademarks, and his interpretation of the legal meaning of confusingly similar.

¹ Korf concludes that Defendants' system is designed to avoid cybersquatting, yet admits that he has not compared Defendants' system to any other system. *See Exhibit B*, Korf Deposition at pg. 267, line 14.

II. Argument

A. Defendants' Expert Korf's Legal Conclusions as to the Ultimate Issues of Bad Faith and Confusing Similarity Should be Excluded

FRE 704 is intended to avoid admission of opinions which would merely tell the jury what result to reach. FRE 704 Notes of Advisory Committee on Proposed Rules. Admittedly an expert may testify as to ultimate issues in a case, but such testimony must not amount to a legal conclusion, as it is for the judge alone to instruct the jury on the applicable principles of law at issue in the case. *See Shahid v. City of Detroit*, 889 F.2d 1543 (6th Cir. 1989); *see also Woods v. Lecureux*, 110 F.3d 1215, 1220 (6th Cir. 1997) (“It is, therefore, apparent that testimony offering nothing more than a legal conclusion-i.e., testimony that does little more than tell the jury what result to reach-is properly excludable under the Rules.”).

1. Korf's Legal Conclusions Regarding Defendants' Intent Should Be Excluded

Korf's entire opinion is based solely upon the design of the Defendants' system. Korf himself admitted that Defendants retained him to offer a legal conclusion as to the intent of Defendants. “The question was: What was the intent? What was it designed to do?” *See Exhibit B*, Korf Deposition at pg. 128, lines 3-4. True to Defendants' call, a legal conclusion is exactly what Korf provides, concluding “they have put in place procedures, both automated and manual, that are designed to avoid cybersquatting.” *See Exhibit B*, Korf Deposition at pg. 320, lines 18-20.

In doing so, he specifically addresses the threshold issue in this case – whether Defendants had a bad faith intent to profit from Plaintiff's marks – albeit couched in the term “designed.” That said, during his deposition, he unequivocally confirmed that his use of the term

“design” is the equivalent of intent. He stated: “‘Designed’ is a – is a question of intent.” *See Exhibit B*, Korf Deposition at pg. 149, line 1. Thus, by Korf’s very own definition, he is offering the impermissible legal conclusion that Defendants have put in place procedures, both automated and manual, that are intended to avoid cybersquatting.

Korf further offers his legal conclusion in his Expert Report. In fact, he goes so far as to say that Defendants acted in “good-faith”:

It is my opinion that Firstlook has developed and implemented a fairly sophisticated system, including both automated computer algorithms and manual reviews, that is designed to prevent the registration of trademarks. While no such system can operate flawlessly, this indicates to me a good-faith effort to prevent the registration of trademarks, rather than a deliberate attempt to target them.

See Exhibit A, Expert Report, ¶ 4. Korf’s legal conclusion is not limited to his Expert Report. Korf went on to state during his deposition that it “appeared to me to be a good faith effort to avoid cybersquatting.” *See Exhibit B*, Korf Deposition at pg. 267, lines 16-19. These legal conclusions, which specifically relate to 15 U.S.C. § 1125(d)(1)(A)(i), are of the exact kind FRE 704 and the case law seek to preclude. As such, the entirety of Korf’s reports as it relates to the legal conclusion that Defendants acted with good faith intent when they designed a system to avoid cybersquatting, along with any testimony mirroring the same, should be excluded. *See H.C. Smith Investments, L.L.C. v. Outboard Marine Corp.*, 181 F. Supp. 2d 746, 749 (W.D. Mich. 2002) (holding that courts must enforce the requirements of FRE 403 with regard to expert testimony and “not to allow expert testimony to infringe on its own authority to instruct as to the law or the jury’s authority to determine ultimate issues such as the **intent** of a party.”) (emphasis added).

Alternatively, at the very least, Korf should be precluded from using the terms good faith, bad faith, or commenting in any way that provides a legal conclusion as it relates to the necessary intent element of the ACPA or cybersquatting cause of action. During his deposition, Korf admits that he should not have used the term “good faith” given its legal connotation in this case. *See Exhibit B*, Korf Deposition at pg. 268, lines 1-7. Korf even goes so far as to say: “I’ll tell you right now I don’t imply a – I don’t mean to imply a legal standard here because I’m – I’m certainly – I’m not a lawyer, and I’m not certain what a court would consider a good faith effort in here according to the law.” *See Exhibit B*, Korf Deposition at pg. 286, lines 16-25. In light of Korf’s own admissions, and in order to avoid undue prejudice, mislead the jury, or juror confusion under FRE 403², any testimony regarding Defendants’ intent to avoid cybersquatting should be precluded and the portions of his Expert Report, including his conclusion in Paragraph 4, should be excluded from trial and not admissible as evidence.

2. Korf’s Legal Conclusions Regarding Whether Defendants’ Domain Names are Confusingly Similar to Plaintiff’s Trademarks or Third Party Marks Should be Excluded

Korf repeatedly uses the terms “confusingly similar” throughout his Expert Reports and offers an explanation as to the semantic meaning of the term “confusingly similar” in his Supplemental Expert Report. *See Exhibit A*, Expert Report, ¶¶ 1.2, 1.4; *See Exhibit C*, Supplemental Expert Report ¶ 3. In addition, throughout his deposition, Korf used the term “confusingly similar” when referring to a comparison of domain names. See, e.g., *Exhibit B*, Korf Deposition at pgs. 133-137, 176-183. Despite admitting use of the term “confusingly

² See *U.S. v. Gallon*, 257 F.R.D. 141, 153-54 (E.D. KY 2009) (holding that expert’s, who was a lawyer, opinions regarding Defendants’ alleged good faith reliance on the Judge’s Orders were misleading, and thus inadmissible under FRE 403); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993) (“the judge in weighing possible prejudice against probative force under Rule 403 ... exercises more control over experts than lay witnesses.”).

similar” is a legal conclusion, and having Mr. Delgado object to a question regarding whether or not a domain name is confusingly similar to a trademark, Korf’s reports offer testimony regarding the ability of Defendants’ system to avoid registering domain names confusingly similar to trademarks. *See Exhibit B*, Korf Deposition at pg. 176, lines 12-23. In doing so, Korf offers a legal conclusion regarding whether a domain name is confusingly similar to a trademark, as required under the ACPA in 15 U.S.C. § 1125(d)(1)(A)(ii)(I)-(II).

In particular, Korf is offering legal conclusions regarding confusing similarity, as well as inaccurate and contrary to law opinions regarding confusing similarity. *See Exhibit B*, Korf Deposition at pgs. 291-293 (provides analysis for determining confusing similarity between <qwunderground.com> and WUNDERGROUND). Moreover, Korf offers a legal conclusion regarding the ability of a computer to make reliable judgments about what would be confusingly similar to a person. *See Exhibit C*, Supplemental Expert Report ¶ 3. He even goes so far as to make legal conclusions regarding whether certain domains are confusingly similar to, or infringing, trademarks. *See Exhibit C*, Supplemental Report ¶ 3; *Exhibit B*, Korf Deposition at 180, lines 12-21; pg. 183; pg. 229, lines 16-18. Korf should be precluded from offering any testimony that serves as a legal conclusion as to whether Defendants’ domain names are confusingly similar to Plaintiff’s trademarks or the trademarks of third parties.

It is for the Court, via the jury instructions, to provide the law and allow the jurors to decide if Defendants’ domain names are confusingly similar to Plaintiff’s trademarks. The law is clear, “a domain name that incorporates a trademark is 'confusingly similar to' that mark if 'consumers might think that [the domain name] is used, approved, or permitted' by the mark holder." *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 635, 641 (E.D. Mich.

2001)**Error! Bookmark not defined.** (quoting *Harrods Ltd. v. Sixty Internet Domain Names*, 157 F. Supp. 2d 658, 677 (E.D. Va. 2001)). Moreover, courts have consistently "found that slight differences between domain names and registered marks, such as the addition of minor or generic words to the disputed domain names are irrelevant." *Id.* at 641; *see also DaimlerChrysler v. Net Inc.*, 388 F.3d 201, 205-206 (6th Cir. 2004). Korf is not permitted to provide a legal conclusion regarding confusing similarity to the jury.

In addition, it is entirely improper for Korf to attempt to educate the jury about the meaning of the ACPA's "confusingly similar" requirement, especially where he has not read the statute and admits to not knowing the legal standard. *See Exhibit B*, Korf Deposition at pg. 287, lines 2-3, 13-19. He has displayed a propensity to interject additional factors, such as the context/content of the website itself, into the determination of confusing similarity. *See Exhibit B*, Korf Deposition at pg. 289, lines 15-21; pg. 295, lines 16-18; pg. 299, line 18 to pg. 300, line 20; pg. 316. In fact, his Supplemental Expert Report makes such statements as: "Even a name which is identical to a trademark may not infringe the trademark if it is used in a different context" and makes conclusions regarding examples involving Apple and Nike. Such testimony is improper and contrary to law. *See Southern Co. v. Dauben Inc.*, 324 Fed. Appx. 309, 318 (5th Cir. 2009) ("the likelihood of confusion test in trademark infringement law is different, and more comprehensive, than the test for "confusingly similar" under ACPA. *See N. Light Tech., Inc. v. N. Lights Club*, 236 F.3d 57, 66 n.14 (1st Cir. 2001) ("[T]he likelihood of confusion test of trademark infringement is more comprehensive than the identical or confusingly similar requirement of ACPA, as it requires considering factors beyond the facial similarity of the two marks." (internal quotation marks omitted)); *see also Coca-Cola Co.*, 382 F.3d at 783 ("The

inquiry under the ACPA is thus narrower than the traditional multifactor likelihood of confusion test for trademark infringement.")). Ultimately, it is up to Defendants, without the impermissible legal conclusions of Korf, to convince the jury that the bad faith factors under the ACPA weigh in their favor.

In sum, Korf's stated use of "confusingly similar" is not in a legal sense consistent with the ACPA and delves into the standard for trademark infringement (i.e. likelihood of consumer confusion). *See Exhibit B*, Korf Deposition at pg. 306, lines 14-25. As such, it should be excluded under FRE 704. Moreover, given the unfair prejudice and juror confusion that would assuredly result, FRE 403 warrants that the testimony by Korf regarding how the confusingly similar determination should be made and what factors into it be excluded. In summary, this Court should exclude the following:

- Paragraph 4 of his Expert Report regarding design of Defendants' system to avoid registration of "confusingly similar" domain names;
- Paragraph 3 of his Supplemental Expert Report regarding the role of semantics of "confusingly similar";
- Paragraph 5 of his Supplemental Expert Report regarding determinations as to what constitutes "confusingly similar" domain names;
- Any and all testimony by him offering an opinion as to whether a particular domain is "confusingly similar" to, infringes on, or cybersquats on a trademark should be excluded. See, e.g., *Exhibit B*, Korf Deposition at pgs. 304-305 (concluding that niceshoes.com is not confusingly similar to Nike Shoes); see also *Exhibit B*, Korf Deposition at pgs. 314-316 (discussing what constitutes infringement); see also *See*

Exhibit B, Korf Deposition at pg. 320, lines 18-20 (“My opinion is that they have put in place procedures, both automated and manual, that are designed to avoid cybersquatting.”).

B. Korf’s Opinion Regarding the Semantics in the “Confusingly Similar” Determination and the ACPA Do Not Meet FRE 702 and *Daubert*

Korf’s Supplemental Expert Report offers a section entitled “The Role of Semantics in “Confusingly Similar.” *See Exhibit C*, Supplemental Expert Report ¶ 3. He concludes that “judgments about what is confusingly similar are complex judgments based on the meanings of words and the contexts in which they are used.” In addition, he attempts to define,³ offers commentary regarding the “confusingly similar” determination and opines that it cannot be completely automated and requires human judgment. *Id.* These opinions are meant to bootstrap his ultimate conclusion that Defendants’ system was designed to prevent cybersquatting. However, his opinions fail to meet the requirements for admissibility under FRE 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Korf fails to satisfy the first requirement under FRE 702 and *Daubert*, “whether the proposed expert is qualified by knowledge, skill, experience, education, or training.” *See Pluck v. BP Oil Pipeline, Co.*, 640 F.3d 671, 677 (6th Cir. 2011). His craft is computer science, both in education and experience. He is not an English major or English professor. He has no stated experience in the philosophy of language or the study of the meaning of words. Put simply, Korf lacks the requisite expertise to offer any expert opinion regarding semantics. Lacking further is

³ *See Berry v. City of Detroit*, 25 F.3d 1342, 1353 (6th Cir. 1994) (overturning verdict where expert witness defined term “deliberate indifference”); *see also Woods v. Lecureux*, 110 F.3d 1215, 1220 (6th Cir. 1997) (upholding district court’s ruling prohibiting expert witness from defining the term “deliberate indifference”).

his expertise in semantics as it relates to the “confusingly similar” language present in the ACPA, which he has not even read. *See Exhibit B*, Korf Deposition at pg. 287, lines 2-3.

Moreover, not only are Korf’s legal conclusions regarding what the ACPA’s confusing similarity language impermissible, as set forth above, but his theory on semantics is not relevant and will not assist the trier of fact to understand the evidence or to determine a fact in issue. The jury is entitled to determine whether or not a domain is confusingly similar to a trademark based upon the jury instructions to be provided by this Court and its own knowledge, without Korf’s unreliable, unsupported, and legal conclusions. Allowing Defendants to introduce this portion of Korf’s report or elicit testimony regarding the meaning of “confusing similarity” and how that meaning factors into whether Defendants’ system was designed to prevent cybersquatting invades the province of the jury, and thus it should be excluded.

In light of the above, it warrants little attention to the remaining *Daubert* factors. Nevertheless, Korf has not provided any facts or data to support his testimony regarding the meaning of words, has not identified any reliable principles or methods, and has not adhered to or applied any such principles or methods in a reliable way. Most telling, the fifth factor considered by many courts, including the Sixth Circuit, confirms that Korf’s opinions regarding semantics should be excluded for they were developed expressly for the purposes of testifying rather than out of research concluded independent of this litigation. *See Smelser v. Norfolk Southern Railway*, 105 F.3d 299 (6th Cir. 1997). Put simply, Korf is serving as Defendants’ mouthpiece in hopes of confusing the jury regarding the meaning of, test for, and legal principles applicable to a “confusing similarity” determination under the ACPA. *See Exhibit B*, Korf Deposition at pg. 86. For the reasons set forth above, Paragraph 3 of Korf’s Supplemental

Expert Report and any testimony related thereto should be excluded under FRE 702 and *Daubert*.

C. Korf's Opinions and Report Relate Solely to Defendants' Current System and are Irrelevant Under FRE 401 and 402

Korf's entire analysis and opinion is based upon Defendants' system as it currently exists. *See Exhibit B*, Korf Deposition at pg. 74, lines 21-25; pg. 143, 14-25; pg. 144, 12-14. Korf confirms he has no opinions as it relates to prior versions of Defendants' system, be it automated or manual. *See Exhibit B*, Korf Deposition at pg. 283, lines 2-4. However, Defendants' current system, which includes additional automated software and additional manual reviewers, is not at issue. Instead, Defendants' system as it existed at each point in time (including when no system was in place) it registered the alleged infringing domains of Plaintiff is at issue in order to provide relevant evidence regarding Defendants' bad faith intent.

Of the known infringing domain names at issue in this lawsuit, the first was registered by Defendants on or about 2004. Korf has no opinion related to Defendants' system at this time, thus any facts relating to the current automated procedures and manual procedures are of no consequence to determining the outcome of this matter. As such, consistent with FRE 401 and FRE 402, Korf's entire reports and opinions related to Defendants' current system are irrelevant and not admissible.

In fact, Korf has no foundation as to when Defendants' particular system was implemented. *See Exhibit B*, Korf Deposition at pg. 151, lines 5-11.

D. Alternatively, Korf's Report and Opinions Should be Excluded Under FRE 403

Alternatively, even if the Court were to find that Korf's reports and testimony regarding Defendants' current system were relevant, it should nevertheless exclude the reports and testimony under FRE 403, because the probative value of evidence regarding a system not used "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, [and] waste of time" FRE 403.

Allowing such testimony would be like allowing an expert to opine about the safety of a 2012 automobile when the one at issue was from 2002 and lacked the same safety mechanisms (such anti-lock breaks, side air bags, and lane change alerts). Plaintiff would be unfairly prejudiced by risking that the jury would confuse Defendants' current system with what was available in 2004, for example. The jury will likely mistakenly believe that additional automated and manual procedures now present evidenced good faith on Defendants' behalf, though such additional automated and manual procedures were not in fact used in 2004. Furthermore, the jury would be misled as to the adequacy of Defendants' system⁴ and confused as to what it is to consider in determining Defendants' bad faith intent.

In addition, the Court's valuable time would be wasted by the presentation of Korf's legal conclusions regarding the design/intent of Defendants' current systems. Given that Korf, as noted above, has no opinions regarding anything beyond mere design, rather than actual performance, of Defendants' system, such testimony would only further delay trial. Ultimately,

⁴ This assumes the adequacy of Defendants' system is relevant to a bad faith determination, which Plaintiff maintains it is not.

the impermissible, irrelevant, and legal conclusions of Korf warrant exclusion under FRE 403 in order to avoid prejudice to Plaintiff.

III. Conclusion

For the reasons stated above, the Court should exclude:

1. any and all testimony, including that present in Korf's Expert Report (¶ 4) and Supplemental Expert Report, relating to Defendants' intent as an inadmissible legal conclusion under FRE 704;
2. any and all testimony, including that present in Korf's Expert Report (¶ 4) and Supplemental Expert Report (¶¶ 3,5), relating to the determination of what constitutes "confusingly similar" under the ACPA as an inadmissible legal conclusion under FRE 704;
3. any and all testimony, including that present in Korf's Expert Report and Supplemental Expert Report (¶ 3), relating to the semantics involved in and meaning of "confusingly similar" as inadmissible under FRE 702 and *Daubert*;
4. any and all testimony, including Korf's entire Expert Report and Supplemental Expert Report, relating solely to Defendants' current system of automated and manual procedures designed to avoid cybersquatting as immaterial and irrelevant under FRE 401 and 402, or alternatively due to prejudice, confusion, waste of time, and other reasons under FRE 403.

WHEREFORE, for all of the above-stated reasons, this Honorable Court is respectfully asked to grant Plaintiff's Motion in Limine to Exclude Testimony of and Expert Reports of Defendants' Expert Richard E. Korf.

Respectfully submitted this 24th day of February, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2012, 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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