

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

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

vs.

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

NAVIGATION CATALYST SYSTEMS, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; FIRSTLOOK, INC.,
a Delaware corporation; and EPIC MEDIA
GROUP, INC., a Delaware corporation,

Defendants.

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**DEFENDANTS CONNEXUS CORPORATION, FIRSTLOOK, INC., AND
NAVIGATION CATALYST SYSTEMS, INC.'S MOTION IN LIMINE NO. 5**

NOTICE OF MOTION AND MOTION

TO THIS HONORABLE COURT, PLAINTIFF, AND ITS ATTORNEYS OF RECORD:

Connexus Corporation, Firstlook, Inc., and Navigation Catalyst Systems, Inc. (collectively the “Defendants”) hereby move this court in *limine* for an order excluding any reference, insinuation, questioning, argument, or evidence (testimony or documents) regarding other companies associated with Defendants, including Global Quest, April Sea, Metes, Mercado, Casbah, Nomen, and Valorem.

The bases for this Motion are set forth in the Memorandum of Points and Authorities; to wit, that such argument and testimony are irrelevant to this matter pursuant to Federal Rule of Evidence Nos. 402. Even if such evidence was relevant and admissible, the prejudicial effect of such evidence substantially outweighs its probative value, and, therefore, the Court should exercise its discretion to exclude such argument and testimony under Federal Rule of Evidence No. 403.

Counsel for Defendants have explained the nature of this Motion and its legal basis and requested, but did not obtain, concurrence in the relief sought.

RESPECTFULLY SUBMITTED this 24th day of February, 2012 (Pacific Time).

/s/William A. Delgado
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

With this motion in *limine*, Defendants seek to exclude any argument and/or evidence related to other companies associated with Defendants or Defendants' ultimate parent, The Epic Media Group. This is a lawsuit about whether Defendants' registration of various domain names violated Plaintiff's trademark rights. Three parties to this lawsuit (Connexus, Firstlook, and Navigation Catalyst) are proceeding to trial. Two other companies within the corporate family have been already been dismissed (i.e., Basic Fusion and The Epic Media Group). During discovery, there was testimony regarding the existence of other companies that are associated with Defendants (including Global Quest, April Sea, Metes, Casbah, Nomen, and Valorem). These companies were not involved in the registration of any of the domain names at issue and, therefore, their existence is irrelevant to this lawsuit.

II. ARGUMENT

A. EVIDENCE OF OTHER COMPANIES IS IRRELEVANT.

The companies involved with the registration of the domain names at issue are either proceeding to trial or have been dismissed from this lawsuit. Navigation Catalyst is the registrant of the domain names at issue. Firstlook, the parent of Navigation Catalyst, was the company responsible for the monetization of the domain names. Connexus is the parent company of Firstlook. Basic Fusion (previously named as a defendant but ultimately dismissed)

acted as the registrar of the domain names.¹ No other companies were involved with the registration of the domain names at issue.

During the deposition of The Epic Media Group by its designee David Graff, Mr. Graff testified about the existence of other companies associated with Defendants, including Global Quest, April Sea, Metes, Casbah, Nomen, and Valorem. *See* Exhibit A to Declaration of William A. Delgado, dated February 24, 2012. According to Mr. Graff, these companies were primarily set up to help Firstlook’s international expansion. April Sea, for example, was to act as the registrar for international domain names, and Metes would act as the registrant for international domain names. *Id.* That said, there was limited international expansion, and some of these companies were dissolved while others were slated to be dissolved. *Id.*

In any event, neither these companies nor their intended purpose is relevant to this dispute and, particularly, the domain names at issue in this case. They are, therefore, irrelevant, and Plaintiff should not be allowed to argue, for example, that Defendants are setting up additional companies to avoid liability, play “shell games,” or anything else of such nature. Fed. R. Evid. 402.

B. SORTING THROUGH EVIDENCE OF THESE OTHER COMPANIES
WOULD RESULT IN A WASTE OF TIME.

In addition to being wholly irrelevant, arguments like the ones noted above would simply result in a waste of time as Defendants would have to present witnesses to testify about the creation of these entities, the reason for their creation, why they are perfectly legal and

¹ The Epic Media Group, the parent company of Connexus Corporation following Epic’s acquisition of Connexus, was also named as a defendant in this matter but has also been dismissed.

appropriate, etc. None of these items are at issue in this lawsuit and would only result in very inefficient trial. For that reason, even if the Court thought that the existence of such companies was marginally relevant, the Court should nevertheless exclude evidence and argument regarding their existence under Fed. R. Evid. 403.

III. CONCLUSION

The existence of other companies associated with Defendants set up to aid in the international expansion of Firstlook is irrelevant to this lawsuit involving domain names alleged to violate Plaintiff's trademarks. For that reason, evidence and arguments as to the existence of these other companies should be precluded at trial.

RESPECTFULLY SUBMITTED this 24th day of February, 2012 (Pacific time).

/s/William A. Delgado

William A. Delgado

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2012, Pacific Time, 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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