

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC., )	)
a Michigan Corporation, )	)
Plaintiff, )	)
vs. )	) Case No. 2:09-CV-10756
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. )	)

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VIDEOTAPED TRIAL DEPOSITION OF SETH JACOBY

New York, New York

Thursday, April 12, 2012

Reported by: Jeremy Frank

NDS Job No.: 147647

1 don't know how you transfer that over so --

2 Q. Now I think I understand.

3 So as part of your exit from Firstlook  
4 what you're saying is that your new company  
5 Flipside, LLC purchased the domain name Flipside.com  
6 from the Connexus Group?

7 A. Correct.

8 Q. And the trademark which was owned by  
9 Flipside, Inc which was part of the Connexus Group  
10 at one time?

11 A. Yes, that's how it was owned.

12 I don't know the ownership structure of  
13 the actual trademark itself, but I know that the  
14 trademark was assigned to me, I just haven't gone  
15 through the process of actually, I don't know how  
16 that works in terms of how it gets sent to me, but I  
17 have got to do it, you reminded me of something.

18 Q. So when you say that your company  
19 Flipside, LLC has absolutely no relationship to  
20 Connexus Group of companies, that's not really true,  
21 is it, the connection is that you actually purchased  
22 assets out of that company?

23 A. Sure, I purchased assets out of that  
24 company, but I have no, there is no other than that  
25 relationship, and the sale of some assets, this

1 \$750,000?

2 A. I did not but I remember it was high.

3 Q. A seven-figure domain name occurs every  
4 year, correct?

5 A. Absolutely.

6 Q. Absolutely.

7 And so in your discussions over the  
8 purchase of this domain name with your former  
9 employer, how much negotiation was there? Did you  
10 propose a number and they accepted, did they propose  
11 a number and you accepted, tell me about the  
12 negotiation.

13 A. I'm not going to get into my negotiation  
14 with them, I can tell you it happened over probably  
15 several months.

16 Q. Are there e-mails or records that  
17 reflect the negotiations?

18 A. Are there e-mails, probably, I would  
19 imagine somewhere.

20 Q. Is there a document which memorializes  
21 the transaction, a domain name transfer agreement or  
22 purchase agreement?

23 A. Yes.

24 Q. In that purchase agreement, does it also  
25 specify that you're buying the trademark and they'll

1 THE COURT REPORTER: No, no.

2 I need you to wait for the attorneys to  
3 finish speaking and also for the questioner  
4 before answering. Thank you.

5 Go ahead, please.

6 Q. Did your former employer to your  
7 knowledge ever put a value on the trademark  
8 registration as part of that transaction?

9 A. I have no idea how they figured the  
10 transaction, how they valued their piece.

11 Q. Did they ever say anything to you about  
12 how they were going about their valuation during  
13 negotiations?

14 A. That would be kind of, no, they did not.

15 Q. Sometimes you will say gee, Seth we took  
16 at a look at least at four our transaction here, the  
17 prices, and don't you think this is similar, so that  
18 kind of thing does come up in some --

19 A. No, I don't really remember how that  
20 negotiation went in terms of the actual trademark  
21 themselves, but I can tell you the focus was not on  
22 the trademarks. It I buy the domain name, then the  
23 trademarks comes with it. But it was never, I never  
24 valued as a pure, you can see I don't value the  
25 trademarks of Flipside as much as the domain name

1 considering I haven't even transferred it over to my  
2 formal ownership yet.

3 Q. Now, has anyone to your knowledge ever  
4 made an offer for Flipside.com either the trademark  
5 or the domain name while you were president?

6 A. While I was the president, I couldn't  
7 tell you. I can tell you since I'm, excuse me, I'm  
8 just fixing this, since I received offers for the  
9 domain name.

10 Q. Now, you have said a couple of times and  
11 you said in an affidavit there was absolutely no  
12 connection between your company, Flipside, LLC and  
13 Flipside, Inc. Now you're saying you meant to say  
14 besides the fact that you bought the domain name and  
15 got the trademark.

16 Isn't it true that you are also running  
17 your new company off of Firstlook software?

18 A. So going back to what I wrote, I said  
19 that Flipside, LLC and Flipside, Inc are, the  
20 defendants, have no corporate relationship with each  
21 other. There is a business transaction where I  
22 purchased assets from them. But beyond that, sort  
23 of that transaction there is no relationship.

24 The second part of your question, yes,  
25 some of the software, some of the software which

1 Firstlook was using I did purchase.

2 Q. Okay.

3 So you also purchased Firstlook  
4 software?

5 A. Yes, some of it.

6 Q. What parts?

7 A. That's not relevant.

8 Q. If I go to log in as a customer to your  
9 website --

10 A. Yes.

11 Q. -- the software that is running in the  
12 back end is running on Firstlook.com, correct?

13 A. Yes, I own that domain name as well.

14 Q. What else did you purchase or took with  
15 you on the way out the door from Connexus when you  
16 started Flipside, LLC?

17 A. I purchased some software, I purchased  
18 some domain names, and some contracts of customers  
19 that like an assignment of some of those customers.

20 Q. What domain name did you purchase  
21 besides Flipside, did you purchase Firstlook.com?

22 A. I purchased Firstlook.com, yes.

23 Q. Was there anything left of Firstlook.com  
24 at Connexus, at the Connexus companies after your  
25 purchase?

1 A. Yes.

2 Q. What's left?

3 A. You will have to ask them, I don't know  
4 what's there now.

5 Q. Okay.

6 What did you take with you besides the  
7 domain names Firstlook.com, Flipside.com and the  
8 trademark for Flipside?

9 MR. GREENE: I object, this is going  
10 towards bias?

11 MR. SCHAEFER: Yes, if they essentially  
12 gave him assets on the way out the door --

13 MR. GREENE: They didn't give it, he  
14 purchased it.

15 MR. SCHAEFER: -- at below market value  
16 or essentially took what he said was a  
17 completely unrelated company is now doing  
18 what Firstlook used to do in whole or in  
19 part, then there is in fact a relationship  
20 there. And if he received an unwarranted  
21 benefit from them then it goes to bias.  
22 There is no way this is not relevant.

23 MR. GREENE: You said doing what they  
24 used to do, I don't think he testified to  
25 that.

1           A.     That's part of the reason but not solely  
2 the reason. Like I said before, the company was  
3 moving in a direction that was not going to be  
4 tenable long term.

5           Q.     What was that direction?

6           A.     Well as you can see, Firstlook doesn't  
7 exist anymore, right?

8           Q.     I wasn't aware Firstlook doesn't exist  
9 anymore.

10          A.     I don't think there is any employees on  
11 Firstlook anymore, I don't know about the company  
12 itself, but I don't think there is any employees  
13 employed by Firstlook anymore.

14          Q.     What about Connexus, I understand there  
15 was a merger with a company called Epic Media in May  
16 2010?

17          A.     Correct.

18                   MO.

19                 MR. DELGADO: I move to strike for the  
20 purpose of enforcing an objection, I object  
21 to the term merger. I think this was decided  
22 by the court it was not a merger, it was an  
23 acquisition.

24          Q.     In lay terms you called it a merger in  
25 your deposition, correct?



1 A. Yes.

2 Q. Without getting into the legal  
3 technicalities of it, at some point all of the  
4 Connexus employees became Epic Media employees?

5 A. Yes, I think that's fair to say.

6 Q. Okay.

7 A. Yes.

8 Q. To be fair to say, there are also no  
9 Connexus employees left anymore, to your knowledge?

10 A. Yes, I don't think so, yes.

11 Q. Are there any Epic Media group employees  
12 left as of the time that you departed the company?

13 A. Yes, there were.

14 Q. Okay.

15 And who was left when you --

16 A. I don't know all of them, it was a big  
17 company, I couldn't tell you how many people were.

18 Q. And some of the Epic Media employees in  
19 addition to yourself left in the months or in any  
20 time in 2011 that you are aware of?

21 A. Of course people left, I couldn't name  
22 them, but yes.

23 Q. Do any former Epic Media, Connexus  
24 employees work for your company, Flipside?

25 A. Some employees who worked for Firstlook

1 specifically I did hire, yes.

2 Q. What part of the Firstlook software are  
3 you using on Flipside.com when I go to log in and I  
4 see its now going to Firstlook.com servers?

5 A. Parts of the account management service,  
6 but I'm not going into details of my business.

7 Q. Would that be the CMS software we had  
8 talked about in the underlying case?

9 A. Small parts of it.

10 Q. Domain monetization?

11 A. I'm not going into my business, I'm not.

12 Q. Do you offer parking pages?

13 A. I'm not getting into my business, it is  
14 my business and it has nothing to do with this.

15 Q. Do you now operate the domain  
16 Connexus.com?

17 A. Do I operate the domain Connexus.com,  
18 no.

19 Q. Do you own the domain Connexus.com?

20 A. No.

21 Q. Do you own the domain Firstlook.com?

22 A. Yes.

23 Q. Do you own the trademarks related to the  
24 domain name Firstlook.com?

25 A. I think I do.

1 A. Yes.

2 Q. So when you received the subpoena from  
3 us to take your deposition for trial --

4 A. Yes.

5 Q. -- you hired an attorney and opposed  
6 this deposition?

7 A. Correct.

8 Q. And according to your affidavit, the  
9 reason that you did not want to have your trial  
10 testimony taken is that in paragraph eight:

11 "Any further deposition of me would not  
12 only be a waste of time but would be  
13 extremely burdensome and a major  
14 inconvenience."

15 Why did you believe that having the jury  
16 hear your trial testimony would be a waste of time?

17 A. Well, it is proven at least today you  
18 have not asked me a single, barely a single new  
19 question that you haven't asked me previously, with  
20 the exception of a handful as we keep referring back  
21 to my testimony, right? So I have already testified  
22 to this matter.

23 Secondly, I'm not party to this matter,  
24 I have, you know, I'm not, I don't work for these  
25 people anymore, I have nothing to do with them

1 anymore, and the reality is I have other things to  
2 do.

3 Q. And when you indicated that you have  
4 nothing to do with the defendants in this underlying  
5 Weather Underground case, correct?

6 A. Correct.

7 Q. But then again we have established that  
8 you did walk away with some assets that used to  
9 belong to that company.

10 MR. DELGADO: Object to the  
11 characterization walk away with assets.

12 Q. You now allegedly own some of the assets  
13 that used to belong to the prior company, correct?

14 MR. DELGADO: Objection to the use of an  
15 word allegedly. The witness has testified he  
16 purchased assets. You want to ask him that  
17 question, go for it.

18 A. You know, my office buys coke and Bounty  
19 paper towels, I have nothing to do with Procter &  
20 Gamble or Pepsi Co.

21 Q. Some of your current employees used to  
22 work for the defendants in this case, correct?

23 A. Yes.

24 One of my former employees used to work  
25 for Exxon Mobil but I have nothing to do with them

1 associated since you purchased a number of assets  
2 from them when you exited the company?

3 MR. DELGADO: Objection argumentative,  
4 vague and ambiguous.

5 A. I own a Chrysler but I don't consider  
6 myself associated somehow with Chrysler.

7 Q. Do you still pay the defendant companies  
8 or Epic Media any money as part of your asset  
9 purchase?

10 A. Yes.

11 Q. Do you agree if you're paying them money  
12 you certainly have an association with them?

13 A. I think what you are trying to imply was  
14 that I was a company associated with them. What I'm  
15 telling you is that not unlike my car example, if I  
16 pay a car loan to Chrysler, that doesn't mean I have  
17 any association with Chrysler Corporation.

18 Q. Do you have contracts with the  
19 defendants in the Weather Underground matter?

20 A. Yes.

21 Q. Don't you think that means that you in  
22 fact have an association with them on a contract  
23 level?

24 A. On an arm's length business transaction  
25 yes, not on a company corporation, no.

1 is a lawsuit against Chrysler and I own a Chrysler,  
2 does that make me associated with Chrysler's  
3 lawsuit, and the answer is absolutely no. I'm  
4 paying Chrysler and I'm use their product, when  
5 Chrysler gets sued because they had bad brakes, I'm  
6 not at fault. And the reality here is that I'm not  
7 connected to the defendants whatsoever other than  
8 the fact I purchased some assets from them and I'm  
9 paying them for those assets over time.

10 Q. You would concede that is a connection,  
11 would you?

12 A. A connection like any commercial  
13 connection, any product, we buy a connection of  
14 another company. I think you're stretching it to  
15 think that I have some kind of, you know, that  
16 corporate umbrella I'm under, I owe them stock or,  
17 there's nothing of that effect, there is a business  
18 transaction that happened.

19 Q. Would you care to rephrase your  
20 statement in your affidavit that you have no  
21 connection with them whatsoever --

22 A. Is there --

23 Q. -- based on your testimony today?

24 A. I think this was in response to this  
25 affidavit was in response to you claiming that I

1 worked for the defendant, the answer is no.

2 Q. We also claim that you were on assets  
3 that used to belong to them, that was part of what  
4 we arguing to court, we needed to discovery what the  
5 relationship was.

6 A. The answer to that is that I purchased  
7 assets, and I believe, I don't remember exactly, I  
8 certainly didn't read what the whole thing was, I  
9 leave that to my attorneys, I trust my attorneys on  
10 how they read that document. But the assertion was  
11 that somehow you were claiming that I am employed by  
12 the defendant which is, or that my company is  
13 associated with the defendants, and the answer to  
14 that is simply not the case.

15 And that's exactly what it is in this  
16 document, I'll use the commercial example over and  
17 over and over again today if we have to. The  
18 reality is companies buy products from other  
19 companies and I have no relationship whatsoever with  
20 Dunkin Donuts, I do buy a doughnut every once in a  
21 while, okay, fair?

22 Q. If you owned Dunkin, if you were an  
23 employee, president of Dunkin Donuts and Dunkin  
24 Donuts was being sued for tens of million of dollars  
25 which could potentially cause it severe economic

1 like, then yes.

2 Q. The next sentence says:

3 "My knowledge of the matters herein is  
4 based on personal knowledge and a review of  
5 business records, except where stated upon  
6 information and belief."

7 Do you see that statement?

8 A. No.

9 Q. The last sentence of paragraph one.

10 A. My knowledge, yes, okay.

11 Q. What business records did you personally  
12 review prior to giving this affidavit?

13 A. I can't remember.

14 Q. Is it possible that you didn't review  
15 any business records and it was again prepared by  
16 someone else?

17 A. I can't remember.

18 Q. Page three at the top right above  
19 paragraph four, you're talking about Navigation  
20 Catalyst's business and you refer to a portfolio of  
21 domain names of approximately 766,087 websites.

22 Would that be 766,087 domain names?

23 A. Probably.

24 Q. So you believe as of 2008 when you  
25 signed this affidavit your portfolio of domain names



1 listed as the registrant in the Whois  
2 database?

3 Q. Correct, that's correct, right?

4 A. Yes.

5 Q. That is to say you're telling the court  
6 here we provide our name Navigation Catalyst  
7 Systems, our address, our e-mail, our phone number,  
8 our fax number, to tell the world that we are the  
9 registrant of the domain name, we are not hiding,  
10 correct?

11 A. Yes.

12 Q. At so some point your company actually  
13 created and launched a proxy service, correct?

14 A. Correct.

15 Q. And that proxy service in fact would  
16 preclude the world from seeing that Navigation  
17 Catalyst Systems or a related entity was in fact the  
18 registrant of a domain name, correct?

19 A. That's pretty common practice, yes.

20 Q. And so in this affidavit it appears what  
21 you're saying is look at one of the reasons why you  
22 should find we are not a bad faith cybersquatting is  
23 because we tell, don't hide, we show the world we  
24 are the actual owner of the domain.

25 Is that fair?

1           A.     That's a fair question.

2           Q.     And after this Verizon lawsuit was  
3 concluded the company made the decision to use a  
4 proxy service so that people couldn't see that  
5 Navigation, Navigation Catalyst Systems was a  
6 registrant of the domain, correct?

7           A.     Correct.

8           Q.     The name of that company that your  
9 entity created was called Domain Name Proxy?

10          A.     Something like that, yes.

11          Q.     Okay.

12                 The effect of that would be that when  
13 someone were to look up a domain name that they were  
14 concerned about as a cybersquatter, they wouldn't be  
15 able to see your name NCS, your address, your phone  
16 number or that you will be able to see the  
17 information Domain Name Proxy and that related  
18 information?

19          A.     They would have all of that related  
20 information, yes, more or less it was yes.

21          Q.     Whose Vietnam Domain Privacy Services?

22          A.     That was a privacy service for a Vietnam  
23 registry, registrar.

24          Q.     Owned by Connexus?

25          A.     Correct. Well, I don't know if it was

1 Connexus, again I don't know, but that company.

2 Q. One of the Connexus companies?

3 A. Yes.

4 Q. Epic Media?

5 A. Yes.

6 Q. Okay.

7 So I understand that at one point you  
8 moved domain names under proxy at Domain Name Proxy,  
9 a company owned by one of the defendants, but it  
10 sounds like you also moved domain names to a proxy  
11 service in Vietnam called Vietnam Domain Privacy  
12 Services.

13 What I want to understand is did you  
14 move domains from Navigation Catalyst Systems under  
15 proxy at Domain Name Proxy and from Domain Name  
16 Proxy to Vietnam Privacy Services, or did you set  
17 part of the portfolio under one proxy and another  
18 part under the Vietnam proxy service?

19 A. That's a good question.

20 I don't know how the decision was made  
21 on how those names were actually, I think actually  
22 what happened was names that were registered in  
23 Vietnam were under a different proxy service name  
24 that were registered from Navigation, right?  
25 Navigation names I don't believe, are you asking me

1 if names at Basic Fusion had Vietnam proxy service  
2 to it?

3 Q. Yes.

4 A. The answer would be no, no, that I don't  
5 believe.

6 Q. Let me make sure you understand.

7 So if there was a domain name that was  
8 registered to Navigation Catalyst Systems --

9 A. Yes.

10 Q. -- if it went under proxy it went to  
11 Domain Name Proxy or could it have also gone to  
12 Vietnam proxy?

13 A. It could have gone to either. But I  
14 don't know exactly how you know, I don't know really  
15 know if we, it was either/or I believe. I don't  
16 know, I don't believe, we never had a name in  
17 Vietnam that was registered under whatever.

18 Q. Domain Proxy?

19 A. Yes.

20 Q. Then moved to Vietnam proxy?

21 A. Yes, that never happened I don't  
22 believe.

23 Q. What was the criteria by which a domain  
24 name --

25 A. I don't believe it was ever a criteria,

1 I think it was more of a timing issue, I think sort  
2 of timing stopped on one and moved on to another.

3 Q. And so at first you would have used  
4 Domain Name Proxy, later you would have developed  
5 Vietnam?

6 A. I believe so, that's how it worked.

7 Q. The Vietnam proxy would have been based  
8 on servers located in Vietnam?

9 A. I don't exactly know how, what do you  
10 mean servers?

11 Q. Well, what was the point of creating a  
12 company in Vietnam, offshore in Vietnam?

13 A. We have employees in Vietnam, we have 30  
14 employees there, and so part of what we did when we,  
15 you know, Net Blue probably had probably more than  
16 30 employees. And so a lot of our technical stuff  
17 moved out to Vietnam, and a lot of development moved  
18 to Vietnam, and that's just sort of how it evolved.

19 Q. Wasn't the point of moving domain names  
20 to Vietnam is to hide the registrant information,  
21 number one, under proxy, and number two, to get  
22 trademarks protected in domains offshore where they  
23 couldn't be seized or attached?

24 A. I think that in the environment that was  
25 going on at the time, it seemed like a decent idea

1 to have names that were domiciled in Vietnam, yes.

2 Q. Offshore?

3 A. Yes.

4 MR. SCHAEFER: I'm going to hand you  
5 what's been marked as P230A. It is actually  
6 P230A through P230C (XII).

7 (P5.230A, Domain name summaries and  
8 Whois histories, marked for identification,  
9 as of this date.)

10 Q. First off, are you familiar with the  
11 airline company called Ryan Air?

12 A. I believe its like a low cost airline in  
13 Europe.

14 Is that right?

15 Q. I think so.

16 I'll hand you this document and this is  
17 a domain name summary sheet and I'll represent on  
18 the first page that it shows that you, Navigation  
19 Catalyst Systems were the registrant of the domain  
20 listed.

21 Would you care to sell that domain?

22 A. R-Y-A-I-A-N-I-R.

23 THE COURT REPORTER: One more time.

24 Q. Dotcom?

25 A. Yes.

1 THE COURT REPORTER: Do it again.

2 R-Y-A-N --

3 THE WITNESS: R-Y-A-I-A-N-I-R.

4 Q. And you would agree that that appears to  
5 be a typographical variation of the airline company  
6 Ryan Air?

7 A. Could be.

8 Q. It according to this sheet anyway it was  
9 registered in or about December 21st, 2007?

10 A. Yes.

11 Q. And I'll represent to you that the  
12 domain history in your own portfolio database and is  
13 confirmed by Domain Tools shows it was listed as a  
14 Navigation Catalyst domain until November 2nd, 2009.  
15 And that would have meant this domain would have  
16 been supposedly scrubbed by your new heightened  
17 trademark scrubbing process --

18 A. You're much better than me.

19 THE COURT REPORTER: You're talking over  
20 him.

21 Was scrubbed over, your new high tech  
22 what?

23 Q. -- trademark scrubbing process was in  
24 2008, correct?

25 A. I think so, yes.

1 Q. So this domain based on the dates would  
2 have gone through your alleged enhanced trademark  
3 screening process?

4 A. Looks that way, yes.

5 Q. And then in November 2009 it was moved  
6 to the registrar or as listed as registrant to  
7 Domain Name Proxy, LLC, it was placed under proxy,  
8 you couldn't see Navigation Catalyst Systems as the  
9 owner, correct?

10 A. Let me look here, you're looking at  
11 actual domain history.

12 Q. Yes, this would be in the Domain Tools  
13 data.

14 A. Yes.

15 Q. Then, contrary to what you say, they  
16 never went from Navigation Catalyst Systems to  
17 Domain Name Proxy to Vietnam Domain Privacy  
18 Services, this domain information went from Domain  
19 Name Proxy Service to offshore Vietnam Domain  
20 Privacy Services November 2nd, 2011, and remains  
21 there to this day, or at least through February 2nd,  
22 2012 when this report was run.

23 MR. DELGADO: Objection, lacks  
24 foundation.

25 A. Yes, this obviously happened after my



1 exit from Firstlook so I can't tell you exactly how  
2 that happened.

3 Q. Okay.

4 But then in any event this domain which  
5 you agree appears similar to the airline company?

6 A. Yes.

7 Q. Supposedly would have been vetted before  
8 it was registered in December 21st, 2007 for  
9 trademark issues, correct?

10 A. Yes.

11 Q. Then it would have gone through this  
12 supposed enhanced vetting process in 2008 and  
13 decided to be kept, correct?

14 A. Yes.

15 Q. Then it would have been put into Domain  
16 Name Proxy where it, Navigation Catalyst Systems  
17 could be identified as registrant?

18 A. Yes.

19 Q. Then was moved offshore to Vietnam  
20 Domain Privacy Services where it appears to have  
21 lasted until February 2nd, 2012, the date of this  
22 report, fair?

23 A. That's fair to say.

24 Q. If we look at the second page which is  
25 Plaintiff's 5.230B.

1 A. What are you --

2 Q. The second page, this is information  
3 pulled from your database which shows the  
4 registration dates and also something called  
5 categorization. And that last box says that the  
6 domain that we are talking about in February 2009  
7 appears to have had key words associated with it  
8 which include cheap flights, cheap airline, airline  
9 tickets.

10 Would those have been the key words that  
11 would have been placed on the domain as part of your  
12 optimization process to drive more revenue?

13 A. This is a seeded key word so I don't  
14 quite know this. I'm not the terminology, there are  
15 some key words created that drive better words.  
16 Some key words use to display results but more or  
17 less those are the names, those are the key words  
18 associated with the domain name but I don't know  
19 exactly, there is different ways these key words are  
20 actually used technically.

21 Q. But in any event it appears that people  
22 in your company would have added cheap flights,  
23 cheap airlines and cheap tickets on to the lander  
24 page in order to offer the user a link they could  
25 click on which would then take them to another page

1 which showed ads, correct?

2 A. I don't know if exactly that's the way  
3 it worked, but more or less in that sort of general  
4 you know, characterization of it is relatively  
5 correct, although I can't tell you exactly how these  
6 key words were used together.

7 Q. And could you explain to the jury how it  
8 is that your categorization employees could identify  
9 this otherwise arbitrary nondictionary word of  
10 Ryaianir to the airline company but your trademark  
11 review people couldn't see the trademark problem?

12 A. Well, part of optimizing itself was a  
13 little a bit more involved than and lot more timely.  
14 And so what they would do is they do research on  
15 what they believe that domain name to be by doing  
16 searches.

17 Q. That's the Google search we were talking  
18 about earlier.

19 A. Right.

20 Q. So if you just simply type in the domain  
21 name as exactly appears here, Google will say did  
22 you mean and offer the real website of the airline  
23 company?

24 A. Yeah, that's part of the process, yes.

25 Q. And you realize that if you were serious

1 about actually vetting for trademarks you could have  
2 also done that same Google search to find  
3 quote/unquote a real website to see if there might  
4 be a trademark problem.

5 Would you agree with that?

6 A. I would agree with that.

7 Q. Are you familiar with the website  
8 PhotoBucket?

9 A. Yes.

10 MR. SCHAEFER: I'll hand you what has  
11 been marked Plaintiff's 5.65A(1) through  
12 P5.65D which is the same type of information.

13 (Plaintiff's 5.65A(1), Domain name  
14 summaries and Whois histories, marked for  
15 identification, as of this date.)

16 MR. SCHAEFER: Let's take a break, we  
17 have now a tape issue.

18 THE VIDEOGRAPHER: We are now going off  
19 the record at approximately 2:38 p.m., April  
20 12th, 2012. This concludes tape number  
21 three.

22 Off the record.

23 (Whereupon, an off-the-record discussion  
24 was held.)

25 THE VIDEOGRAPHER: This is the beginning

1 understood that there might be a change to the  
2 policy which would effect your domain tasting --

3 A. It seems so.

4 Q. -- efforts?

5 A. Potentially, yes.

6 Q. Then he says interestingly:

7 "Many of our domain names involve an  
8 incorrect spelling of some other domain  
9 names."

10 Was that true at the time did you have  
11 an understanding that many of your domain names  
12 involved an incorrect spelling of some other domain?

13 A. I think you have to qualify many,  
14 certainly we had domain names that were similar to  
15 what he's talking about, yes.

16 Q. Or not only similar but incorrect  
17 spellings of a real website of a real domain name?

18 A. In some cases, yes.

19 Q. Do you have any idea why he would have  
20 said many of our domain names or do you disagree  
21 with that?

22 MR. DELGADO: Objection, compound.

23 A. Yes, well I don't know what many, what  
24 he thinks is many but you know, certainly I don't  
25 know what the breakdown is, I don't really remember

1 recollection of the test, so its unlikely that I --

2 THE COURT REPORTER: So I what --

3 A. I have absolutely no recollection of  
4 this e-mail and I have absolutely no recollection of  
5 that test so --

6 Q. And in any event, you knew as of the  
7 date of this e-mail in 2008 that your company had  
8 registered a typo of a major discount airline,  
9 correct?

10 A. This RyanAir.com domain name?

11 Q. Yes.

12 A. It was in this e-mail, yes.

13 Q. And your response doesn't say anything  
14 about the fact that it may be a problem that you  
15 have this typo of a major discount airline, does it?

16 A. No.

17 Q. Do you recall if you did anything to  
18 divest yourself of that domain after seeing this  
19 e-mail where you have got a typo of a misspelled  
20 domain of a real website?

21 A. I have no idea.

22 Q. Let's take a look at the PhoitoBucket  
23 exhibit which is P5.65A(1), and it goes through  
24 5.65D, and so this is a domain name and its  
25 PhotoBucket except it adds an I after the first O,

1 P-H-O-I-T-O.

2 Is that correct?

3 A. Yes, that's what we are looking at.

4 Q. And would it surprise you looking at any  
5 keyboard it appears that the O and the I are right  
6 next to each other on the keyboard?

7 A. If you say so.

8 Q. And so given that it looks like, have  
9 you ever heard of the phrase sticky key?

10 A. No.

11 Q. Someone hits two keys at the same time  
12 by accident?

13 A. I'm sure that happens, of course.

14 Q. You by registering domains like this  
15 that are sticky keys of websites that do significant  
16 traffic like PhotoBucket, you have the opportunity  
17 to make money by showing ads and diverting that  
18 traffic, correct?

19 A. That's correct.

20 Q. So this domain name summary which I'll  
21 represent is a summary of the information to follow  
22 indicates that Navigation, Navigation Catalyst  
23 Systems the defendants registered in February 2005.

24 Do you see that on the summary sheet?

25 A. Yes.

1 Q. And then under other registrants it says  
2 that the domain was moved to Domain Name Proxy  
3 February 2010 to August 2011 which granted would  
4 have been just after you left, correct?

5 A. Excuse me, correct.

6 Q. Then they move to Vietnam Domain Privacy  
7 Service from August 2011 until this data was  
8 captured just last month.

9 Do you see that?

10 A. I see that.

11 Q. So, you acknowledge that this appears to  
12 be a typo of the real website PhotoBucket.com,  
13 correct?

14 A. Yes.

15 Q. In fact if we go to the next page which  
16 is P5.65A(2), that appears to be a parking page  
17 delivered by the Firstlook software?

18 A. It looks like our page.

19 Q. It says, Welcome to, it lists the  
20 literal spelling of the domain name with the extra  
21 I?

22 A. Mm-hmm.

23 Q. Then the first key word underneath it  
24 says in fact Photo Bucket.

25 MR. PATTI: We need an actual answer.



1 typos as exhibits. This next one Plaintiff's  
2 Exhibit 5.233A, which appears to be another  
3 typographical variation of Ryan Air, this one  
4 R-Y-A-N-E-A-I-R.com, registered by Navigation  
5 Catalyst Systems in August 2007, moved to  
6 Domain Name Proxy in 2009 and Vietnam Domain  
7 Privacy Service November 2011.

8 (P5.233A, Domain name summaries and  
9 Whois histories, marked for identification,  
10 as of this date.)

11 Q. Let's take a look at the second page  
12 again, this appears that this 2009 which would have  
13 been after the supposed vetting for trademarks seed  
14 key words would have been added by Firstlook  
15 personnel that would have included cheap airlines,  
16 cheap flights and discount air travel, correct?

17 A. Yes.

18 Q. Is this a domain that might be one that  
19 you purchased from Connexus Firstlook when you  
20 started your new company?

21 A. I have no idea.

22 Q. It is possible but you don't know?

23 A. I don't know.

24 Q. You do know some names that you do have  
25 under Vietnam Domain Privacy Service.

1 Q. We look at the search domain portfolio  
2 from the second page, it looks like the initial  
3 registration was 2004.

4 A. You're mistaking the cache date in the  
5 Domain Tools is the date you put in.

6 Q. Okay, that might be an error on our  
7 part.

8 In any event the data from your database  
9 appears that it was 2004, and again this would have  
10 gone to Domain Name Proxy, then to Vietnam Domain  
11 Privacy Service through last month with  
12 categorization of this one has got different  
13 categorizations.

14 So let's take a look at that, looks like  
15 December 9th user ID 105, role ID three, put key  
16 words in cheap hotel, discount air travel, bargain  
17 travel. But then December 11th a couple days later  
18 it was changed to cheap airfare, plane tickets  
19 online, book a flight.

20 Do you have any idea why within a couple  
21 of days the seed key words would have been changed?

22 A. No idea.

23 MR. SCHAEFER: Let's take look at a  
24 P5.45A(1) and all the way through P5.45D.  
25 This is a domain name and its

1 Hungryhowies.com except instead of an N it is  
2 an M, H-U-M-G-R-Y.

3 (P5.45A(1), Domain name summaries and  
4 Whois histories, marked for identification,  
5 as of this date.)

6 Q. You certainly recognize the brand Hungry  
7 Howie's, correct?

8 A. Never heard of it.

9 Q. You never heard of a pizza chain Hungry  
10 Howie's?

11 A. Never.

12 Q. It appears your categorization folks on  
13 page P5.45B under categorization, your employees  
14 actually added the seed key word pizza restaurant.

15 A. Looks that way.

16 Q. This would have been a domain  
17 registration in November 2007 by Navigation Catalyst  
18 Systems, correct?

19 A. Correct.

20 Q. I can't remember from this morning, is  
21 late 2007 a period where you say you were doing a  
22 better job at vetting domains for trademarks or  
23 hadn't already started that yet?

24 A. I can't really remember.

25 Q. This looks like a domain that you have

1 tasted. If you look at that data page that's your  
2 data, there is a tasting record which shows that it  
3 was tasted November 26th, 2007.

4 A. I'm not sure.

5 Q. I'll represent to you that's coming out  
6 of your tasting database and that that reflects that  
7 you would have tasted and then decided to keep this  
8 particular domain.

9 A. Okay, if you say so.

10 Q. Okay.

11 Given that your categorization people  
12 could identify this as a pizza restaurant, do you  
13 have any explanation as to how this could have  
14 gotten through your trademark vetting system?

15 A. No.

16 Q. In any event, if we go to the very last  
17 page, P5.45D, we see that HungryHowie's is in fact a  
18 registered trademark for restaurant services with a  
19 filing date of 1987.

20 Does that appear to be correct?

21 A. That appears to be correct, actually  
22 that's incorrect.

23 Q. What do you see?

24 A. Registration date is 1988.

25 Q. Let's see, I'm seeing a filing date of

1 1987.

2 A. Filing date of 1987 is correct.

3 Q. Okay.

4 Are you familiar with something in  
5 Detroit called Wayne State?

6 A. The university, that guy was crazy and  
7 shot a lot of kids.

8 Q. You got it.

9 A. I think so, yes.

10 MR. SCHAEFER: So let me hand you P5.91A  
11 which is a domain and its W-A-N-Y-E-  
12 S-T-A-T-E.com, WanyeState.com.

13 (P5.91A, Domain name summaries and Whois  
14 histories, marked for identification, as of  
15 this date.)

16 Q. It appears to have been registered in  
17 January 2008, and again if we look at the  
18 categorization even though perhaps you can make the  
19 argument that that could be lots of different  
20 things, right, Wanyestate.com, it appears your  
21 categorization people were able to identify several  
22 key words seeds, Detroit University Information,  
23 Detroit College Courses and Detroit College Events.

24 Do you see that?

25 A. Yes, I see that.

1 Q. And so again, any idea how your  
2 categorization people could see how to optimize this  
3 domain towards the university and your trademark  
4 vetting people couldn't identify this as a  
5 trademark?

6 A. I'm not sure.

7 Q. If we go to the last page 5.91D, we see  
8 that Wayne State University is in fact a registered  
9 trademark since 1956, filed in 1990, correct?

10 MR. PATTI: 1990?

11 MR. SCHAEFER: Filed December 13th,  
12 1990, second line from the bottom off the  
13 right.

14 A. Filed December 13th, 1990, registered  
15 November 5th, 1991, yes.

16 Q. Again this is a domain that appears to  
17 have been put into proxy and moved offshore to  
18 Vietnam Domain Privacy Service, correct, at least  
19 from the summary page which the Domain Tools history  
20 will back up.

21 A. It looks that way.

22 Q. Again this domain might be under  
23 Flipside, we just don't know sitting here today?

24 A. I have no idea.

25 Q. How much of the domain portfolio from

1 Navigation Catalyst Systems Firstlook Connexus did  
2 you purchase, approximately how many domains?

3 A. I have no idea on the actual number of  
4 domains.

5 Q. Is it hundreds, thousands, tens of  
6 thousands, hundreds of thousands?

7 A. Its hundreds of thousands.

8 Q. Was it to your knowledge most of the  
9 Navigation Catalyst Systems portfolio?

10 A. No, most meaning more than 50 percent?

11 Q. More than 50 percent.

12 A. Slightly over 50 percent is currently  
13 owned.

14 Q. And I take it that you paid, you have  
15 some sort of arrangement with them where you're  
16 paying them for that portfolio?

17 A. No, not just for the portfolio.

18 Q. Let me ask you --

19 A. The portfolio is a fraction of my  
20 business, a tiny portion.

21 Q. Let's me ask you this.

22 The portfolio domain names that you now  
23 have that used to be listed as Navigation Catalyst  
24 Systems --

25 A. Yes.

1 Q. -- did you pay for those domains or were  
2 they simply transferred to you?

3 A. I paid for them.

4 Q. Did you license them or --

5 A. No.

6 Q. -- or purchase them outright?

7 A. Purchased them.

8 Q. Okay.

9 And how much did you allocate to the  
10 purchase of the domain portfolio as part of that?

11 A. Well, the domain, so the domains were at  
12 the time of the purchase probably to be honest, we  
13 never really looked at it that way, I mean, I don't,  
14 we didn't value it that way, I didn't value it that  
15 way.

16 Q. How did you value the assets that you  
17 purchased, was it just bulk price, did you try and  
18 categorize the assets by category, what was the  
19 general model?

20 A. No, it was based on a multiple of the  
21 business.

22 Q. Okay.

23 A multiple of the total business?

24 A. Right.

25 Q. For instance, domain names monetization?



1           A.    No, the domain name monetization  
2           portion, this is a tiny fraction of the business,  
3           maybe 10 percent.

4           Q.    What beyond the domain portfolio did you  
5           buy from Firstlook? I understand that you have new  
6           things that you're doing, so just for now I want to  
7           focus in on what did you buy from Firstlook  
8           Connexus.

9           A.    Sure, I bought software as I mentioned.

10          Q.    That would be the Firstlook software?

11          A.    Some of it, yes.

12          Q.    Some of it?

13          A.    Yes.

14                I bought furniture, chairs, computers,  
15           desks, printers, I bought contracts, so customer  
16           contracts that were assigned to me, I bought some  
17           domain names, I bought, that's it.

18          Q.    So part of what you bought was the kind  
19           of portfolio domain name I take it were some special  
20           domain names separate from the portfolio  
21           Flipside.com that you purchased as well?

22          A.    Yes, there was, they were in the  
23           portfolio domain name.

24          Q.    You were not monetizing those as lander  
25           pages per se?

1           A.    Yes, I am, with the exception of  
2    Flipside.

3           Q.    So if I type Wunderground.Flipside.com,  
4    I'll get a lander page with advertising on it,  
5    correct?

6           A.    Wunderground.Flipside.com, no, you will  
7    not.

8           Q.    Did they take a security interest as  
9    they being your former companies as part of this  
10   transaction?

11          A.    Did they take a security interest?

12          Q.    Did they give you a loan or finance the  
13   transaction?

14          A.    A loan, they financed the transaction.

15          Q.    So you're making payments to them?

16          A.    Yes.

17          Q.    What was the total purchase price of the  
18   transaction with Firstlook Connexus?

19          A.    Total purchase price without interest,  
20   of course interest will be added was \$8 million.

21          Q.    And did you put some money down or it  
22   was all financed?

23          A.    Some of my own money was spent to start,  
24   finance of the business, it wasn't paid to them.

25          Q.    Okay.

1           So you're paying them monthly,  
2 quarterly, annually?

3           A.    Quarterly.

4           Q.    Quarterly.

5                   And over what term do you owe them  
6 money?

7           A.    I believe the term goes through 2015,  
8 what year is it now, 2012, to 2015, I believe.

9           Q.    And there is interest on the financing?

10          A.    Of course, yes.

11          Q.    And they took a security interest in the  
12 domains and other assets that were transferred?

13          A.    I think they have a security interest in  
14 the company in case I default of some sort, yes. I  
15 don't really know how the security interest works  
16 technically, but I remember that term coming up  
17 during the negotiation.

18          Q.    Kind of an all asset?

19          A.    Excuse me?

20          Q.    All asset security interest where you  
21 have an asset and they a security interest in it?

22          A.    I couldn't tell you.

23          Q.    Who was the transaction with, was it  
24 with Epic Media Group, Connexus, Firstlook, all of  
25 those companies, some other companies?

1           A.     I negotiated the agreement with Dave  
2 Graff.

3           Q.     Do you recall on the contract who the  
4 other contracting party was, was it Epic Media, was  
5 it Firstlook, was it Connexus, was it all of them?

6           A.     To be honest with you, I don't really  
7 know.

8           Q.     Who owned the domain portfolio at the  
9 time that you purchased it, which company, do you  
10 know?

11          A.     I'm not sure.

12                   There was a period of time where I  
13 wasn't employed by the company and when I purchased  
14 the assets, so I don't know.

15          Q.     Have you received any trademark  
16 infringement letters or UDR proceeding to the  
17 portfolio since you took the portfolio?

18          A.     Have I, no.

19          Q.     Your company Flipside?

20          A.     Flipside, LLC has not, no.

21          Q.     Has Vietnam Proxy Service on your behalf  
22 received those kind of letters, threat letters,  
23 UDRPs, et cetera?

24          A.     I believe so.

25          Q.     What assets to your knowledge that used

1 for speculation and lacks foundation.

2 A. I believe he works for Epic Media.

3 Q. Give me a second.

4 When was the last time you spoke to  
5 David Graff?

6 A. Last time I spoke to him was two days  
7 ago.

8 Q. Okay.

9 And did you speak to him in preparation  
10 for this deposition?

11 A. No.

12 Q. With regard to, you did hire an attorney  
13 to be with you here with you today for you  
14 personally, correct?

15 A. Correct.

16 Q. Whose paying for that attorney, you or  
17 Epic Media, Connexus, et cetera?

18 A. The latter.

19 Q. You're paying for your own attorney or  
20 your company is?

21 A. I said the latter.

22 Q. Epic Media is paying for your attorney?

23 A. Yes.

24 Q. Again, that doesn't sound like no  
25 relationship whatsoever with Epic Media, Connexus

1 companies.

2 When you represented to the court that  
3 there was no relationship whatsoever between your  
4 new company and Epic Media, had Epic Media, Connexus  
5 agreed to pay your attorneys fees at that point?

6 A. No.

7 MR. SCHAEFER: Let's take a five-minute  
8 break.

9 THE VIDEOGRAPHER: We are now going off  
10 the record at approximately 3:49 p.m., April  
11 12th, 2012.

12 (Whereupon, an off-the-record discussion  
13 was held.)

14 THE VIDEOGRAPHER: This is the  
15 continuation of tape number four of the  
16 deposition of Mr. Seth Jacoby. We are now  
17 going on the record at approximately 4:04  
18 p.m., April 12th, 2012.

19 THE WITNESS: If I can correct my last  
20 answer, I think I misunderstood.

21 Q. Go ahead.

22 A. The arrangement for my attorneys fees in  
23 relation to anything related to this matter was made  
24 long ago, you know, last summer. So I thought you  
25 had mentioned, asked was it made like now, the

1 answer is no, it was made, you know, last July.

2 Q. Okay.

3 So July 2011 as part of your departure?

4 A. It was if I have to get roped back into  
5 this thing you guys are going to pay, you have to  
6 pay for my attorney.

7 Q. Being who?

8 A. Epic.

9 Q. Epic Media Group?

10 A. Yes.

11 Q. Connexus, Firstlook, correct?

12 A. Yes.

13 Q. The conversation that you did have with  
14 David Graff a couple days ago, first off he's not  
15 your attorney, is he?

16 A. No.

17 Q. What did you talk about with David  
18 Graff?

19 A. Cape Cod --

20 THE VIDEOGRAPHER: Can you raise your  
21 mike up.

22 A. -- Nantucket, and he asked me how my  
23 family was. I asked him how his family was, and  
24 then he asked for a time, I owe him a quarterly  
25 payment of course, we are at that quarterly time so

1 he wanted to know, you know, when he could show me,  
2 when he would see the payment.

3 Q. Were you late on the quarterly payment?

4 A. No, payment is not due until the end of  
5 this month.

6 Q. What is the quarterly payment that you  
7 pay?

8 A. Depends what I can afford.

9 Q. And did you put any money down in the  
10 transaction or was the whole thing financed by  
11 Connexus EMG?

12 A. You had asked that previously, the  
13 answer is I didn't pay any money down to them but I  
14 helped but I personally financed the startup of the  
15 business.

16 Q. Meaning that you had to sign a rental  
17 contract for space?

18 A. Yes, that kind of stuff. I needed to  
19 pay, I had to get things going, I had to, you know,  
20 general sort of startup stuff, you know, that I  
21 self-financed that.

22 Q. And okay.

23 Just ballpark in general how much by way  
24 of computers did you purchase from Connexus?

25 A. How many computers?



1 Q. Yes.

2 A. I think I probably purchased actually  
3 its a big number, I probably purchased maybe 40  
4 computers.

5 Q. What kind of computers?

6 A. Personal computers?

7 Q. Well, that's a good question, let's  
8 start with the big stuff, servers, you know,  
9 nonpersonal computers?

10 A. I couldn't say the number there, but --

11 Q. A lot?

12 A. A lot, what do you consider a lot, I  
13 don't know to be honest with you.

14 Q. Did you end up buying April C?

15 A. That's did I buy the registrar?

16 Q. Yes.

17 A. Yes.

18 Q. April C is a company which is  
19 incorporated out of where?

20 A. Vietnam.

21 Q. It took over the function that had  
22 previously been performed by Basic Fusion, correct?

23 A. Correct.

24 Q. April C as a registrar is ICANN  
25 accredited?

1 privacy service that lists out as Vietnam Privacy  
2 Service?

3 A. Something like that.

4 Q. Who are the board members of your  
5 company Flipside?

6 A. None.

7 Q. Did anyone else besides yourself put  
8 money into the startup of Flipside?

9 A. No, it was my wife of course, but --

10 Q. Okay.

11 So the financing came all from the  
12 Connexus Epic Media side. Any miscellaneous things  
13 that needed to be purchased were purchased by you?

14 A. Yes.

15 Q. Approximately how much money did you  
16 have to put into to start up the company, more than  
17 100,000, less than 100,000?

18 A. Less than 100,000.

19 Q. Less than 10,000?

20 A. No, more than 10,000.

21 Q. Less than 20,000?

22 A. Probably in that ballpark.

23 Q. And what is the address of your company  
24 Flipside?

25 A. Do you mean where we actually work or

1 Flipside or ultimately are you responsible for it?

2 A. Ultimately I'm responsible for it.

3 Q. Whose actually paying the Verisign fees,  
4 is this Epic Media Connexus?

5 A. No, April C is.

6 Q. Is the money that April C is using to  
7 pay Verisign coming out of its own bank accounts or  
8 does it have some sort of arrangement, credit  
9 arrangement or otherwise where someone sells, is  
10 footing that bill?

11 A. No, its coming from me, no one else is  
12 footing that bill.

13 Q. So the revenue that you have coming in  
14 is enough to renew domains and buy new domains, et  
15 cetera?

16 A. We don't buy new domains really, but as  
17 I told you before the domain business is a tiny  
18 portion of the overall size of revenue of the  
19 business.

20 Q. What month and year did your, Flipside  
21 end up taking control or becoming the registrant of  
22 the portfolio that used to belong to Connexus?

23 A. Sometime in August 2011.

24 Q. Did it happen all at once or did it have  
25 to phase over time?

1 A. No, it appeared all at once.

2 Q. Are you familiar with a company called  
3 Rook Media?

4 A. Yes.

5 Q. What is Rook Media?

6 A. They are a domain parking company.

7 Q. Are you or your company affiliated with  
8 Rook Media in any way?

9 A. No, we will, well, we have, we are  
10 their, we are their customer.

11 Q. Meaning you park some of your domains on  
12 their software platform?

13 A. Just recently, yes.

14 Q. And so is it true some of your domains  
15 which used to be Navigation Catalyst Systems domains  
16 are parked on the Firstlook software and some are  
17 parked on the Rook Media software?

18 A. Yes.

19 Q. And what is the attraction to the Rook  
20 Media software that you're trying them out for  
21 parking?

22 MR. DELGADO: Can I ask what this has to  
23 do with this case? I mean I understand you  
24 had some questions about his business to go  
25 to bias, but now you're asking about Rook

1 A. No.

2 Q. In general though you're making in  
3 excess of \$10 million annually off of this business  
4 model?

5 A. No.

6 Q. Or you were at one time?

7 A. At one time, possibly.

8 Q. There was a discussion about affidavits  
9 and whether or not they were accurate. You  
10 testified that initially that you thought that the  
11 agreement was recent that the defendants would pay  
12 your attorneys fees. And then you came back after  
13 the break and changed that and said you know what, I  
14 think that was part of my exit deal.

15 A. Not think, I know.

16 Q. You know it was part of your exit deal  
17 approximately 10 months ago or so, July 2011?

18 A. Correct.

19 Q. But in your affidavit that you submitted  
20 in New York to try and avoid this deposition, your  
21 affidavit says:

22 "Wherefore it is respectfully requested  
23 that the application seeking to quash the  
24 subpoena and an issuance of a protective  
25 order be granted, in judgment together with

1 movement's attorneys fees be entered against  
2 Weather Underground."

3 The reality is you're the movement, you  
4 didn't have any attorneys fees, did you?

5 A. That's correct.

6 MR. GREENE: Objection.

7 Go ahead.

8 Q. Were you aware your counsel in court had  
9 represented to the judge in New York in order to  
10 avoid this deposition that you had to retain counsel  
11 obviously and pay for that to come in and try and  
12 quash this, that you had to pay attorneys fees?

13 A. I'm unaware of what went on in court.

14 Q. With regard to these other companies  
15 that were identified, these other parking companies  
16 that counsel went through with you and I don't  
17 remember all of them, Skenzo and some of these  
18 familiar companies, do you know if Skenzo is  
19 registering and parking typographical variations of  
20 registered trademarks?

21 A. I have no idea what Skenzo is doing.

22 Q. What about those other companies, do you  
23 know if they're using their parking software to  
24 display ads on cybersquatting domains?

25 A. I couldn't speak to their, you're

1 STATE OF NEW YORK )  
2 COUNTY OF NEW YORK ) ss:  
3

4 I, JEREMY FRANK, do hereby certify:  
5

6 That I am a duly qualified Certified Shorthand  
7 Reporter and Notary Public in and for the State of New  
8 York 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.

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

6  
7 IN WITNESS WHEREOF, I have subscribed my name  
8 this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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11 \_\_\_\_\_  
12 JEREMY FRANK, MPM  
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