

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; BASIC FUSION, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; and FIRSTLOOK, INC.,
a Delaware corporation,

Defendants.

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DECLARATION OF WILLIAM A. DELGADO

I, William A. Delgado, declare as follows:

1. I am an attorney duly licensed to practice in the State of California and have been admitted to this Court for purposes of this case. I make this declaration in support of Defendant Navigation Catalyst Systems, Inc.'s Motion for Protective Order. Except where otherwise indicated, I have personal knowledge of the facts stated herein and, if called as a witness, I could competently testify hereto.

2. I attended the scheduling conference in this matter on January 11, 2010. There, Plaintiff took the position that third party discovery is required because one of the statutory factors that can be evidence of "bad faith" for purposes of the ACPA is the registration of multiple domain names that are identical or confusingly similar to the mark of others, citing 15 U.S.C. § 1125(d)(1)(B)(i)(VIII).

3. At the time, I disagreed with the application of the Statutory Factors in a case such as this one where the domain name registration was the result of an automated computer system.

4. Notwithstanding Defendant's position as to the non-applicability of the Statutory Factors, on January 14, 2010, I reached out to Plaintiff's counsel, Enrico Schaefer, to offer a plan by which Defendant could provide the information Plaintiff sought for purposes of Statutory Factor 8 (either because it was in NCS's possession, custody, and/or control or easily stipulated to) without having Plaintiff send out a set of burdensome subpoenas to third parties. A true and correct copy of my letter to Mr. Schaefer is attached as Exhibit A. I received no reply whatsoever.

5. On February 1, 2010, Plaintiff served Defendant with a Notice of Intent to Serve Subpoena for six different companies: Facebook, Yahoo! (Flickr), Netflix, Google (Orkut), Wikimedia Foundation (Wikipedia), and YouTube. True and correct copies of each Notice of Intent to Serve Subpoena are attached as Exhibits B-G, respectively.

6. After receiving the Notices of Intent to Serve Subpoena, I informed Mr. Schaefer that Defendant would bring a motion for protective order. A true and correct copy of my e-mail to Mr. Schaefer is attached as Exhibit H. Mr. Schaefer and I met and conferred regarding the motion on February 3, 2010, but no agreement was reached.

7. The United States Patent and Trademark Office contains a publicly accessible database of trademarks that have been applied for and registered called TESS (Trademark Electronic Search System) which can be accessed from the Office's website at <http://www.uspto.gov>.

8. Plaintiff's Request for Production No. 46 in its First Set of Requests for Production reads: "Produce all Documents reflecting authorization or permission from a third party trademark or service mark owner to NCS register a domain name incorporating the third party trademark or service mark, or anything confusingly similar thereto."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of February 2010 at Los Angeles, California.

/s/William A. Delgado

William A. Delgado

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, 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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