

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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**MOTION FOR AN ORDER COMPELLING RESPONSES TO PLAINTIFF'S FIRST
REQUEST FOR PRODUCTION AND INTERROGATORIES TO DEFENDANT**

NOW COMES Plaintiff, The Weather Underground, Inc. ("Plaintiff"), by and through its primary counsel, Traverse Legal, PLC, and pursuant to F.R.C.P. 37(a)(3)(B), (4) and (5), states and follows for its Motion for Sanctions as follows:

1. Plaintiff served Defendant Navigation Catalyst Systems (NCS) with its First Interrogatories and First Request for Production on January 19, 2010.

2. On February 15, 2010, the day before the discovery response were due, counsel for NCS contacted counsel for Plaintiff requesting a two week extension to respond to discovery. (*See Exhibit C attached to the Brief in support of this Motion.*) Fearing that this was just a delay tactic and that two weeks would simply result in boilerplate responses, Counsel for Plaintiff was hesitant to grant a two week extension ("As always, my concerns revolve around whether I am granting an extension for a legitimate purpose. As I am sure has happened to you, counsel sometimes asks for extensions then provides boilerplate objects which begs the question of why an extension was needed in the first place."). *Id.* "Counsel for NCS indicated:

If, as a matter of practice, you do not provide extensions of time, are you not maximizing the chances you will receive the very same boilerplate objections you are trying to avoid? It seems like you are setting up a self-fulfilling prophecy so that, when you do get those objections, you can feel relieved that you did not provide the extension. *Id.*

3. Upon assurances from counsel for NCS that NCS had been working on responses during the initial 30 days, and that an extension was necessary to prepare good faith disclosures, a last minute extension was granted Discovery until February 26, 2010 on the express condition that the documents would be produced on that date as well. *Id.*

4. Directly contrary to representation from counsel, NCS provided boilerplate responses to discovery on February 26, listing virtually every known objection to every request and producing virtually none of the key and most relevant documents requested. (See *Exhibits D and E attached to the Brief in support of this Motion.*) Nine documents were produced with a total file size of less than 10 Megabytes.

5. We are now three months into discovery, with expert reports due on May 17, 2010, and we have virtually no information from NCS concerning the relevant issues in this case. More importantly, NCS has already exhibited an inclination and pattern to hide relevant documents and engage in the kind of discovery gamesmanship specifically designed for obstruction, not the least of which is hiding documents in sister companies operating out of the same office space with shared employees and the hiding of clear cybersquatted domain names in privacy protect services for the specific purpose of hiding NCS identity.

6. Counsel for Plaintiff sent two letters documenting the inadequacy of NCS's clearly bad faith responses to discovery on May 15, 2010. (See *Exhibits F and G attached to the Brief in support of this Motion.*) Counsel met and conferred by phone on Monday, March 23, 2010, resolving a few relatively minor issues such as an indication from NCS that it might agree to state in its Responses that the objections lodged will not preclude production where production is otherwise provided. Because of the serious discovery issues raised and the lack of good faith in the responses, as well as the short timeframes for completion of discovery, Plaintiff has requested that NCS stipulate to a discovery order compelling supplemental responses and production. While counsel for

NCS agreed to revisit some responses, NCS refuses to stipulate to a discovery order and has left most discovery issues unresolved, thus necessitating this motion.

7. The substantive issues related to this Motion to Compel are included in Exhibits F and G, as well as the Brief in support of this Motion.

8. On January 19, 2010, Plaintiffs sent a Notice of Request to Allow Inspection of the offices at 2141 Rosecrans Avenue, Suite 2020, El Segundo, California. NCS made it clear that it would not allow such an inspection. (*See Exhibit B attached to the Brief in Support of this Motion.*)

9. F.R.C.P. 37(a)(1)-(4) provides that a party may seek an order compelling answers, designation, production and inspection, as well as other appropriate sanctions for sanctions for incomplete answers or responses to discovery. F.R.C.P. 26(b) governs to scope and limits of discovery.

(1) Scope in General.

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, Plaintiff requests an Order:

- a. Requiring NCS to supplement its Discovery Responses, deleting objections where unwarranted, and providing responses and documents as requested, within seven (7) days, and

- b. Assess such other sanction or penalty as the Court deems appropriate including attorney fees.

Respectfully submitted this 26th day of March, 2010.

/s/Enrico Schaefer

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**BRIEF IN SUPPORT OF MOTION FOR AN ORDER COMPELLING PROPERTY
INSPECTION, RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
AND INTERROGATORIES TO DEFENDANT**

Concise Statement of Issue Presented

Whether this Court should issue an order compelling discovery against Defendant Navigation Catalyst Systems, Inc. (“NCS”) regarding Plaintiff’s Request for Inspection of NCS Business Operations at 2141 Rosecrans Avenue, Suite 2020, El Segundo, California, and NCS’s Responses to Plaintiff’s First Request for Production and First Interrogatories.

ARGUMENT

A. Procedural History.

This case was filed on February 27, 2009. The parties could not agree to a proposed scheduling order in light of NCS requesting 12 months of discovery. The Court rejected Defendant NCS’s request and provided the following scheduling dates (Docket #31):

Status Conference	May 12, 2010 at 2:30 p.m.
Discovery Cutoff	July 12, 2010

Plaintiff served NCS a request for property inspection on January 19, 2010. (*Exhibit A*: Request to Inspect Premises and Objections), the same address as it allegedly has not employees, and shared by its sister companies Firstlook, Basic Fusion and Connexus. NCS refused to make the property available for inspection. (*Exhibit B*; NCS’s Objection to Inspection). Plaintiff served Defendant NCS with its First Interrogatories and First Request for Production on January 14, 2010. On February 15, 2010, the day before the discovery responses were due, counsel for NCS contacted counsel for Plaintiff requesting a two week extension to respond to discovery. (*Exhibit C*; Email from Delgado and Responses Thereto). Fearing that this was just a delay

tactic, and having already been forced to seek court intervention for adequate initial disclosures (Docket #29) and that two weeks would simply result in boilerplate responses, Counsel for Plaintiff was hesitant to grant a two week extension (“As always, my concerns revolve around whether I am granting an extension for a legitimate purpose. As I am sure has happened to you, counsel sometimes asks for extensions then provides boilerplate objects which begs the question of why an extension was needed in the first place.”). *Id.* “Counsel for NCS indicated:

If, as a matter of practice, you do not provide extensions of time, are you not maximizing the chances you will receive the very same boilerplate objections you are trying to avoid? It seems like you are setting up a self-fulfilling prophecy so that, when you do get those objections, you can feel relieved that you did not provide the extension. *Id.*

Upon assurances from counsel for NCS that NCS had been working on responses during the initial 30 days, and that an extension was necessary to prepare good faith disclosures, a last minute extension was granted until February 26, 2010 on the express condition that the documents would be produced on that date as well. *Id.*

Directly contrary to representation from counsel, NCS provided boilerplate responses to discovery on February 26, listing virtually every known objection to every request and producing 9 total documents. (*Exhibit D*, NCS Response to Plaintiff's First Request for Production) (*Exhibit E*, NCS Response to Plaintiff's First Interrogatories). NCS essentially objected to the production of virtually all relevant documents in this case, without a good faith basis for doing so.

NCS appears to be actively concealing documents through its sister companies, all located in the same office space, sharing the same employees and each performing essential activities to the mass cybersquatting model which is at issue in this case. It is

clear that NCS does not intend on voluntarily producing the documents requested, and, even more troubling, intends to play discovery games such as arguing that it has ‘no employees’ and hiding documents in its sister companies First Look, Basic Fusion and Connexus.

B. Incorporation of Letters Dated March 15, 2010, Specifically Identifying Inadequate Responses.

Plaintiff hereby incorporates by reference the specific issues on specific discovery requests as set forth in Exhibits F and G attached. Plaintiff requests the opportunity to go through the specific discovery requests at the hearing on this motion, and will cover the broader points herein.

C. NCS Is Hiding Documents In Its Sister Companies First Look, Basic Fusion and Connexus.

Defendant NCS objected to Plaintiff’s definition of NCS: “The words ‘You’, ‘Your’, ‘NCS’ and ‘Defendant’ as used herein refer to Navigation Catalyst Systems, Inc and any and all parent companies, subsidiaries, divisions, and each of those Company’s officers, directors, employees, agents, contract consultants, attorneys and affiliates.” Defendant responded as follows: “NCS objects to the definition of ‘You,’ ‘Your,’ ‘NCS,’ and ‘Defendant’ as overbroad. NCS shall interpret these words to refer solely to NCS.” (Emphasis added).

Rule 34 of the Federal Rules of Civil Procedure requires a party to produce documents in its possession, custody, or control. When a party from whom discovery is sought is a corporation, it is often the case that documents requested are in the actual physical possession of an affiliated corporation which is not named as a party. Courts have consistently held that a party receiving discovery has an obligation to produce

documents from parent, affiliated and related entities. See *Richardson-Merrell, Inc., In re*, 97 F.R.D. 481, 36 Fed. R. Serv. 2d 277, 36 Fed. R. Serv. 2d 278 (S.D. Ohio 1983). (A discoveree cannot avoid a proper discovery request by utilizing record keeping which conceals rather than discloses. Furthermore, the non-party status of wholly-owned subsidiaries does not shield discoverable documents in their possession from production. Plaintiffs may obtain discovery of documents in the care, custody or control of subsidiaries. This applies to both domestic and foreign subsidiaries). *Japan Halon Co., Ltd. v. Great Lakes Chemical Corp.*, 155 F.R.D. 626, 145 A.L.R. Fed 749 (N.D. Ind. 1993), related reference, 852 F. Supp. 673 (N.D. Ind. 1993) (the court held that the relationship between the plaintiff and its two Japanese parent corporations was sufficiently close to justify enforcing the defendant's discovery request for documents in the physical possession of the parent corporations). 145 A.L.R. Fed. 527 analyzes instances where non-party production is required by a party and includes instances where the Party and non-party are related companies, have parent/subsidiary relationship or when the party otherwise has the ability to obtain the documents.

When a corporate party is requested to produce documents or materials which happen to be in the possession of a corporate affiliate which is not a party to the action, the corporate party's control of the requested materials typically becomes the focal issue. In many of the reported cases involving this issue, control has been deemed to exist because of a close relationship between the corporate party and its non-party affiliate. Some courts have described this close relationship as one that is manifested in the context of the subject matter of the litigation. Others have described it as manifested by corporate structure, including overlapping directors, officers, or employees. 145 A.L.R. Fed. 527, § 2[a] Summary and comment.

For instance, all of the reported cases involving documents in possession of a parent corporation which is not a party to the action have held that such documents were

subject to production under Rule 34 of the Federal Rules of Civil Procedure. In this case, the indicia of control could not be more dramatic. NCS is part of a group of companies which registers, traffics in and monetizes one of the largest portfolio of domains names in the world. They all share office space, employees and execute different elements of the same business plan. The Companies act as one in dealing with trademark issues as evidenced by the threat letter responses on behalf of NCS on Connexus letterhead, emails responding to threat letters to NCS by Firstlook employees, all of which use the words “we” and “us” and “ours” as though the companies are one entity. Further, the affidavit of Seth Jacoby (Exhibit H) essentially admits that the group of companies are in this together.

At various points in time, NCS was the registrant of over one-half a million domain names, many of which infringe third party trademarks, including the ones at issue in this case. The NCS business model requires scores of workers, tremendous capital (the registration of 500,000 domain names at the approximately wholesale cost of approximately \$6 per domain per year is \$3 million dollars a year in registration costs alone) and high-level strategic planning. Issues such as ICANN rules changes (such as the elimination of domain tasting, a practice of registering a domain, ‘tasting it’ for traffic during the 5 day Add Grace Period (AGP), and only keeping the domain name if it is profitable), and changes in Yahoo’s platform and fee structure for the advertisements delivered on NCS’s domains are always in flux and can be extremely challenging for the industry as a whole.

Yet, NCS has already stated in open court that it has no employees (technically they are paid by Connexus). Now, NCS refuses to provide documents from Connexus,

FirstLook and Basic Fusion on the contrived basis that those documents are apparently held in file cabinets or on servers allocated to First Look, Basic Fusion and/or Connexus, which are all companies owned by the same people and share office space with NCS. (NCS, Connexus, Firstlook and Basic Fusion will be collectively referred to as “NCS Group of Companies”).

a. The NCS Group of Companies was set up in anticipation of trademark lawsuits such as this specifically to segment out revenue, documents and obstruct discovery.

Acceding to affidavits previously filed by the NCS Group of Companies in defense of similar cybersquatting lawsuits, Firstlook, Inc. a wholly-owned subsidiary of Connexus Corporation. Firstlook, Inc. is the parent corporation of both Defendant NCS and Basic Fusion. Upon information and belief, Connexus provides payroll for NCS employees, contractors and administrative staff, thereby allowing NCS to narrowly define ‘employees’ to people paid directly by NCS (apparently none). Firstlook holds the software which delivers the advertisement on hundreds of thousands of NCS typo-domains. Basic Fusion acts as the registrar for NCS to register domains at wholesale cost. According to ICANN rules, someone must be listed as the domain ‘owner’ or ‘registrant’ for all registered domains. NCS has been listed as the ‘registrant’ of hundreds of thousands of typo domains, including the ones at issue in this case and tens or hundreds of thousands of other typos of registered trademarks.

Each member of the NCS Group of Companies performs functions on behalf of each other as part of their overall business plan of registering and monetizing typographical variations of high traffic domains. All of these companies share office space and employees at NCS’s primary office location in El Segundo, California.

(*Exhibit I*, Corporate documents of each entity). Seth Jacoby is the President of Firstlook. Mr. Jacoby previously served in various capacities with Connexus Corporation. In his positions with Firstlook, Inc. and Connexus, he has been responsible for various aspects of Connexus, Basic Fusion, FirstLook and NCS's online business, including the business associated with the domain names registered by NCS. When NCS and Basic Fusion were sued by Verizon for Cybersquatting in 2009, it was Seth Jacoby (supposedly employed by Connexus and First Look) who provided sworn testimony on behalf of NCS and Basic Fusion as the person most knowledgeable concerning NCS and Basic Fusion's registration of cybersquatted domain names. He swore in his affidavit that he reviewed the business records of those companies in order to provide sworn testimony, clearly establishing access to those companies' records.

Paragraph 3 of his affidavit states:

“Navigation also offers fully managed and customized domain navigation solutions to registrars, registrants, and resellers. Basic Fusion currently has a number of third party customers with a total in excess of 100,000 domain names under registration. Navigation owns, or represents owners, of website domains on which it provides information to consumers and advertising revenue to advertisers, as well as Internet directory and search capabilities in numbers different verticals. For purposes of this proceeding, the most relevant aspect of Navigation's business is providing information to consumers and advertising revenue to its customers via its portfolio of approximately 766,087 websites.”

Mr. Jacoby repeatedly refers to the NCS Group of Companies collectively by referring to the Group of Companies using pronouns such as “our” and “we.” In fact, when Plaintiff in this case filed for Arbitration under the Uniform Domain Name Dispute resolution Policy (UDRP) against NCS, General Counsel for Connexus replied as though he worked directly for NCS., again using the words “we” and “our” on behalf of both NCS and Connexus. (*Exhibit J*, 10/10/08 Pirrone email). A review of the response

to the 2005 threat letter from yahoo to NCS illustrates the overlap between the companies, wherein a NCS worker, Firstlook worker and Connexus worker all participate in the response to the threat letter sent solely to NCS. (*Exhibit K*). But for the subpoena sent to Flickr, Plaintiff would not have had access to the threat letter, the responses or the fact that NCS registered Yahoo brands even after being put on notice of trademark rights. Since NCS has refused to produce these documents. Again, NCS has objected to providing this document in discovery on the basis that it came from Connexus, not NCS. It is believed that all third party trademark infringement responses came from Connexus. Beyond the fact that the most knowledgeable people for NCS work for its sister companies and that numerous employees who are technically paid by Connexus work directly for and on behalf of NCS, NCS refuses to provide such information as:

- The name, positions and salaries of employees doing work for or on behalf of the domains names registered by NCS.
- Business start-up and investment documents which detail the NCS Group's domain registration and monetization business plan and capitalization.
- Internal and external emails concerning a variety of issues related to the NCS Group's domain registration and monetization business plan and capitalization.
- Policy Manuals, instructions or other directions provided to workers performing activities in furtherance of the NCS Group's domain registration and monetization business plan and capitalization.
- Revenue generated by the NCS Group as part of its domain registration and monetization business plan.

b. NCS Is Selectively Producing Documents from Its Sister Companies & Actively Requires Employees to Destroy Documents

NCS admits that it has access and control over documents from its sister companies. It appears the relative few produced in this case came from its sister

companies. For instance, NCS document retention policy is on Connexus Letterhead. Most disturbingly, NCS and its sister companies, in addition to the shell game it plays in discovery, **actively requires employees to destroy documents**, including emails within incredibly short periods of time. (*Exhibit L*, Connexus Document Retention Policy, NCS000007). For example, emails must be destroyed within 30 days, and all other business records are to be destroyed within one year after received or drafted. There can be no business justification for such a policy, beyond obstruction of discovery.

Even more disturbing, NCS has started to hide its domains from discovery using privacy protect and proxy services so that no one can see if NCS is the registrant of a particular domain. (See Declaration of Enrico Schaefer). This is critical since NCS will testify at trial that key proof that it does not register domains ‘in bad faith’ is that it does not use proxy and privacy services to hide its registrant status. NCS is actively seeking to hide evidence which could be used to impeach this testimony.

In addition, numerous domains in its portfolio appear to be moving to another offshore company, ND Invest LTD, with an address on an island east of Australia, which appears to have been created since this lawsuit was filed, and no doubt for the express purpose of making NCS ‘judgment proof’ and hiding evidence in an offshore company beyond the subpoena power of the Court. (See Declaration of Enrico Schaefer). NCS has refused to provide any information related to its bulk transfer of domain names offshore, despite specific document requests for which such information would be responsive. See RFP 31 and 36.

D. Third Party Trademark Infringement

NCS defends this action by stating that it does not register domains which it knows or has reason to believe are trademark protected. A key factor which the jury will need to consider is whether NCS has registered other domains which are trademark protected. Yet, NCS refuses to provide any information concerning its portfolio of domains, threat or notice letters from third party trademark holders, its 'trademark database, any emails or information related to the supposed activity of its numerous "human screeners," how much money it generates off trademark protected domains and other relevant information requested in this first round of discovery requests. Interestingly, NCS argues that once it receives direct notice of third party trademarks, it blacklists those words and typos of those words from future registration. Despite NCS refusal to provide documents in discovery, third party Subpoenas to Flickr.com shows that exactly the opposite is true. Flickr put NCS on direct notice of its trademark rights in an email dated October 27, 2007. (Exhibit M). As of the date of this brief, NCS still has registered the typo domain name flickkr.com. Note that in this case, Weather Underground brought UDRP arbitration against NCS on August 18, 2008. NCS through Connexus offered to transfer those domains voluntarily on August 22, 2008. Plaintiff saw through NCS's attempts to hide its malfeasance from public view and allowed the arbitration to move forward to completion. On October 8, 2008, approximately two months after the UDRP complaint was filed, underground.com was registered. On October 13, 2008, a UDRP arbitrator found the NCS had engaged in bad faith cybersquatting and transferred 41 domains to Plaintiff. Of utmost importance,

wwatherunderground.com was registered five months after the UDRP decision and one month after the Complaint in this present action as filed.

E. NCS Refuses to Provide Financial Information.

An important piece of evidence for the jury to consider in determining if NCS is engaged in bad faith cybersquatting is how much revenue and profits are generated through the activity. Request No. 8 asked for NCS' financial information.

NCS plans on defending this case by saying its activities were 'no big deal' since NCS only made less than \$2,000 or so off the typo versions of Plaintiff's trademarks. (See *Exhibit N*, Unverified Spreadsheet of net and gross revenue for some of the subject domains). The jury is entitled to know (a) how much of NCS' portfolio of domains are typos of registered trademarks, and (b) how much revenue/profits were made off the trademark protected domains; specifically NCS's bad faith intent to profit from typosquatting third party trademarks under 15 U.S.C. § 1125(d)(1)(A)(i). Such information is also relevant for impeachment purposes, to identify potential expenditures which could show notice, identify of vendors used by NCS and related issues. Tax returns are also relevant to economic damages, namely the disgorgement of profits as provided under 15 U.S.C. § 1117(a)(1). That fact that typosquatting is extremely profitable, or unprofitable for that matter, is relevant to the intent required under the ACPA and goes directly to Plaintiff's claim and NCS's defense. A similarly lodged objection by a Defendant in a trademark lawsuit led a federal district court to hold:

Defendants also object to discovery of their financial statements and tax returns. In order to determine the profits that Defendants have allegedly obtained through violation of Plaintiff's trademark, Plaintiff is entitled to obtain information regarding the Defendants' financial condition, incomes, expenses and deductions. Defendants' financial statements and tax returns are likely to contain relevant evidence or lead to the discovery

of admissible evidence regarding Defendants' profits. In evaluating the damages sustained by the alleged infringement, however, Plaintiff should not be forced to rely on what Defendants selectively identify as relevant financial information. Under the circumstances of this case, the Court finds that Plaintiff should be able to obtain, review and analyze Defendants' financial records and tax returns in order to make its own determination as to the profits or income that Defendants have generated from their alleged infringement of Plaintiff's trademark. Defendants are ordered to respond to these requests.

Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc., 2007 U.S. Dist. LEXIS 13956, 22-23 (D. Nev. 2007); see also Guardian Alarm Co. v. Prough, 2007 U.S. Dist. LEXIS 28266 (D. Mich. 2007) (granting Plaintiff's motion to compel production of documents, including "copies of all tax returns and accompanying schedules and attachments . . ." in a trademark related matter).

These documents are also relevant to Defendant NCS's bad faith intent to create a "shell corporation" sometime after registering many of the domains at issue in this case, taking the domain registrar and parking activities marketed and performed by NCS and splitting them off into sister companies all controlled by NCS and Connexus.

F. The Time Frame at Issue is From 2004 Until Present.

NCS has the guts to argue to this court at the last hearing that bad faith must be shown "at the time of the domain registration" – which in this case involves domain registrations dating from 2004 through 2009 - but then refuses to provide any historical documents or information. Note that the 'blacklist' produced by NCS only provides a document version identified as the most recent version of 02-19-2010. In fact, no document version or historical information has been produced. As part of any discovery order, NCS must be required to produce documents from the first known domain registration in July 2004 until present.

G. NCS Should Be Ordered to Allow a Property Inspection.

NCS has a business address which is shared with its sister companies. NCS has stated in has no employees. Plaintiff's requested a property inspection at the 2141 Rosecrans Avenue, Suite 2020, El Segundo, California, address to see what the business looks like, obtain a general feel for how large it is, and how many employees work there. (Exhibit A).. Plaintiff would request this Court order the inspection to proceed forward under ground rules which require NCS to continue normal operation. Plaintiff has already agreed that the no discussions will occur with NCS employees or anyone else on site.

H. NCS has lodged Objections to Every Request.

As the Court reviews Exhibits D and E, it should note that each and every response incorporates every possible objection known to man, and then re-lodges objects again to virtually every request. Most of the objections are completely inappropriate and should be stricken.

I. NCS is Treating Discovery as a Joke.

A grand total of nine documents have been produced by NCS. Not a single email has been produced (not surprising since NCS believes that since it has no employees being paid directly by NCS, then there must not be any emails sent or received by NCS personnel), not even the ones sent to Plaintiff related to the subject domains in this case. More incredibly, NCS produced a list of domains similar to Weather Underground with registration date, transfer date, gross income made from advertising on those domains, and similar information, but specifically excluded the wunderphotos.com domain that was also included in the Complaint (paragraph 80) as well as

Wwatherunderground.com, whetherunderground.com, uundergroundweather.com, underground.com, underground.com, and wunderunderground.com which have been discovered since the filing of the complaint and which NCS has objected to disclosing as part of its discovery responses. NCS specifically defined the "Subject Domains" to exclude the domains listed above, clearly trying to conceal their identity. The discovery responses were made in "bad faith." This Court ought to make a specific finding that the responses appear to have been lodged without any regard to the court rules.

Plaintiff requests that this Court award Plaintiff's its costs and attorney's fees occasioned by the filing of this Motion, as well as the previous hearing were NCS made bad faith objections to third party subpoenas.

Respectfully submitted this 26th day of March, 2010.

/s/Enrico Schaefer

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 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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