

EXHIBIT E

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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**NAVIGATION CATALYST SYSTEMS, INC.'S RESPONSES TO FIRST SET OF
INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 33, Defendant Navigation Catalyst Systems, Inc. (“NCS”) hereby objects and responds to Plaintiff The Weather Underground, Inc.’s (“Weather Underground”) First Set of Interrogatories (“Interrogatories”) as follows:

General Objections

The following general objections to Plaintiff’s Interrogatories are incorporated by reference into each and every response to each individual Interrogatory as though fully set forth therein:

1. NCS objects to the Interrogatory to the extent it seeks to impose obligations on it greater than or more extensive than those required by the Federal Rules of Civil Procedure.
2. NCS objects to the Interrogatory to the extent it calls for the provision of information subject to the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges. NCS will not provide such privileged information. The inadvertent provision of privileged information by NCS shall not constitute a waiver of any applicable privilege nor shall the provision of any information be construed as a waiver of any objection to the admissibility of such information.
3. NCS objects to the definition of “You,” “Your,” “NCS,” and “Defendant” as overbroad. NCS shall interpret these words to refer solely to NCS.
4. NCS objects to the Interrogatory to the extent it is vague and ambiguous.
5. NCS objects to the Interrogatory to the extent it is overly broad, unduly burdensome and oppressive.

6. NCS objects to the Interrogatory to the extent it seeks information which is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

7. NCS objects to the Interrogatory to the extent it seeks information equally or more available to, or already in the possession, custody or control of Plaintiff.

8. NCS objects to the Interrogatory on the ground and to the extent it seeks trade secret, proprietary or otherwise confidential information.

9. NCS objects to the Interrogatories to the extent individual interrogatories are duplicative of each other.

10. NCS objects to the Interrogatory to the extent it seeks information not in its possession, custody or control.

11. NCS objects to the Interrogatory on the ground that discovery is continuing in this action, and NCS has not completed its factual investigation. These responses are made in good faith and after diligent inquiry into the facts and information now known to NCS. However, information that may be responsive to the Interrogatory may not yet have been discovered. Accordingly, without asserting an obligation to do so, and without waiving the objections asserted herein, NCS reserves the right to amend and/or supplement its responses as and when additional information and/or documents are discovered. Additionally, because NCS's responses are based upon information which they have identified to date, they do not preclude NCS from relying on facts or documents discovered or generated pursuant to subsequent investigation and discovery.

12. In providing responses and objections to the Interrogatories, NCS expressly reserves all of its objections to the use of the responses herein, including but not limited to objections as to the competency, relevance, materiality, and admissibility thereof.

Specific Objections and Responses

1. Identify the person(s) answering/responding, or assisting in answering/responding, to these First Interrogatories and the Plaintiff's First Request for Production.

Answer: NCS objects to this interrogatory to the extent it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. In addition, NCS objects to this interrogatory insofar as it requests the disclosure of information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or doctrine.

Subject to and without waiving the foregoing objections, NCS responds as follows:
William Delgado and Chris Pirrone.

2. Identify all current and former employees, managers, officers, board members, representatives, agents and independent contractors who have worked or been employed by for NCS, at any time, from company inception to present.

Answer: NCS objects to this interrogatory to the extent it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. NCS also objects to this interrogatory to the extent it is vague or ambiguous. NCS further objects on the grounds that it is overbroad, burdensome and oppressive in scope, particularly as to time. Moreover, NCS objects to this interrogatory on the grounds that it seeks confidential trade and business data and other non-public, proprietary and confidential information protected from disclosure by applicable law. NCS also objects to the

extent the interrogatory seeks confidential information of current or former employees of NCS and/or other third parties on the ground that providing such information would invade the legally protected rights of employees and/or third parties including but not limited to their right to privacy. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive.

Subject to and without waiving the foregoing objections, NCS responds as follows: Seth Jacoby, Donald Misino, Lily Stevenson, and Dennie Rhee have performed work on behalf of NCS.

3. Identify any Software presently or previously used by You to register domain names, perform trademark availability or clearance searches, or any other function related to the selection, registration, and/or cancellation of a domain name(s).

Answer: NCS objects to this interrogatory to the extent it is vague or ambiguous. NCS objects to this interrogatory on the grounds that it seeks confidential trade and business data and other non-public, proprietary and confidential information protected from disclosure by applicable law. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive.

Subject to and without waiving these objections, NCS responds as follows: NCS uses internally created software to register domain names, review potential domain registrations to determine if it may be confusingly similar to a trademark, and perform other functions related to the selection, registration, and/or cancellation of a domain names.

4. Identify any Software presently or previously used by You to park, optimize, analyze (including reporting or analytics) and/or monetize domain name(s).

Answer: NCS objects to this interrogatory to the extent it is vague or ambiguous. NCS further objects on the grounds that it calls for information that is not in its possession, custody, or control. Moreover, NCS objects to this interrogatory on the grounds that it seeks confidential trade and business data and other non-public, proprietary and confidential information protected from disclosure by applicable law. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive.

Subject to and without waiving these objections, NCS responds as follows: Domain name optimization is performed by Firstlook. Firstlook uses internally developed software, named Firstyield, to optimize and analyze domain names owned by NCS.

5. Identify any Software presently or previously used by You to analyze web site traffic statistics, visitor paths, hyperlink clicks and/or revenue of Registered Domains.

Answer: NCS objects to this interrogatory to the extent it is vague or ambiguous. NCS further objects on the grounds that it calls for information that is not in its possession, custody, or control. Moreover, NCS objects to this interrogatory on the grounds that it seeks confidential trade and business data and other non-public, proprietary and confidential information protected from disclosure by applicable law. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive.

Subject to and without waiving these objections, NCS responds as follows: Firstyeld is the name used for the internally developed software used by Firslook. Firstyeld provides basic statistics that are used to optimize and analyze domain names owned by NCS.

6. Identify all lawsuits, arbitrations or adversarial proceedings in which You have been involved, as named Plaintiff or Defendant, Complainant or Respondent, or otherwise, from inception to present.

Answer: NCS objects to this interrogatory to the extent it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. NCS also objects to this interrogatory to the extent it is vague or ambiguous. NCS further objects on the grounds that it is overbroad, burdensome and oppressive in scope. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive. NCS further objects on the grounds that the interrogatory seeks information that is publicly available. NCS further objects on the grounds that the interrogatory seeks an abstract, compilation, and/or summary of information publicly available to all parties and the effort of compiling or summarizing that information would be substantially the same for both parties.

Subject to and without waiving these objections, Defendant responds as follows:

Mesa Garage Doors v. Navigation Catalyst Systems Inc. et al., Case No. 09-CV-0053

(C.D. Cal.)

Verizon California Inc. et al v. Navigation Catalyst Systems, Inc. et al., 08-CV-2463

(C.D. Cal.)

Rodman & Renshaw, LLC v. Navigation Catalyst Systems, Inc., Case No. 08-CV-1081
Kaplan, Inc. v. Navigation Catalyst Systems, Inc., Case No. 08-CV-0439 (C.D. Cal.)
Station Casinos, Inc. v. Navigation Catalyst Systems, Inc., Case No. 06-CV-1401 (D.
Nev.)

Virgin Enterprises Limited v. Navigation Catalyst Systems, Inc. et al., Case No. 06-CV-
3651 (S.D.N.Y.)

Wynn Resorts Holdings, LLC v. Navigation Catalyst Systems, Inc., Case No. 05-CV-0924
(D. Nev.)

Wachovia Corporation v. Navigation Catalyst Systems Inc., Case No. 04-CV-10087
(C.D. Cal.)

Federated Western Properties Inc. et al v. Navigation Catalyst Systems Inc., Case No.
04-CV-1171 (C.D. Cal.)

Miccosukee Tribe of Indians of Florida v. Navigation Catalyst Systems, Inc., Case No.
09-CV-23444 (S.D. Fla.)

For UDRP proceedings, please see the attached Exhibit A which contains search results
from NAF and WIPO for proceedings in which NCS was a respondent.

7. Identify all processes, policies or procedures You use, or have used, to identify, select,
register, delete/purge, blacklist and park domain names. If the process, policy or procedures has
changed in any regard since company inception, please Identify each process, the people
involved in the change, all documents related to the change and the dates each process was in
place.

Answer: NCS objects to this interrogatory to the extent it is vague or ambiguous. NCS further objects on the grounds that it is overbroad, burdensome and oppressive in scope. Moreover, NCS objects to this interrogatory on the grounds that it seeks confidential trade and business data and other non-public, proprietary and confidential information protected from disclosure by applicable law. NCS further objects on the ground that the interrogatory is compound, conjunctive or disjunctive. NCS also objects that the terms “identify, select, register, delete/purge, blacklist and park domain names” as used in this interrogatory are ambiguous, unintelligible and open to a variety of meanings.

Subject to and without waiving these objections, NCS responds as follows: Between November 2006 and July 2009, NCS used a proprietary automated tool to add un-owned domain names during the ICANN Add Grace Period. The domain registration engine would use a “blacklist” database to reject from the automated registration process any domain name which contained the exact domain or character-string on the blacklist. The blacklist was regularly added to and updated and, as of the date that NCS ceased registering domain names through an automated process, contained hundreds of character strings against which domain names would be checked.

In addition, beginning in 2007, NCS would use a human screener to review registered domain names during the five-day Add Grace Period to manually screen each domain for potential trademark conflicts. When a domain name was identified by a human screen as a potential trademark conflict, it was immediately returned to the registry. In 2008, NCS added a second human screener to re-review the first screener’s review of all registered domains. Beginning in 2008, screeners used an internal automated tool that integrated the USPTO

trademark database so that domain names could be checked against the database. Any domain name that was rejected by the screener was added to the blacklist database so that it could not be registered again in the future.

Lastly, NCS hired additional human screeners in May 2008 to review the entire NCS portfolio for domain names that were arguably confusingly similar to the trademarks of others. By virtue of that process, NCS identified and deleted domain names that were arguably derivations of trademarks and updated the blacklist with those domain names.

February 22, 2010



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EXHIBIT A



[Home](#) [IP Services](#) [Arbitration and Mediation Center](#) [Domain Names](#) [Statistics](#)

Named Respondent

(decided cases only; searches based on inclusion of selected search term in respondent names as provided)

[Download:  Excel]

CASE NUMBER	NAMED RESPONDENT
D2009-0173	Navigation Catalyst Systems, Inc
D2008-0483	Navigation Catalyst Systems, Inc.
D2007-1141	Navigation Catalyst Systems, Inc.



DOMAIN NAME DISPUTES

Site Map

SEARCH

FORUM Home / Domain Name Disputes Home

Home / Case Search

1 VERIFICATION

2
3 STATE OF NEW YORK, COUNTY OF NEW YORK

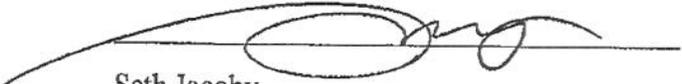
4 I, Seth Jacoby, declare as follows:

5 I am the president of Firstlook, the parent company of Navigation Catalyst Systems,
6 Inc. and I have been duly authorized to sign this verification.

7 I have read the foregoing document entitled **NAVIGATION CATALYST**
8 **SYSTEMS, INC.'S FIRST SET OF INTERROGATORIES**, know the contents
9 thereof, and declare them to be true of my own knowledge, except as to matters stated on
10 information and belief and, as to those matters, I believe them to be true.

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

13 Executed on February 22, 2010 at New York, NY.

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16 Seth Jacoby
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2010, I served Defendant Navigation Catalyst Systems, Inc.'s First Set of Interrogatories via electronic mail and U.S. Mail, first-class, postage prepaid on:

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