

Exhibit D



WILLENKEN
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March 5, 2010

VIA E-MAIL AND U.S. MAIL

Enrico Schaefer, Esq.
Traverse Legal
810 Cottageview Drive, Suite G-20
Traverse City, MI 49684

Re: *Weather Underground v. Navigation Catalyst Systems, Inc.*

Dear Enrico:

I am writing to meet and confer regarding Plaintiff's Responses to NCS's First Set of Interrogatories and NCS's First Set of Requests for Production. I address each, in turn, below.

Plaintiff's Responses to NCS's First Set of Interrogatories

Failure to Provide Verification

No verification was provided with the responses provided by Plaintiff. Your cover letter stated the verification would follow. To date, no verification has been provided. Please provide the verification as soon as possible.

Response to Interrogatory No. 1

Interrogatory No. 1 seeks an identification of each person whom Plaintiff claims was confused, deceived or misled as a result of NCS's actions. No specific individual or entity has been identified. Instead, Plaintiff merely recites its arguments as to why it believes an individual *might* be misled.

If Plaintiff cannot identify a specific individual or entity that has been confused, deceived or misled, it should supplement its response to this interrogatory to state as such.



Response to Interrogatory Nos. 7-8

While it is acceptable to refer to documents in response to an Interrogatory if the answer to the Interrogatory requires a compilation, abstract, summary, etc. of such documents, Fed. R. Civ. P. 33(d) requires a specific identification of documents (e.g., by Bates Number). Simply referring to an "anticipated production" does not satisfy sub-section (d). Please supplement Plaintiff's response to these interrogatories by identifying the specific, responsive documents by Bates number.

Plaintiff's Response to Requests for Production

Response to Request Nos. 1-3, 6-14, 16, 28, 29, 35, 36, 38-40

In these responses, Plaintiff states that it has identified responsive documents which have been sent out for Bates stamping. Please let me know when these documents will be ready for production.

Further, for many of these responses, Plaintiff also states various objections and then suggests a meet and confer regarding the scope of production. That response is plainly inappropriate as it does not provide information as to what Plaintiff is producing and what Plaintiff is withholding based on its objections. I suggest that we have a telephonic meet and confer so that we can go through each request individually to determine what is being produced and what is being withheld and, as to the latter, the basis for withholding documents.

Response to Request Nos. 4-5, 18-20, 24-26, 30-33, 42, 43

In these responses, Plaintiff states it is searching for and will produce responsive documents. Please let me know when Plaintiff intends to supplement its responses to identify whether such documents have been found and, if so, when those documents will be produced.

Response to Request No. 11

It is unclear from Plaintiff's response what documents are being produced in response to this request. Therefore, to be clear, this request would encompass documents that show the amount of traffic received by Plaintiff's websites. That information is plainly relevant. Plaintiff claims that it has lost web traffic due to NCS's activities, and, therefore, information about web traffic on Plaintiff's websites is at issue.

Response to Request No. 12, 27

These requests seek Plaintiff's financial records for the relevant time period. Plaintiff has stated that it does not intend to seek lost profits as a *measure* of damages. Nevertheless, such records would still be relevant to the issue of whether Plaintiff suffered any damages at all. Thus, such documents should be produced.



Response to Request No. 15

In its response, Plaintiff claims that it does not understand this request which seeks documents related to marks “other than the Weather Underground Marks.” The request is plain on its face. NCS is seeking documents which show use of marks *other* than the Weather Underground Marks. Such documents would be relevant to show that consumers identify Plaintiff in connection with *other* marks, not the marks at issue in this matter.

Response to Request No. 17

This request is plain on its face. It calls for documents which refer or relate to Defendant, NCS. It specifically excludes documents protected by the attorney-client privilege and/or attorney work product doctrine.

Response to Request No. 21

Plaintiff’s objections to producing IP addresses are meritless. First, it should be noted that Plaintiff has sought the same information from Defendant, and it’s refusal to produce such documents is the height of hypocrisy. Second, IP addresses will confirm where visitors to Plaintiff’s websites come from which is relevant to NCS’s personal jurisdiction defense (i.e., if the majority of visitors come from a state outside of Michigan, NCS can argue that the alleged “injury” did not take place in Michigan for purposes of the effects test). Third, with IP addresses, the parties can compare whether visitors to an NCS website ultimately visited Plaintiff’s website which would defeat any argument by Plaintiff that it “lost traffic.” In order to make such a comparison, Plaintiff must produce its IP addresses.

Response to Request No. 34

Many companies track how their customers first learned of them or, in the case of websites, how a visitor to their website learned of the website. Such information is relevant to a factor that is considered for purposes of determining likelihood of confusion: overlap of marketing channels. To the extent that Plaintiff keeps track of such information, it should be produced.

I look forward to your response and to discussing these issues further telephonically. Please provide me with some dates and times over the next week when you are available.

Very truly yours,


William A. Delgado