

Exhibit 1

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 COUNTERCLAIM FOR
CANCELLATION OF TRADEMARK**

For its counterclaim in this matter, Defendant Navigation Catalyst Systems, Inc. (“NCS”), states and alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Counterclaimant NCS is a Delaware corporation having its principal place of business at 2141 Rosecrans Avenue, #2020, El Segundo, CA 90245.

2. On information and belief, Counterclaim-defendant The Weather Underground, Inc. (“Wunderground”) is a Michigan corporation having its principal place of business at 185 Berry Street Suite 5501, San Francisco, CA 94107.

3. The court has subject matter jurisdiction over Plaintiff’s original claims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1338(b). The court has subject matter jurisdiction over this counterclaim for cancellation of trademark pursuant to 28 U.S.C. § 1367 and 15 U.S.C. § 1119.

4. The court has personal jurisdiction over Wunderground because (i) Wunderground maintains an office in this judicial district and (ii) Wunderground filed the original action in this judicial district. NCS continues to object to the court’s exercise of personal jurisdiction over it for the reasons stated in its Motion to Dismiss and as stated in its Answer to the Complaint but nevertheless files this counterclaim in the interests of judicial economy and to preserve its rights.

5. Venue for this counterclaim is proper in this district pursuant to 28 U.S.C. § 1391(b) because (i) the original claim was filed in this district and (ii) Wunderground resides in this district.

II. GENERAL ALLEGATIONS

6. Wunderground is the registered owner of U.S. Reg. No. 2,281,088 for the trademark WEATHER STICKER® having a registration date of September 28, 1999. The USPTO acknowledged the incontestability of U.S. Reg. No. 2,281,088 on January 18, 2005.

7. In the underlying action, Wunderground has sued NCS pursuant to the Lanham Act alleging, *inter alia*, infringement and dilution of its various trademarks, including WEATHER STICKER®.

8. As used by Wunderground, WEATHER STICKER® refers to a banner or graphic containing a piece of weather data, such as temperature, which can be placed on a website of a third party. Examples of the different types of Weather Stickers available from Wunderground appear in Exhibit A hereto.

9. On information and belief, the term “Weather Sticker” has become a common descriptive or generic term and now refers to **any** banner or graphic containing a piece of weather data appearing on a website and no longer identifies Wunderground as the exclusive source of such goods or services.

10. Examples of the third party use of the term “Weather Sticker” as a generic term include the following:

- a. The Rockbottom Observatory website invites visitors to its website to create their own “Weather Sticker” which is not similar to those of Wunderground. No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit B.

- b. The website www.weather-forecasts.com advises visitors how to customize their own “weather sticker.” No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit C.
- c. The website www.sloweather.com advises visitors how to get their own “weather conditions sticker” from them and gives examples of weather stickers. No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit D.
- d. The website www.racers.net provides visitors with an assortment of “weather stickers” to choose from to put on their own website. No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit E.
- e. The website www.healdsburgweather.com invites its visitors “to add a Healdsburg weather sticker or banner” to their website. No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit F.
- f. The website www.lawrencevilleweather.com invites its visitors to “create a weather sticker for your web page.” No mention of Wunderground appears. A copy of a printout from the website is attached as Exhibit G.
- g. The website www.codingforums.com contains on-line forums for people to participate in discussion. In one discussion, individuals

are discussing weather stickers and using the term as a generic term as evidenced by the fact that one user refers to getting a “sticker” from weather.com. A copy of a printout from the website is attached as Exhibit H.

- h. The website www.velocityreviews.com contains on-line forums for people to participate in discussion. In one discussion, a poster invites people to get a “free weather sticker” from the website www.eweather.biz. Another poster refers to getting “weather stickers” from Weather Pixie at www.weatherpixie.com. A copy of a printout from the website is attached as Exhibit H.

11. Indeed, even on their own website, Wunderground did not consistently use the “®” symbol to denote that WEATHER STICKER® was a registered mark, given the appearance to others that, in fact, it was a descriptive or generic term. A true and correct copy of a printout of a portion of Plaintiff’s website known as the WunderWiki, produced by Plaintiff in this litigation, is attached as Exhibit J.

12. On information and belief, Wunderground did not actively police the third party use of the term “Weather Sticker” which resulted in that term becoming descriptive and/or generic.

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COUNT I

CANCELLATION OF TRADEMARK

(15 U.S.C. § 1119)

13. NCS restates the allegations in paragraphs 1-12 above as though fully restated herein.

14. 15 U.S.C. § 1119 allows the court to order the cancellation of any trademark in an action involving a registered mark. Even an incontestable mark can be cancelled if it becomes descriptive or generic.

15. As a result of third party use, the term “Weather Sticker” has become commonly descriptive or generic for any website banner containing weather data and, as a result, U.S. Reg. No. 2,281, 088, Wunderground’s registration of WEATHER STICKER®, should be cancelled.

16. Wunderground’s registration of WEATHER STICKER® is harmful to NCS because Wunderground has sued NCS for trademark infringement alleging that it has exclusive rights in the mark WEATHER STICKER®.

PRAYER FOR RELIEF

WHEREFORE, NCS prays for judgment as follows:

1. That the Court enter a judgment that the term “weather sticker” is descriptive or generic and order the cancellation of U.S. Reg. No. 2,281,088 and that the Director of the USPTO be provided with a certified Order of same;

2. That Wunderground and its agents, officers, attorneys, representatives and those acting in concert and/or privity with them be enjoined from suing, threatening to sue or making any charges that NCS has committed any acts of trademark infringement, trademark dilution, unfair competition, or ACPA violations respecting the term “weather sticker.”
3. That NCS be awarded its costs of suit incurred herein, including its attorneys’ fees and expenses.
4. For such other and further relief as the Court deems just and proper.

JURY DEMAND

NCS hereby demands a trial by jury on all matters so triable.

Dated this ____ day of May, 2010.

/s/William A. Delgado

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