

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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ORDER COMPELLING DISCOVERY

The Court having reviewed documents related to Plaintiff's Motion to Compel Discovery (Docket No. 46), Defendant's Motion to Compel Discovery (Docket No. 61) and Plaintiff's Motion to Extend Discovery (Docket No. 70), and conducting two hearings on the issues presented on May 12 and May 19, 2010, and the Court being advised in the premises, IT IS HEREBY ORDERED:

With regard to Plaintiff's Motion to Compel Discovery (Docket No. 46):

1. This Stipulated Order shall supersede and replace the Order filed May 21, 2010 (Docket No. 80), which shall have no effect.
2. This Stipulated Order is without prejudice to either Party's right to move the Court for a modification of the scope of discovery at a later date.
3. The words 'You', 'Your', 'NCS' and 'Defendant' as used herein and in Plaintiff's discovery requests is defined to include Connexus, Firstlook, Basic Fusion and any other affiliated companies that are involved in the registration, use or trafficking of domain names registered by Navigation Catalyst Systems, Inc.
4. Unless otherwise indicated, the "Relevant Period" means the timeframe beginning July 22, 2004 (believed to be the date when Defendant first registered a domain alleged to infringe Plaintiff's trademarks) through the present.
5. With regard to production of voluminous email the following shall apply. To the extent NCS affirms that production of email in response to specific requests is too difficult and voluminous and as an alternative to producing all email, NCS may propose a list of search queries to run on all relevant email databases to Plaintiff's counsel for review. Plaintiff's counsel may provide any proposals for modification of the search queries within 5 business days. The parties shall meet and confer with respect to such proposal and NCS shall execute the queries upon which the parties agree.
6. With regard to RFP #2, NCS is ordered to look for all non privileged, communications and supplement its response.
7. With Regard to RFP #3, RFP #4, RFP #5, RFP #6, #9, NCS, for now, is ordered to look for and produce responsive documents for or related to NCS solely (i.e., not Connexus, Firstlook or Basic Fusion), if any, and supplement its responses accordingly. With regard to searching email databases, NCS is ordered to provide a document confirming that an inquiry was conducted using the following keywords: Invest!, Capital!, Start up, Form!, Venture capital, Prospectus.
8. With regard to RFP #7 and #8, NCS is ordered to produce its audited financial statements including Profit and Loss and Balance Sheets from 2004 to 2008 and any subsequent years as they become available.
9. With regard to RFP #12 and ROG #2, NCS will supplement its response and produce employment and work-related contracts or offer letters for individuals performing work related to domain name registration and/or monetization for the Relevant Time Period, if any.

10. With respect to RFP #14, NCS will supplement its response and produce responsive documents, if any.
11. With regard to RFP # 15, NCS is ordered to produce corporate records, including bylaws, articles, membership agreements, certificates of incorporation, stock certificates, and license resolutions and minutes related to domain name registration, use, or trafficking.
12. With regard to RFP#16, NCS will produce all Documents related to the business relationship between NCS and Basic Fusion, Inc, NCS and Connexus Corp. and NCS and Firstlook, Inc., as follows:
 - a. All money paid to and between each company from 2004 -2009 and
 - b. Contracts and other agreements between the companies.

NCS shall create a database of all emails by and between NCS and each company, run a search query defined by the parties on the database consistent with the process described in Paragraph 5, and produce all non-privileged emails responsive to the query

13. With regard to RFP #17-19, NCS will supplement its response and produce responsive documents, if any, but the search and production of e-mail shall be subject to Paragraph #5.
14. With regard to RFP #21, NCS will supplement its production and produce responsive documents.
15. With regard to RFP #22, 23, 24, 25, 26, 27, 29 NCS is ordered to look for and produce responsive documents, if any. To the extent NCS is being asked to produce emails, NCS shall comply with paragraph 5 for the Relevant Period.
16. With regard to RFP #28, NCS is ordered to supplement production of documents if any.
17. With regard to RFP #30, NCS is ordered to look for and produce all documents which constitute, refer to or relate to employment policies, if any.
18. With regard to RFP # 31, 34, the parties stipulate to the admissibility of Domain Tools archival WHOIS data subject to each parties right to contest the accuracy of that data and subject to production of any documents in support thereof. NCS agrees that it will not seek to calculate the difference between revenue and profits on Plaintiff's claim of disgorgement of profits as it relates to the Domains At Issue. NCS will produce revenue for the Domains at Issue, to the extent that it has not already been provided. NCS shall provide a delete date if applicable for each of the Domains At Issue. NCS shall provide all communications, if any, received by third parties inquiring about purchase or use of the Domains At Issue.
19. With regard to RFP# 32, and to the extent possible, NCS is ordered to produce the raw data from which document NCS000001 was generated.

20. With regard to RFP# 33, NCS is ordered to look for and produce or affirm, via affidavit, that documents requested are not reasonably available and state in detail why the documents are not reasonably available for production.
21. With regard to RFP #36, NCS shall produce a list of all domain names registered by NCS for January 1, 2004, July 1, 2004 and each year thereafter on those same dates through 2009. NCS does not need to produce any domains registered and then dropped during the 5 day Add Grace Period (AGP). To the extent NCS alleges that prior registrations are not available or cannot reasonably be produced, NCS is ordered to provide an affidavit stating in detail the specific reasons as to why it cannot produce any such list of domain names. NCS will further provide a Rule 30(b)(6) deponent concerning its assertion that information cannot be reasonably produced.
22. With Regard to RFP# 36, the parties stipulate to the admissibility of Domain Tools data concerning WHOIS hosting, registrar, and related information. The parties reserve their right to challenge the admissibility should their documentation reveal that the Domain Tools data was incorrect and subject to their obligation to provide supporting documents.
23. With regard to RFP #40, NCS shall produce emails to and from the emails shown on the bottom of all parked pages regarding the purchase or sale of domain names for the Domains at Issue and for all domains registered by NCS during the period January 1, 2008 through January 1, 2009.
24. With regard to RFP #42, NCS shall supplement its response and provide responsive documents if any.
25. With regard to RFP#45, NCS shall supplement its response to the extent responsive documents exist. To the extent that NCS states information otherwise not available, it will provide an affidavit explaining in detail why documents are no longer available. Consistent with Paragraph 36, NCS shall ensure that no further documents responsive to RFP #45 are destroyed from the date of this Order forward.
26. With regard to RFP#46, NCS shall supplement its response.
27. With regard to RFP #50, Plaintiff will re-submit a more specific document request.
28. With regard to RFP #52 and #53, NCS shall supplement its production by producing all previous drafts of the Firstlook and Basic Fusion Agreement, if any.
29. With regard to RFP #57, NCS shall supplement its production and produce responsive documents, if any.
30. With regard to RFP #58 and ROG #6, NCS shall supplement by identifying all commercial disputes, by stating case name and number and general explanation of any lawsuit, arbitration, or other adversarial proceeding.

31. With regard to RFP #59, NCS shall supplement its response.
32. With regard to RFP #60, NCS shall supplement its response and produce responsive documents, if any.
33. With regard to ROGS 3, 4, 5, NCS is ordered to supplement its response to include version or other software identification, people who assisted in the design, development, coding, and maintenance, and dates of use to the extent such information is available.
34. To the extent a request for production or interrogatory is not addressed herein nor raised at the hearing on May 19, 2010, it shall be deemed resolved, and NCS shall have no current obligation with respect to such request or interrogatory.
35. NCS shall comply with the above provisions within 25 days.
36. During the pendency of this lawsuit, NCS shall suspend any non-automated document destruction. To the extent that automated document destruction exists, NCS will provide a list of such automated systems to Plaintiff. Plaintiff may thereafter seek modification of this provision of the order.

With regard to Defendant's Motion to Compel:

1. Plaintiff shall reproduce any illegible document already identified by NCS as illegible. Plaintiff further agrees to produce any document in color if it was originally in color. For illegible document identified in the future, NCS agrees to specifically identify to Plaintiff which documents require reproduction and Plaintiff shall produce those requests within 10 days of receiving the request.
2. With regard to RFP #6, 28, Plaintiff shall produce documents not available via the USPTO website at www.uspto.gov within 10 days notice.
3. With regard to RFP #12, 27, Plaintiff shall produce Profit and Loss Statements and Balance Sheets from 2006 to present to the extent they exist.

With regard to Plaintiff's Motion to Extend Discovery, all future dates, except the status conference scheduled with Judge Battani on June 3, 2010, are extended 90 days.

Approved as to Form:

/s/Enrico Schaefer (by authorization)

Enrico Schaefer (P43506)

Lead Attorneys for Plaintiff

/s/William A. Delgado

William A. Delgado

Lead Counsel for Defendants

SO ORDERED

S/Virginia M. Morgan

Virginia M. Morgan

United States Magistrate Judge

Dated: May 25, 2010

PROOF OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record via the Court's ECF System and/or U. S. Mail on May 25, 2010.

s/Jane Johnson

Case Manager to

Magistrate Judge Virginia M. Morgan