

1 MICHAEL G. KING (SBN 145477)
 mking@hgla.com
 2 JANICE M. KROLL (SBN 189975)
 jmkroll@hgla.com
 3 HENNELLY & GROSSFELD LLP
 4 4640 Admiralty Way, Suite 850
 Marina del Rey, CA 90292
 5 Tel: (310) 305-2100; Fax: (310) 305-2116

6 BRETT LEWIS (pro hac vice)
 7 blewis@lewishand.com
 Lewis & Hand, LLP
 8 45 Main Street, Suite 818
 9 Brooklyn, NY 11201
 10 Tel: (718) 243-9323; Fax: (718) 243-9326

11 Attorneys for Defendants
 NAVIGATION CATALYST SYSTEMS, INC.; and
 12 BASIC FUSION, INC.

13 **UNITED STATES DISTRICT COURT**
 14
 15 **CENTRAL DISTRICT OF CALIFORNIA**
 16
 17 **WESTERN DIVISION**

18 VERIZON CALIFORNIA INC.;
 19 VERIZON TRADEMARK
 20 SERVICES
 21 LLC; and VERIZON LICENSING
 COMPANY,

22 Plaintiffs,

23 Vs.

25 NAVIGATION CATALYST
 26 SYSTEMS, INC.; and BASIC
 FUSION,
 27 INC.,

28 Defendants.

Case No. CV 08-2463 ABD (Ex)

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION
 TO MOTION FOR PRELIMINARY
 INJUNCTION**

DATE: June 30, 2008

TIME: 10:00 a.m.

CTRM: 680

HON. AUDREY B. COLLINS

TABLE OF CONTENTS

1

2

3

4 I. INTRODUCTION 1

5 II. STATEMENT OF FACTS..... 3

6 A. VERIZON’S DNS WILDCARDING SCHEME..... 3

7 B. NAVIGATION AND BASIC FUSION 5

8 C. NAVIGATION’S AUTOMATED SCREENING PROCESSES..... 6

9 D. ACCURACY OF WHOIS INFORMATION 8

10 E. NAVIGATION’S POLICY REGARDING TRADEMARK

11 HOLDERS 9

12 F. ADDITIONAL SCREENING POLICIES ADOPTED 10

13 G. FILTERING OF VERIZON MARKS..... 11

14 III. LEGAL ARGUMENT 13

15 A. INTRODUCTION 13

16 1. Standard For Granting Injunctive Relief 13

17 B. PLAINTIFFS CANNOT DEMONSTRATE IRREPARABLE

18 HARM 14

19 1. Plaintiffs Unreasonably Delayed in Seeking

20 Injunctive Relief 14

21 2. Defendants Have Already Discontinued the

22 Allegedly Infringing Activities 16

23 C. PLAINTIFFS’ REQUEST FOR INJUNCTIVE RELIEF

24 IS BARRED BY THEIR UNCLEAN HANDS 18

25 D. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE

26 MERITS OF THEIR CYBERSQUATTING CLAIM..... 20

27 1. Introduction 20

28 2. Navigation Did Not Use the Tasted Domains in Bad Faith 22

E. THE SCOPE OF THE REQUESTED RELIEF IS VAGUE AND

OVERBROAD..... 24

IV. CONCLUSION..... 25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ames Publising Co. et al. v. Walker-Davis Publications, Inc., et al.,
372 F.Supp. 1 (D.C. Pa. 1974) 19

Bambu Sales, Inc. v. Testini,
12 U.S.P.Q.2d 1479 (E.D.N.Y. 1988) 18

Cadence Design Sys., Inc. v. Avant! Corp.,
125 F.3d 824 (9th Cir. 1997)..... 14

Citibank, N.A. v. Citytrust, 756 F.2d 273 (2d Cir. 1985)..... 16

CPC International, Inc. v. Skippy Incorporated,
214 F.3d 456 (4th Cir. 2000)..... 19

eAcceleration Corp. v. Trend Micro, Inc.,
408 F. Supp. 2d 1110 (W.D. Wash. 2006)..... 14

Feathercombs, Inc. v. Solo Products Corp.,
306 F.2d 251 (2d Cir. 1962) 20

Grotrian, Helfferich, Shultz, Th. Steinweg Nachf. v. Steinway & Sons,
523 F.2d 1331 (2d Cir. 1975) 16

In re Napster Copyright Litigation,
191 F.Supp.2d 1087 (N.D. Cal. 2002)..... 18

Interstellar Starship Services, LTD v. EPIX, Inc.,
304 F.3d 936 (9th Cir. 2002) 22

Japan Telecom, Inc. v. Japan Telecom America Inc.,
287 F.3d 866 (9th Cir. 2002)..... 18

Lasercomb America Inc. v. Reynolds,
911 F.2d 970 (4th Cir. 1990) 19

Majorica, S.A. v. R.H. Macy & Co., Inc.,
762 F.2d 7 (2d Cir. 1985)..... 16

Manhattan Industries, Inc. v. Sweater Bee by Banff, Ltd.,
627 F.2d 628 (2d Cir. 1980) 19

National Cable & Telecommunications Ass'n v. Brand X Internet Services,
545 U.S. 967 (2005)..... 4

Nordic Inn Condominium Owners' Ass'n v. Ventullo,
151 N.H. 571, 864 A.2d 1079 (N.H. 2004)..... 16

1	<i>Phi Delta Theta Fraternity v. J.A. Buchroeder & Co.</i> ,	
	251 F.Supp. 968 (D.C.Mo. 1966).....	18
2	<i>RasterOps v. Radius, Inc.</i> ,	
3	861 F. Supp. 1479 (N.D. Cal. 1994).....	13
4	<i>Republic Molding Corp. v. B. W. Photo Utilities</i> ,	
5	319 F.2d 347 (C.A.Cal. 1963).....	18, 19
6	<i>Sampson v. Murray</i> ,	
7	415 U.S. 61 (1974).....	13
8	<i>Skippy, Inc. v. CPC Int’l, Inc.</i> ,	
9	674 F.2d 209 (4th Cir. 1982).....	16
10	<i>Sony v. Connectix</i> ,	
11	53 U.S.P.Q.2d 1705 (9th Cir. 2000).....	13
12	<i>Valeo Intellectual Property, Inc. v. Data Depth Corp.</i> ,	
13	368 F. Supp. 2d 1121 (W.D. Wash. 2005).....	16
14	<i>Verizon California Inc. et al. v. Maltuzi LLC et al.</i> ,	
15	CV 07-1732 (C.D. Cal.) (filed Mar. 15, 2007).....	15
16	<i>Verizon California Inc. et al. v. Ultra RPM Inc.</i> ,	
17	CV 07-2587 (C.D. Cal.) (filed Apr. 18, 2007).....	15
18	<i>Verizon North Inc. et al. v. Internet Reit Inc.</i> ,	
19	CV 07- 996 (S.D. Tex.) (filed Mar. 23, 2007).....	15

STATUTES

19	15 U.S.C. § 1125(d)	2
----	---------------------------	---

TREATISES

23	5 J. Thomas McCarthy, <u>Trademarks and Unfair Competition</u>	
24	(4th ed. 2006).....	13, 14, 15, 16, 18
25	RESTATEMENT (THIRD) UNFAIR COMPETITION	18

1 **I. INTRODUCTION**

2 A user logs onto the Internet and enters the URL in her browser for her favorite
3 Website, MYFACETUBEBOOK.com, only she misspells the domain name. A Web
4 page pops up offering the user a series of paid advertised links, some to competing goods
5 or services. That user is a Verizon broadband customer and the paid advertising links she
6 is shown are served by Verizon as a part of its DNS wildcarding service. See Affidavit of
7 Matt Wrock (“Wrock Aff.”), ¶ 4, and Exhibit A to the Wrock Aff. Verizon makes money
8 every time a user clicks on such an advertisement. Respected commentators have derided
9 the practice.¹ See Exhibits A, B, C, D to the Declaration of Robert Johnson (“Johnson
10 Decl.”). Others have branded Verizon as hypocrites for profiting from typo traffic, while
11 at the same time aggressively pursuing typo traffic settlements that winnow out the
12 competition. See Exhibits E, F, G, H, I to Johnson Decl. In other words, Plaintiffs have
13 unclean hands.
14
15
16
17
18

19 _____
20 ¹ See, e.g., Martin H. Bosworth, *Verizon Overrides Internet Searches With Its Own*
21 *Results: Web search “tinkering” raises net neutrality concerns*, Consumer News at
22 http://www.consumeraffairs.com/news04/2007/11/verizon_search.html (last visited June
23 13, 2008) (noting that “[Verizon’s service] also raises the question of whether or not an
24 Internet provider that automatically redirects a user’s searches without telling them will
25 also shape the results they do get, such as filtering their searches to get specific results.”);
26 Professor Susan Crawford, *Monetizing Disorder*, Susan Crawford blog posting dated
27 November 5, 2007 at <http://scrawford.net/blog/category/icann/> (last visited June 13,
28 2008) (noting that “[w]e don’t expect ISPs to be filtering our web browsing requests and
inserting themselves into the conversation”). See also David Chartier, *404 might be
found: the curious case of DNS redirects*, Ars Technica dated Feb. 13, 2008 at
<http://arstechnica.com/news.ars/> (last visited June 12, 2008) (citing net neutrality
concerns by Professor Tim Wu, Columbia Law School).

1 Plaintiffs also unduly delayed in moving for injunctive relief. Plaintiffs make no
2 allegation that the conduct in dispute is newly discovered, nor could they. Plaintiffs have
3 filed at least five similar actions, starting in March 2007. Plaintiffs also have access to
4 sophisticated monitoring equipment, which provides them with daily updates of the
5 domain names registered by Navigation Catalyst Systems (“Navigation”) and others. As
6 such, Plaintiffs have known for at least fifteen months, and likely longer, that Navigation
7 was engaged in the conduct complained of herein. Yet, Verizon took no action, sat on its
8 hands, allowed the so-called irreparable injury to continue unabated, and let the meter on
9 its cybersquatting allegations run up.
10
11

12
13 In any event, Plaintiffs fail to establish that Navigation acted with the bad faith
14 intent necessary to satisfy the requirements of the Anticybersquatting Consumer
15 Protection Act of 1999, 15 U.S.C. § 1125(d) (“ACPA”). Unlike *real* bad faith actors,
16 Navigation never made any effort to shield its identity. Prior to this litigation, Navigation
17 had enacted a policy to screen out trademark typos. Due to Navigation’s screening
18 efforts, the overwhelming majority of the domain names in dispute – more than 1,200 of
19 the disputed domain names – were not registered to Navigation at the time the Complaint
20 was filed. See infra § II A; Affidavit of Seth Jacoby (“Jacoby Aff.”), ¶ 16, Exhibits A, B
21 to the Jacoby Aff. Plaintiffs misrepresent both the nature and magnitude of the allegedly
22 infringing domain names registered by Navigation in an attempt to prejudice the Court.
23
24
25

26 Following the commencement of this action, Navigation implemented additional
27 policies and filters to prevent against the inadvertent registration of trademarked domain
28

1 names. See Jacoby Aff., ¶¶ 8, 12, 15, Exhibits C, D to Jacoby Aff. Navigation has
2 offered to transfer, without charge, any domain names which are similar to the
3 trademarks of others, and, in fact, transferred the 126 disputed domain names to Verizon
4 following the commencement of this action. See Jacoby Aff., ¶ 16.
5

6 Accordingly, Plaintiff’s Motion for a Preliminary Injunction should be denied for
7 the following reasons:
8

- 9 • Plaintiffs’ unclean hands in wrongly asserting their trademark rights to gain an
10 unfair advantage for their competitive typo monetization scheme;
- 11 • Plaintiffs’ delay of at least fifteen months in seeking emergency injunctive relief
12 and failure to establish irreparable injury; and
- 13 • Plaintiffs’ failure to establish a likelihood of success on the merits, where
14 Defendants have made, and are making, good faith efforts to screen out domain
15 names similar to trademarks.
16
17

18 Plaintiffs’ own actions belie the need for the extraordinary injunctive relief that they seek.
19

20 **II. STATEMENT OF FACTS**

21 **A. VERIZON’S DNS WILDCARDING SCHEME**

22 Since at least as early as June 11, 2007, Verizon has been engaging in practices
23 that, although accomplished through different technical means, achieve essentially the
24 same result as Navigation’s complained of practices. See Exhibits J, K to Johnson Decl.
25 Specifically, through a feature that Verizon calls “Advanced Web Search” (and otherwise
26
27
28

1 known in the industry as DNS wildcarding) customers of Verizon's FIOS and DSL
2 broadband services who type in a misspelled or non-existent domain name into a browser
3 are automatically redirected to a Verizon web page "containing suggested links based on
4 the query [the user] entered."² See Exhibits J, K to Johnson Decl. The redirect affects all
5 domain names and sub-domains that have not been registered or simply do not exist. See
6 id. Through its ISP service, Verizon intercepts a user's request, and rather than showing
7 the user a standard "page not found" response, Verizon instead serves up its own
8 advertisements. See, e.g., National Cable & Telecommunications Ass'n v. Brand X
9 Internet Services, 545 U.S. 967, 125 S.Ct. 2688, 162 L.Ed.2d 820 (2005) (explaining how
10 IPSs function). Verizon even uses the same Yahoo! services to display and monetize
11 advertisements that Navigation uses. See Exhibits N, O, P to Johnson Decl.³

12
13 Although, as a strictly technical matter, Verizon does not register typographical
14 misspellings of trademarks, Verizon achieves near identical results by simply forging
15 replies from DNS servers, which they can do without having to go to the effort (and
16 expense) of actually registering all those mis-typed domain names. The consequences of
17 Verizon's DNS redirection are on a much larger scale than anything that Navigation
18 currently does or could ever do and Verizon claims to have a growing market share in
19
20
21
22
23

24 ² Although Verizon claims that users have the ability to opt out of this feature, there is no
25 simple check box to click; rather, the user is required to follow long, technically-detailed
26 instructions to reconfigure their DNS settings. See Exhibits L, M to Johnson Decl.

27 ³ See, e.g., Brian Krebs, *When Monetizing ISP Traffic Goes Horribly Wrong*, Security Fix
28 Column dated April 19, 2008 at <http://blog.washingtonpost.com/securityfix/2008/04/> (last visited June 13, 2008).

1 excess of 8.5 million subscribers. See Pl. Mem., p. 9.

2 Moreover, Verizon’s DNS redirection affects *all* iterations of unregistered and
3 non-existent domains, many of which necessarily – and in fact do – consist of domain
4 names that are typographical misspellings of famous trademarks. See Exhibit A to the
5 Wrock Aff.; see also Exhibit Q to Johnson Decl. If there was any doubt about Verizon’s
6 practices, the Wrock Affidavit and accompanying list of approximately 100 Web pages
7 served in response to trademark typos of famous brands, lays it to rest.
8
9

10 **B. NAVIGATION AND BASIC FUSION**

11
12 Basic Fusion is an Internet registrar accredited by the Internet Corporation for
13 Assigned Names and Numbers (“ICANN”), with its principal offices located in El
14 Segundo, California. See Jacoby Aff., at ¶ 2. Basic Fusion offers bulk registration
15 services to customers seeking to register large numbers of domain names. See Jacoby
16 Aff., at ¶ 2. Basic Fusion currently has a number of third party customers with in excess
17 of 100,000 domain names under registration. See Jacoby Aff., at ¶ 3.
18
19

20 Navigation is an affiliate of Basic Fusion. See Jacoby Aff., at ¶ 1. Navigation uses
21 Basic Fusion’s services to register domain names, but it is a separate legal entity. See
22 Jacoby Aff., at ¶ 2. Basic Fusion does not in any way select or control the selection of
23 domain names registered by Navigation. See Jacoby Aff., at ¶ 2. Rather, Basic Fusion
24 simply processes the registration requests made by Navigation. See Jacoby Aff., at ¶ 2.
25
26

27 Both companies are part of the Connexus Corporation (“Connexus”). See Jacoby
28

1 Aff., at ¶ 1. Connexus is a premier online, performance-driven marketing platform,
2 offering a diversified, multi-channel approach to connect advertisers with their target
3 customers. See Jacoby Aff., at ¶ 3. As of June 16, 2008, Connexus had 192 employees
4 and other full time staff. See Jacoby Aff., at ¶ 1.
5

6 **C. NAVIGATION’S AUTOMATED SCREENING PROCESSES**

7

8 Navigation owns a proprietary automated tool to add un-owned domain names
9 during the five day ICANN Add Grace Period. See Jacoby Aff., at ¶ 4. This activity,
10 practiced by Navigation and a number of other companies, is sometimes referred to as
11 “domain tasting.” See Jacoby Aff., at ¶ 4, fn. 1. Although Navigation’s intent was to
12 identify available dictionary words and generic domain names and typos, automated
13 registration systems do not, on default, differentiate between trademark and other types of
14 domain names. See Jacoby Aff., at ¶ 7.
15
16

17 As a result, Navigation implemented a screening system to identify trademarked
18 domain names during the official five-day Add Grace Period before those names became
19 registered with the applicable registry. See Jacoby Aff., at ¶ 7 (explanation of screening
20 processes). Domain names that matched character-strings on a blacklist, or identified as
21 trademarks by human screeners, were deleted prior to the expiration of the five day Add
22 Grace Period. See Jacoby Aff., at ¶ 7. Potentially infringing domain names were deleted
23 for compliance purposes, not, as Verizon contends, because they did not generate
24 revenue. See Jacoby Aff., at ¶ 13, and Exhibit E to the Jacoby Aff. (showing \$350,000 -
25
26
27
28

1 \$800,000 of potential revenue projected for deleted domain names).

2 In late 2007, Navigation revamped its screening processes, adding additional
3 compliance personnel and procedures to prevent the registration of potentially
4 trademarked domains. See *Jacoby Aff.*, at ¶ 7. Navigation has since purged its portfolio
5 of tens of thousands domain names identified as being potentially similar to known
6 trademarks. See *Jacoby Aff.*, at ¶¶ 10, 13 and Exhibits F, Q to *Jacoby Aff.* Where there
7 were any matches with identified trademarks, Navigation added the domain names to a
8 blacklist, which bars such domain names from being added again. See *Jacoby Aff.*, at ¶
9 10. Although several levels of Navigation employees manually review each domain
10 name selected by its automated systems in an effort to assure that it does not
11 inadvertently register trademarked domain names, some domain names similar to third
12 party trademarks were *registered* – meaning that they were secured for a term of years
13 with the applicable registry, as opposed to being screened for a matter of days and
14 rejected from registration. See *Jacoby Aff.*, at ¶ 11.

15 Plaintiffs contend that all of the domain names disputed in this action were
16 “**registered**” by, and are currently “**registered**” to, Navigation. See Plaintiffs’
17 Memorandum In Support of Motion for Preliminary Injunction (“Pl. Mem.”), at .p. 10.
18 That is not correct. First, a factual issue exists whether domain names reserved during
19 the registry’s five day administrative Add Grace Period are *registered* within the meaning
20 of the ACPA. Second, of the 1357 or 1392 domain names allegedly registered by
21 Navigation and held in a “portfolio,” only 126 of those are *currently* registered to
22
23
24
25
26
27
28

1 Navigation (the “Registered Domain Names”). See Jacoby Aff., at ¶ 16, and Exhibit G
2 attached to Jacoby Aff.⁴

3 Excluding those names registered out of legal obligation, roughly thirty of the
4 currently registered domain names are misspellings of the word VERIZON plus some
5 other word or phrase. See Jacoby Aff., at ¶ 16, and Exhibit H attached to Jacoby Aff.

6 Those domain names consist largely of badly misspelled words, such as
7
8 WERIZONVIRALES.COM, WERIZONVIRELES.COM, VERIOSION.COM,
9
10 VERISONNETWORK.COM, VERVZION.COM, and ZERIZONWIRLESS.COM. See
11 Jacoby Aff., at ¶ 16, and Exhibit H attached to Jacoby Aff. The remainder are variations
12
13 on Plaintiffs’ far less well-known VZ and VZW marks, and of those, many (such as,
14 VZWL.COM, VZW3.COM, VZWPUIX.COM, TEXTVZW.COM, VZNTEXT.COM,
15 VZW22.COM, VZWCHAPERON.COM, VZWHUBS.COM and VZWPLACE.COM)
16
17 are not readily identifiable with Plaintiffs. See Jacoby Aff., at ¶ 16, and Exhibit I
18 attached to Jacoby Aff.

19
20 **D. ACCURACY OF WHOIS INFORMATION**

21 At all times, Navigation has listed and Basic Fusion has displayed accurate Whois
22 contact information for the disputed Domain Names. See Jacoby Aff., at ¶ 5. Navigation
23 made no effort to hide its identity either behind a fictitious name or a fictitious entity. See
24

25 _____
26 ⁴ Of that number, two domains, (VERISONPICPLACE.COM and
27 MYVZWPIXPLACE.COM) that were in tasting and would have been deleted, were
28 registered after this lawsuit was filed out of a legal obligation not to cancel domain names
named in a litigation. See Jacoby Aff., at ¶ 16.

1 Jacoby Aff., at ¶ 5. Basic Fusion’s Whois server is functioning properly, to the best of
2 Basic Fusion’s knowledge. See Jacoby Aff., at ¶ 5. Basic Fusion also disputes that it has
3 failed to make Whois information available subsequent to the filing of the Complaint in
4 this action. See Jacoby Aff., at ¶ 5.⁵

6 **E. NAVIGATION’S POLICY REGARDING TRADEMARK HOLDERS**

7
8 Navigation has an established company policy of transferring disputed domain
9 names to complaining parties, where justified. See Jacoby Aff., at ¶ 17. When a third
10 party asserts that a domain name registered by Navigation allegedly infringes on its
11 trademark, and the party can establish the ownership of exclusive trademark rights,
12 Navigation’s policy is to promptly transfer the domain to the complaining party. See
13 Jacoby Aff., at ¶ 17. Navigation is unaware of any efforts made by Plaintiffs to contact
14 Navigation prior to Plaintiffs’ filing of this action. See Jacoby Aff., at ¶ 17.

15
16
17 Navigation’s first response after being sued was to disable the advertising links in
18 question. See Jacoby Aff., at ¶ 16, fn. 3. Navigation then transferred the Registered
19 Domain Names to Verizon. See Jacoby Aff., at ¶ 16. Navigation did not attempt to sell
20 any of the domain names in question to Plaintiffs or any other party, and has never
21 attempted to extort money from a trademark holder by selling domain names with a bad
22 faith intent to profit off of a known trademark. See Jacoby Aff., at ¶ 16.

23
24
25 Verizon also contends that Navigation has registered tens or hundreds of thousands

26
27 ⁵ It makes no sense that Navigation would make its contact information publicly available
28 for at least four years, only to shield that information *after* having been sued by Verizon.

1 of domain names containing terms similar to third party trademarks. See, e.g., Pl.
2 Complaint, Exhibit 7 (list of 21,133 domains allegedly owned by Navigation). Although
3 Navigation did not have enough time to analyze **all** such domain names cited by Verizon
4 in its various papers, Navigation owns only 1,506 (roughly 7%) of the domains identified
5 in the Complaint, which domain names Navigation is currently in the process of divesting
6 from its portfolio. See Jacoby Aff., at ¶ 9, and Exhibit J to the Jacoby Aff. In other
7 words, as part of Navigation’s standard operating procedures, screeners identified,
8 deleted and blacklisted roughly 93% or more of the potentially infringing domains on
9 Plaintiffs’ list. See Jacoby Aff., at ¶ 9. The additional policies stated below should,
10 nonetheless, cut down substantially on the number of such domain names added or
11 inadvertently registered.
12
13
14

15 **F. ADDITIONAL SCREENING POLICIES ADOPTED**

16
17 Prior to commencement of this action, Navigation was already in the process of
18 strengthening its screening procedures. See Jacoby Aff., at ¶ 7, and Exhibits A, K to the
19 Jacoby Aff. Subsequently, Navigation continued to adopt and implement additional
20 measures. See Jacoby Aff., at ¶ 7. In May and June 2008 Navigation added over 6,000
21 new character-string terms containing brand names and typos of such brands to the
22 blacklist, more than quadrupling its size to over 8,500 terms. See Jacoby Aff., at ¶ 12. In
23 June 2008 Navigation expects to add at least another 10,000 additional terms to the
24 blacklist derived from a list of brands that was purchased from a third party, including all
25
26
27
28

1 typos and misspellings of such brands. See Jacoby Aff., at ¶ 12. Any domain names
2 matching these criteria will never be registered by Navigation. See Jacoby Aff., at ¶ 12.

3 Navigation has also enhanced the second phase of the screening process by hiring
4 additional human screeners. See Jacoby Aff., at ¶ 10. Every domain name that is
5 identified by Navigation’s automated systems will be screened by humans not once, but
6 twice. See Jacoby Aff., at ¶ 7. Navigation is building a tool to interface with the USPTO
7 database to assist in the identification of potential trademarks. See Jacoby Aff., at ¶ 8.
8

9 With respect to Navigation’s existing domain name portfolio, screeners, in conjunction
10 with the legal department and online tools developed to enhance compliance efforts, are
11 evaluating the entire portfolio for possible trademark issues. See Jacoby Aff., at ¶ 10.
12

13 Those that are found to be potentially problematic are being deleted. See Jacoby Aff., at ¶
14 10.
15

16 **G. FILTERING OF VERIZON MARKS**

17 On May 6, 2008, Navigation added the following terms to its blacklist: “fio,” “vz,”
18 “vzw,” “ver,” “vir,” “zeri,” and “eriz.” See Jacoby Aff., at ¶ 15. Navigation added
19 “zon” on June 12, 2008. See Jacoby Aff., at ¶ 15. This was done to prevent domain
20 names similar to the following marks: VERIZON, VERIZON WIRELESS, VZ, VZW,
21 VZACCESS, VZEMAIL, VZGLOBAL, VZVOICE, FIOS and VERIZON FIOS
22 trademarks (the “Verizon Marks”) from being added or registered. See Jacoby Aff., at ¶
23 15.
24
25
26
27
28

1 Plaintiffs contend that, notwithstanding these efforts, some 37 additional domain
2 names, allegedly similar to the Verizon Marks, were registered by Navigation after
3 receipt of the Complaint. See Bradley Decl., ¶ 8. Only **one** of the 37 domains,
4 vzwireles.com, was actually *registered* by Navigation after receipt of the Complaint.
5 That domain name was registered on May 3, 2008, three days before the terms “vz” and
6 “vzw” were added to Navigation’s blacklist.⁶ See Jacoby Aff., at ¶ 14. The remaining
7 domain names were screened and deleted by Navigation’s human screeners during the
8 Add Grace Period. See Jacoby Aff., at ¶ 14, and Exhibit L to Jacoby Aff. Moreover, the
9 domain names tasted after May 6, 2008 bear little resemblance to the Verizon Marks. It
10 is difficult to see how domain names, such as varzzon.com, vorizonwilless.com,
11 varizonweriless.com, vreionswireless.com, vrrlzonwireless.com, varizonnet.com,
12 vceraiz0nwireless.com, vsrzionwireless.com, startvorizon.net or varizoninternet.com,
13 could be confused with the Verizon Marks. Although each of these domain names was
14 identified by human screeners and deleted prior to registration, it is difficult to see how
15 Navigation could have anticipated and blacklisted the particular misspellings complained
16 of by Verizon.⁷

17 In all, Navigation and Basic Fusion are not the cyber-pirates that Verizon makes

18 ⁶ Four of the 37 domain names (wirelessvirizon.com, verizopn.net, veriso.net, and
19 verizionwareless.com) were registered to customers of Basic Fusion and not Navigation.
20 See Jacoby Aff., at ¶ 14, and Exhibits L, M, N, O, P to Jacoby Aff.

21 ⁷ It is difficult to believe that these domains were organically generated by actual
22 customers. They go far beyond a simple typo or misspelling. Verizon may be using its
23 own DNS wildcarding technology to generate additional typos to test Navigation’s
24 systems, which typos were then added by Navigation via its automated tool.

1 them out to be. Although Navigation’s record has not been perfect, it has made good
2 faith efforts to help ensure that trademarks of third parties are respected. Legitimate
3 claims made regarding allegedly infringing domain names have been promptly addressed
4 and remedied. Additional filters and compliance processes have been implemented.
5

6 **III. LEGAL ARGUMENT**

7 **A. INTRODUCTION**

8 **1. Standard For Granting Injunctive Relief**

9
10 Injunctive relief is a drastic remedy that should only be granted in extreme
11 circumstances. See Sampson v. Murray, 415 U.S. 61, 88, 94 S.Ct. 937, 951, 39 L.Ed.2d
12 166 (1974); RasterOps v. Radius, Inc., 861 F. Supp. 1479, 1482 (N.D. Cal. 1994). The
13 Court may not exercise its discretion to grant a preliminary injunction unless Plaintiffs
14 establish (1) a likelihood of success on the merits of both their case in chief and against
15 Navigation’s affirmative defenses, and a showing of irreparable injury or (2) serious
16 questions going to the merits where the balance of hardships tip sharply in Plaintiffs’ favor.
17 Sony v. Connectix, 53 U.S.P.Q.2d 1705, 1709 (9th Cir. 2000). The burden on the party
18 seeking a preliminary injunction is heavier in cases such as this one where the grant of
19 injunctive relief would effectively grant the Plaintiffs much of the relief available only after
20 a full trial on the merits. 5 J. Thomas McCarthy, Trademarks and Unfair Competition §
21 30.30, at 30-70 (4th ed. 2006) (citation omitted).
22
23

24 Although Plaintiffs rely heavily on the presumption of irreparable harm, that
25 presumption can be rebutted where “the plaintiff has not been harmed, [or] where any
26 harm is de minimis.” Cadence Design Sys., Inc. v. Avant! Corp., 125 F.3d 824, 829 (9th
27
28

1 Cir. 1997). In this case, Navigation transferred all of the Registered Domain Names
2 voluntarily to Plaintiffs. Navigation has implemented a Verizon blacklist and has bolstered
3 its screening procedures. No new Verizon domain names have been *registered* since the
4 blacklist was implemented on May 6, 2008. In addition, Verizon waited more than a
5 month after filing its Complaint, and for *at least* fifteen months after it had knowledge of
6 Navigation's alleged conduct (and likely longer), before moving for a preliminary
7 injunction. As such, Verizon would not be irreparably injured by this Court's denial of its
8 motion for a preliminary injunction and Verizon would still be able to obtain any necessary
9 relief after a full trial on the merits. On the other hand, a grant of the injunctive relief
10 requested, barring Navigation from registering domain names using an automated process,
11 would cripple Navigation's business.
12

13 **B. PLAINTIFFS CANNOT DEMONSTRATE IRREPARABLE HARM**

14 **1. Plaintiffs Unreasonably Delayed in Seeking Injunctive Relief**

15 Plaintiffs cannot show irreparable harm where they have delayed in moving for
16 injunctive relief for a period of more than a year, undermining any presumption of
17 irreparable injury they may have otherwise enjoyed. See e.g. eAcceleration Corp. v.
18 Trend Micro, Inc., 408 F. Supp. 2d 1110, 1122 (W.D. Wash. 2006) (delay of one year
19 contradicted plaintiff's assertion of "urgent, continuing and irreparable harm."). As noted
20 by Professor McCarthy, the failure of a plaintiff to act with due speed undercuts the need
21 for emergency relief:
22
23
24
25

26 A preliminary injunction is sought upon the theory that there is an urgent need for
27 speedy action to protect plaintiff's rights. By sleeping on its rights a plaintiff
28 demonstrates the lack of need for speedy relief and cannot complain of the delay

1 involved pending any final relief to which it may be entitled after a trial on all the
2 issues.

3 McCarthy, supra, § 30:53, at 30-122 (quoting Helena Rubenstein, Inc. v. Frances
4 Denney, Inc., 286 F. Supp. 132 (S.D.N.Y. 1968)).

5 Plaintiffs have not alleged when they first became aware of Navigation's
6 registration of certain domain names and adding of others. The reason for this omission
7 is that Plaintiffs have known of Navigation's actions for well over a year – March 2007,
8 at the latest. By that time, Plaintiffs had filed three lawsuits against third parties over
9 allegedly infringing domain name registrations, and had access to sophisticated domain
10 name monitoring equipment.⁸ It is inconceivable that they simply overlooked
11 Navigation, which had added, dropped, and, in some cases, registered Verizon formative
12 domain names since at least as early as 2004. See Jacoby Aff., at ¶ 2. Moreover,
13 Plaintiffs did not file their motion for a preliminary injunction until June 9, 2008, roughly
14 fifteen months later.
15
16
17
18

19 Nor do Plaintiffs offer any evidence of actual harm in their motion and supporting
20 papers. Plaintiffs rely, instead, on a bare assumption of irreparable harm. This failure of
21 proof, coupled with Plaintiffs' extensive delays in seeking injunctive relief, utterly belies
22 the assertion that Plaintiffs would suffer an irreparable injury if the requested relief is not
23 granted. See Valeo Intellectual Property, Inc. v. Data Depth Corp., 368 F. Supp. 2d 1121,
24

25 _____
26 ⁸ See generally Verizon California Inc. et al. v. Ultra RPM Inc., CV 07-2587 (C.D. Cal.)
27 (filed Apr. 18, 2007); Verizon North Inc. et al. v. Internet Reit Inc., CV 07- 996 (S.D.
28 Tex.) (filed Mar. 23, 2007), and Verizon California Inc. et al. v. Maltuzi LLC et al., CV
07- 1732 (C.D. Cal.) (filed Mar. 15, 2007).

1 1128 (W.D. Wash. 2005) (“A three-month delay in seeking injunctive relief is inconsistent
2 with [the movant’s] insistence that it faces irreparable harm.” (citations omitted));
3 Citibank, N.A. v. Citytrust, 756 F.2d 273, 276-77 (2d Cir. 1985) (plaintiff’s delay of
4 more than nine months proved no irreparable harm; granting motion would have been
5 abuse of discretion); Majorica, S.A. v. R.H. Macy & Co., Inc., 762 F.2d 7, 8 (2d Cir.
6 1985) (seven month delay is evidence of lack of irreparable harm).⁹

8 In sum, Plaintiffs’ delay of at least fifteen months or more in seeking emergency
9 injunctive relief, and the complete lack of evidence of any harm to Plaintiffs should their
10 motion be denied, undercut all urgency alleged by Plaintiffs. This is a matter that can be,
11 and should be, decided on the merits after discovery and a full trial.

14 **2. Defendants Have Already Discontinued the Allegedly Infringing Activities**

15 In addition, as stated above, Navigation has ceased to register domain names that
16 are similar to the Verizon Marks. Navigation has enhanced its compliance procedures,
17 implemented a blacklist not only of Verizon trademarks, but also of top brands and typos

21 ⁹ Courts have also consistently rejected damages claims made by plaintiffs that sit back,
22 fail to act, and let damages accrue. See, e.g., Grotian, Helfferich, Shultz, Th. Steinweg
23 Nachf. v. Steinway & Sons, 523 F.2d 1331, 1344 (2d Cir. 1975) (denying claim for
24 damages where plaintiff failed timely to assert its rights); accord Skippy, Inc. v. CPC
25 Int’l, Inc., 674 F.2d 209, 212-13 (4th Cir. 1982); see also Nordic Inn Condominium
26 Owners' Ass'n v. Ventullo, 151 N.H. 571, 583, 864 A.2d 1079, 1090 (N.H. 2004) (ACPA
27 case holding that plaintiff’s “delay in seeking damages undercuts its claim that past
28 profits generated by the defendants were due to actual public confusion.”) (citing 5 J.
Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 31:11, at 31-38
(4th ed. 2004)). In this case, it would be inequitable to award Verizon damages for any
domain name registered after Verizon first learned of the disputed conduct.

1 of those brands. See Jacoby Aff., at ¶ 7. Navigation now screens all pre-registered
2 domain names with two human screeners prior to registering any domain names. See
3 Jacoby Aff., at ¶ 7. Navigation also voluntarily transferred all of the Registered Domain
4 Names to Verizon immediately after being served with the Complaint. See Jacoby Aff., at
5 ¶ 16.
6

7 Notwithstanding the above, Verizon maintains that it will be irreparably harmed by
8 Navigation’s adding and dropping of a small number of domain names allegedly
9 containing fringe misspellings of Verizon’s Marks (e.g., varzzon.com,
10 vreionswireless.com, veerisonwireless.com, and vorizonwilless.com). The domain
11 names in question contain so many spelling errors – and are so unlikely to be typed in by
12 users – that it is difficult to conceive of exactly what harm Verizon would suffer from
13 their addition and deletion during the Add Grace Period.
14
15

16 Indeed, even if these badly misspelled domain names were never tasted, given
17 Verizon’s DNS wildcarding practices and the wildcarding practices of other ISPs, these
18 typos would resolve to a page of advertised links. See Exhibits N, O, P, Q to Johnson
19 Decl. It makes absolutely **no difference** whether these terms are tasted by Navigation or
20 not. In 2008, virtually every typographical error and misspelling of a word is monetized
21 by someone, whether a domain name registrar, a domain investor, an ISP, or Verizon
22 itself. See Exhibits A - Q to Johnson Decl.
23
24
25

26 As Plaintiffs have not and cannot establish irreparable harm, their motion should
27 be denied.
28

1 **C. PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF IS BARRED BY**
2 **THEIR UNCLEAN HANDS**

3 The Ninth Circuit has held that “[u]nclean hands is a defense to a Lanham Act
4 infringement suit.” Japan Telecom, Inc. v. Japan Telecom America Inc., 287 F.3d 866,
5 870 (9th Cir. 2002) (citations omitted). Courts have found that “[w]hat is material is not
6 that the plaintiff's hands are dirty, but that he dirtied them in acquiring the right he now
7 asserts, *or that the manner of dirtying renders inequitable the assertion of such rights*
8 *against the defendant.*” Republic Molding Corp. v. B. W. Photo Utilities, 319 F.2d 347,
9 349 (C.A.Cal. 1963) (emphasis added). A court will bar an action for unclean hands,
10 when a defendant shows some relationship between the right asserted and the wrong
11 complained of. See, e.g., 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair
12 Competition § 31:51 (4th ed. 2002).

13 Courts have applied the unclean hands doctrine, as a doctrine of “misuse” in the
14 context of Intellectual Property, in general, (see, e.g., In re Napster Copyright Litigation,
15 191 F.Supp.2d 1087, 1102-06 (N.D. Cal. 2002)), and trademark misuse, in particular.
16 See, e.g., Phi Delta Theta Fraternity v. J.A. Buchroeder & Co., 251 F.Supp. 968, 977-80
17 (D.C.Mo. 1966) (Unclean hands to attempt to obtain monopoly over fraternity insignia
18 through application of trademark law); see also Bambu Sales, Inc. v. Testini, 1988 WL
19 138055 at *5, 12 U.S.P.Q.2d 1479 (E.D.N.Y. 1988) (consideration of unclean hands
20 appropriate where plaintiff sought damages under Lanham Act based upon lost illegal
21 sales); see generally RESTATEMENT (THIRD) UNFAIR COMPETITION, §32, *comment d.*
22
23
24
25
26
27
28

1 (trademark misuse may give rise to unclean hands); cf. Ames Publishing Co. et al. v.
2 Walker-Davis Publications, Inc., et al., 372 F.Supp. 1, 14-15 (D.C. Pa. 1974) (enjoining
3 both plaintiff and defendant from the same acts under Lanham Act (citing Republic
4 Molding Corp. v. B.W. Photo Utilities, 319 F.2d 347 (9th Cir. 1963)).

6 At the heart of this public policy approach is that it seeks to stop the holder of a
7 limited right in intellectual property from abusively asserting that right to expand its
8 statutory monopoly “in order to gain control over areas outside the scope of the
9 monopoly.” In re Napster Copyright Litigation, 191 F.Supp.2d 1087, 1103 (N.D. Cal.
10 2002) (citing Practice Mgmt. Info. Corp. v. American Med. Assoc., 121 F.3d 516 (9th
11 Cir. 1997)); cf. Lasercomb America Inc. v. Reynolds, 911 F.2d 970, 977-79 (4th Cir.
12 1990) (reversing District Court where it had “declin[ed] to recognize a misuse of
13 copyright defense”).

16 In this case, Verizon is misusing its trademark rights to bar Navigation from
17 making *any* automated registration of domain names, on the basis that a subset of domain
18 names registered by Navigation are similar to Verizon’s trademarks. See Complaint p.
19 35, ¶ 3(b). Verizon lacks standing to ask the Court for such broad relief. See, e.g., CPC
20 International, Inc. v. Skippy Incorporated, 214 F.3d 456, 459 (4th Cir. 2000) (overruling
21 a district court’s “sweeping injunction” that prohibited the appellant from engaging in
22 permissible speech on its website); Manhattan Industries, Inc. v. Sweater Bee by Banff,
23 Ltd., 627 F.2d 628 (2d Cir. 1980) (limiting injunctive relief when the equities of the case
24 are closely balanced); Feathercombs, Inc. v. Solo Products Corp., 306 F.2d 251, 258 (2d
25
26
27
28

1 Cir. 1962), cert. denied 371 U.S. 910 (1962) (holding that injunctive relief should not go
2 so far as to prohibit a competitor from “legitimately market[ing] its own” products).

3 In this case, there is more than a sufficient evidentiary basis to support a finding of
4 trademark abuse. Verizon chastises Navigation for not successfully blocking trademark
5 typos from being registered, but makes **no** effort, itself, to screen or block out any
6 trademarks from returning results in its money-making DNS wildcarding scheme.
7 Verizon is picking off the competition, one by one, by leveraging its trademark rights to
8 expand its business into the typo monetization field. See generally Exhibits A - Q to
9 Johnson Decl.

10 Verizon started filing lawsuits in March 2007, just three months before it rolled out
11 its DNS wildcarding service in June 2007. With its success in shutting down the
12 competition, Verizon, upon information and belief, has expanded its typo traffic business
13 and the money it makes from such operations. Verizon monetizes typo traffic through
14 Yahoo!, the same service used by Navigation, and makes no effort to filter out
15 trademarks, despite claims that blocking trademark typos is easy to do.

16 Accordingly, for the foregoing reasons, Verizon’s request for injunctive relief should be
17 denied.
18

19
20
21
22
23
24 **D. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF**
25 **THEIR CYBERSQUATTING CLAIM**

26 **1. Introduction**

27 Verizon’s papers are misleading on the issue of bad faith registration and use. As
28

1 stated above, Verizon omitted any mention in its papers of the significant difference
2 between so-called *tasted* domain names and *registered* domain names.¹⁰ The differences
3 in this case, however, are as great as the gap between good and bad faith. With respect to
4
5 tasted domain names, two novel issues arise: (1) does the reservation of a domain name
6 without payment of any registry fee for a period of five days or less constitute
7 “registration,” within the meaning of the ACPA; and, if so, (2) does a parties’ deletion of
8
9 a tasted domain name based on trademark compliance purposes during the five day
10 ICANN Add Grace Period constitute a bad faith *use* of such domain names. No reported
11 decision that we could find has resolved this issue.

13 **2. Tasting Does not Constitute Registration**

14
15 At the time of the enactment of the ACPA on November 29, 1999, there was no
16 Add Grace Period. See Exhibit R to Johnson Decl. (Add Grace Period for “.com” enacted
17 on May 25, 2001). As such, the practices in dispute in this litigation did not exist and
18
19 could not have been within the contemplation of Congress. Verizon, nonetheless,
20 conclusorily argues that tasted domain names are *registered* within the meaning of the
21 ACPA.

22
23 ICANN’s Registrar Accreditation Agreement (the “Agreement”) is instructive in
24 this regard. That Agreement provides that:

25 Registrar shall not activate any Registered Name unless and until it is satisfied that
26

27 ¹⁰ Arguments not refuted herein are not admitted. The arguments addressed in these
28 papers, however, are believed to be the most relevant to the Court’s determination.

1 it has received a reasonable assurance of payment of its registration fee. For this
2 purpose, a charge to a credit card, general commercial terms extended to
3 creditworthy customers, or other mechanism providing a similar level of assurance
4 of payment shall be sufficient, provided that the obligation to pay becomes final
and non-revocable by the Registered Name Holder upon activation of the
registration.

5 See Agreement, § 3.7.4, attached as Exhibit S to Johnson Decl. This provision expressly
6 states that a registration may not be activated until payment becomes final and non-
7 revocable. In the case of domain names that are tasted, no payment is made or assured.
8 The transaction can be canceled at any time without payment, prior to the expiration of
9 the five-day Add Grace Period. Thus, tasted domain names are not *registered*, within the
10 meaning of ICANN's controlling Agreement or the ACPA.
11
12

13 **3. Navigation Did Not Use the Tasted Domains in Bad Faith**

14 "A finding of 'bad faith' is an essential prerequisite to finding an ACPA violation."
15 Interstellar Starship Services, LTD v. EPIX, Inc., 304 F.3d 936, 946 (9th Cir. 2002)
16 (good faith where defendant performed web search to avoid registering trademark). Of
17 the alleged 1300 plus infringing domain names in dispute in this action, all but 126 of
18 them were screened for compliance and deleted by Navigation prior to this action. See
19 Jacoby Aff. ¶ 16, and Exhibit G to the Jacoby Aff. When you fish for tuna, you
20 occasionally catch a dolphin, and you throw it back. Navigation caught a few dolphins,
21 but threw back over 90%, in the case of Verizon. Of the remaining 126 domain names,
22 the great majority of them are scarcely recognizable as bearing any relation to the VZ and
23 VZW marks. These domain names include: VZWL.COM, VZW3.COM,
24
25
26
27
28

1 VZWPUIX.COM, TEXTVZW.COM, VZNTEXT.COM, VZW22.COM,
2 VZWCHAPERON.COM, VZWHUBS.COM and VZWPLACE.COM. See Exhibit I
3 attached to Jacoby Aff.

4
5 Of the remainder, fewer than twenty-five of the currently registered domain names
6 are misspellings of the word VERIZON plus some other word or phrase. See Exhibit H
7 attached to Jacoby Aff. Such domain names include: WERIZONVIRALES.COM,
8 WERIZONVIRELES.COM, VERIOSION.COM, VERISONNETWORK.COM,
9 VERVZION.COM, and ZERIZONWIRLESS.COM. See Exhibit H attached to Jacoby
10 Aff.

11
12
13 In all, a small percentage of the domain names in dispute, and a tiny fraction of the
14 domain names registered by Navigation overall, raise potential trademark concerns for
15 Verizon. In addition, the vast majority of the third party trademark domains allegedly
16 registered by Navigation and cited in the Complaint (19,607 out of 21,113) were screened
17 and deleted in accordance with Navigation's compliance practices. See Jacoby Aff., at ¶
18 9. Navigation is currently in the process of divesting its portfolio of those remaining
19 domain names that were not yet deleted. See Jacoby Aff., at ¶ 9.

20
21
22 With respect to the more than 90% or so of the domain names tasted and/or deleted
23 by Navigation and at issue here, Navigation's *use* of those domain names was not in bad
24 faith. Navigation freed the dolphins caught in its nets. Unlike several of the other
25 entities that Verizon has sued, Navigation did not engage in a practice of perpetually
26 adding and dropping tasted domain names to collect advertising fees, while avoiding
27
28

1 registration costs – so-called domain name *kiting*. See Jacoby Aff., at ¶ 6. Instead,
2 Navigation added identified trademark typos to a blacklist, not to be registered again. See
3 Jacoby Aff., at ¶ 7.

4
5 As stated above, even before this litigation was filed, Navigation had undertaken
6 an internal compliance review process and had retained outside counsel to advise it on
7 ways to improve its standard operating procedures. See Jacoby Aff., at ¶ 7. Several steps
8
9 had been adopted prior to the commencement of this litigation, and others have been
10 adopted in response to it, to provide additional safeguards against registering domain
11 names that are similar to known trademarks. See Jacoby Aff., at ¶¶ 7, 10.

12
13 Given the entirety of the record before this Court, we respectfully submit that
14 Verizon has not established a likelihood that it will succeed on the merits of its ACPA
15 claims.

16
17 **E. THE SCOPE OF THE REQUESTED RELIEF IS VAGUE AND**
18 **OVERBROAD**

19 Plaintiffs’ demand that Defendants stop using an automated process to register
20 domain names is vague and overbroad. Most registration functions performed by Basic
21 Fusion for its customers, including, Navigation, are automated. Were the requested
22 injunction granted, it would stop Navigation’s entire business. See Jacoby Aff., at ¶ 17.
23
24 Staff layoffs would follow. See Jacoby Aff., at ¶ 17.

25
26 The relief requested is also far broader than whatever relief Verizon has standing to
27 seek under the law. Again, it seems that Verizon’s principal motive in bringing these
28

1 actions is a competitive one – stop the competition from using automated systems to
2 identify domain names that generate Web traffic, so more typo traffic will be diverted to
3 Verizon’s competing wildcard DNS scheme. So far, Verizon’s plan to use its trademark
4 rights to gain an unfair advantage in the typo monetization field is working. We
5 respectfully request that this Court give a hard look at Verizon’s practices before granting
6 Verizon any more unwarranted relief.
7

8
9 **IV. CONCLUSION**

10 Given the serious and novel issues that deserve to be litigated with more attention
11 than can be mustered on an expedited motion for a preliminary injunction, the harm to
12 Defendants of shutting down its automated systems, and the absence of any real harm to
13 Verizon in denying its motion, we respectfully request that Verizon’s motion be denied.
14
15

16
17 DATED: June 16, 2008

18
19 Respectfully Submitted,

20 LEWIS & HAND, LLP

21 By /s/ Brett E. Lewis

22
23 Attorneys for Defendants,
24 NAVIGATION CATALYST SYSTEMS, INC.; and BASIC FUSION, INC.
25
26
27
28