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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CALCAR, INC., a California corporation;
 and AMERICAN CALCAR, INC., a
 Delaware corporation,

Plaintiff(s),

vs.

THE CALIFORNIA CARS INITIATIVE,
 INC., an unknown business entity; and
 FELIX KRAMER, an individual,

Defendant(s).

Case No. 3:08-MC-80083 MHP (WDBx)

Underlying Civil Action Pending in U.S.
 District Court for the Central District of
 California (Civil Action Case No. SACV07-
 00723)

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION TO SHORTEN TIME**

Honorable Wayne D. Brazil

I. NOTICE OF MOTION AND MOTION TO SHORTEN TIME

TO DAVE BAGSHAW, THE CALIFORNIA CARS INITIATIVE, INC., FELIX
 KRAMER AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Calcar, Inc. and American Calcar, Inc. (collectively
 "Calcar"), Plaintiffs in the above referenced action pending in the Central District of California,
 by and through their attorneys, Christie, Parker & Hale, LLP, move for an Order shortening
 time for this Court to hear Plaintiffs' Motion to Compel currently set to be heard on August 6,

1 2008 at 4:00 p.m. Pursuant to Local Rule 6-3(c), any opposition to this motion to shorten time
2 must be filed no later than the third court day after receiving this motion.

3 **II. RELIEF REQUESTED**

4 The relief sought by Calcar via this motion includes the following:

- 5 1. An Order shortening the time for the Court to hear Plaintiffs' Motion to Compel
6 and setting the hearing for July 9, 2008; and
- 7 2. An Order requiring Google, Inc. to file any opposition to Plaintiffs' motion to
8 compel by July 3, 2008; and
- 9 3. An Order allowing Plaintiffs to file a reply by July 7, 2008.

10 Calcar submits the following Memorandum of Points and Authorities and the
11 concurrently filed Declaration of G. Warren Bleeker in support of Plaintiffs' motion.

12 **III. MEMORANDUM OF POINTS AND AUTHORITY**

13 **A. Reasons for Shortening Time**

14 The reason Calcar seeks to shorten the time is that witness lists, exhibit lists and
15 memorandums of fact and law must be submitted by July 21, 2008. Shortening time for this
16 Court to hear Plaintiffs' Motion to Compel would allow for the discovery in the underlying
17 trademark infringement case.

18 On May 23, 2008, Calcar served Bagshaw with a subpoena issued from this Court and a
19 check for witness fees and mileage for deposition testimony to occur on June 17, 2008.
20 (Declaration of G. Warren Bleeker ("Bleeker Decl.") filed herewith, Exs. A & B.) Bagshaw
21 remained silent for two weeks after being served. (*Id.* at ¶ 3.) Finally, on June 5, 2008,
22 Bagshaw's counsel sent a letter to Calcar's counsel acknowledging the June 17 deposition date,
23 but falsely claiming improper service because Calcar "sent" the subpoena to Bagshaw and "it
24 appears that no witness fees or mileage fees were provided with the subpoena." (*Id.*, Ex. C.)
25 Calcar's counsel sent a letter to Bagshaw's counsel enclosing proof of *personal* service of both
26 the subpoena and check for witness fees and mileage fees along with a copy of the check. (*Id.*,
27 Ex. D.)

28 The June 5 letter from Bagshaw's counsel also asserted that Bagshaw would not be
available on June 17. (*Id.*, Ex. C.) Accommodating Bagshaw's purported unavailability, Calcar

1 responded on June 12 that it was "willing to consider alternate dates." (*Id.*, Ex. D.) When
2 Calcar attempted to ascertain whether Bagshaw would comply with the subpoena and appear at
3 the deposition, Bagshaw's counsel simply stated "Bagshaw will not be appearing on June 17."
4 (*Id.*, Ex. E.) Although Bagshaw's counsel claimed he would "respond in due course," he failed
5 to do so before the June 17 deposition date. (*Id.* at ¶ 5, Ex. E.) Thus, the June 17 deposition
6 date passed without any action or communication from Bagshaw regarding his failure to
7 comply with the subpoena. On June 19, Calcar's counsel broached the subject of Bagshaw's
8 availability during a break in the deposition of Ronald Gremban, but Bagshaw's counsel still
9 refused to provide a date. (*Id.* at ¶ 6.) Finally, on June 23, ten days after Bagshaw's counsel
10 stated he would respond, Calcar's counsel sent another email to Bagshaw's counsel to see if
11 Bagshaw would comply with the subpoena and attend his deposition. (*Id.*, Ex. F.) Bagshaw's
12 counsel finally responded on June 24 in a letter that reasserts improper service, lack of
13 relevance and claims Bagshaw's single objection "satisfied all of [Bagshaw's] duties with
14 regard to the subpoena." (*Id.*, Ex. G.) Bagshaw's counsel asserts in the June 24 letter that "Mr.
15 Bagshaw will not voluntarily subject himself to that conduct and, for that additional reason,
16 declines your request that he appear for deposition." (*Id.*)

17 The imminent deadline to submit witness lists, exhibit lists and memorandums of fact
18 and law (July 21) combined with Calcar's reliance upon Bagshaw's duty to obey the subpoena
19 prevent Calcar from bringing a regularly scheduled motion under this Court's Local Rules.
20 Calcar attempted on multiple occasions and in multiple ways to meet and confer with
21 Bagshaw's counsel in accordance with Local Rule 30-1. Bagshaw, however, failed to cooperate
22 and refused to discuss alternate dates for the deposition until the effective date to file a
23 regularly noticed motion had passed. As required by Local Rule 7-2, "motions must be filed,
24 served and noticed in writing on the motion calendar of the assigned Judge for hearing not less
25 than 35 days after service of the motion." Adherence to these timing requirements would put
26 the motion on for hearing past the Central District Court's July 21 deadline for witness lists,
27 exhibit lists and memorandums of facts and law. Further, the first available date for hearing
28 before this Court is August 6, 2008, well past the date set by the Central District Court and only

1 20 days before trial on August 26, 2008.

2 If this Court does not hear Plaintiff's Motion to Compel on a shortened timetable,
3 Plaintiffs would suffer severe prejudice without access to information possessed by Bagshaw.
4 Further, Plaintiffs should not suffer for Bagshaw's dilatory and evasive tactics to avoid
5 providing relevant testimony.

6 **B. Calcar's Efforts to Stipulate to a Time Change**

7 Calcar's counsel contacted counsel for Bagshaw on June 26, 2008 in order to obtain
8 agreement on the dates proposed herein. (Declaration of Patrick J. Ormé filed herewith, Ex.
9 A.) Bagshaw's counsel refused to stipulate to any shortening of time. (*Id.*)

10 **C. Substantial Harm and Prejudice Would Result With No Shortening of Time**

11 If the motion to shorten time is not granted, Plaintiffs will be harmed and prejudiced in
12 pursuing claims of trademark infringement against Defendants The California Cars Initiative,
13 Inc. ("TCCI") and Felix Kramer (collectively "TCCI"). Plaintiffs own the CALCAR mark, but
14 Bagshaw's role as Senior Advisor to TCCI with his technical and marketing expertise allowed
15 TCCI to use and promote the infringing CALCARS mark. (Bleeker Decl. at ¶ 9, Ex. H.)
16 Plaintiffs merely seek testimony regarding Bagshaw's knowledge of and role in promoting
17 products similar to Plaintiffs, any incidents of actual confusion between the parties as sources
18 for goods, marketing channels used by TCCI to sell its goods, and market knowledge regarding
19 the types of goods and the degree of care likely to be exercised by a purchaser and any planned
20 expansion of TCCI's product lines. The information sought is relevant to the likelihood of
21 confusion factors necessary to show trademark infringement. *See AMF, Inc. v. Sleekcraft*
22 *Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979) (providing list of likelihood of confusion factors).

23 Without the shortening of time, Plaintiffs will not have an opportunity to have their
24 Motion to Compel heard prior to the deadline for providing witness lists, exhibit lists and
25 memorandums of fact and law. If heard and granted later than the requested July 9 date,
26 Plaintiffs will not have an opportunity to depose Bagshaw before the July 21 deadline set by the
27 Central District Court's Order. Such an outcome would prejudice Plaintiffs in pursuit of their
28 trademark infringement claims against TCCI.

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D. Compliance with Discovery Rules

On June 19, 2008 counsel for Calcar and Bagshaw met and conferred in compliance with Local Rule 37-1(a) to resolve the discovery dispute. (Bleeker Decl. at ¶ 6.) Calcar believes Bagshaw should comply with the deposition subpoena and appear to provide deposition testimony.

E. Prior Time Modification in This Case

With the exception of the April 7, 2008 Central District Court Order modifying the discovery schedule, no other modifications have occurred either by stipulation or Court order. (*Id.* at ¶ 11.)

F. Shortening Time Would Not Affect the Case Schedule

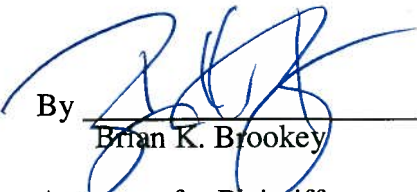
Shortening the time for hearing would not impact the current case schedule.

IV. CONCLUSION

Bagshaw's decision to ignore the subpoena prevents Plaintiffs' Motion to Compel from being heard before the deadline for providing witness lists, exhibit lists and memorandums of fact and law. Plaintiffs would suffer prejudice in pursuing their trademark infringement claims. Bagshaw possesses relevant testimony regarding Defendants use and promotion of the infringing mark. Shortening the time in this matter would not affect the case schedule, but instead would allow justice to prevail.

DATED: June 26, 2008

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 

Brian K. Brookey
Attorneys for Plaintiffs,
CALCAR, INC. and AMERICAN CALCAR,
INC.

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2008 I electronically filed the document described as PLAINTIFFS' NOTICE OF MOTION AND MOTION TO SHORTEN TIME with the Clerk of the Court using the ECF system which will send notification of such filing to the parties. I further certify that I have served a true copy of the paper via electronic mail to the non-ECF participants as follows:

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/s/Betty L. Venuti

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