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 INTERSERVE, INC. dba TECHCRUNCH  
 8 and CRUNCHPAD, INC.

9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

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12 INTERSERVE, INC. dba TECHCRUNCH, a )  
 Delaware corporation, and CRUNCHPAD, )  
 13 INC., a Delaware corporation, )  
 )  
 14 Plaintiffs, )  
 )  
 15 vs. )  
 )  
 16 FUSION GARAGE PTE. LTD., a Singapore )  
 company, )  
 17 )  
 )  
 18 Defendant. )

**Case No. C 09-cv-5812 RS (PVT)**  
**JOINT CASE MANAGEMENT**  
**CONFERENCE STATEMENT**  
 [Pursuant to Reassignment Order of  
 March 18, 2010]

1 Pursuant to the March 18, 2010, order reassigning this case to Judge Seeborg, the parties  
2 provide the Court with the following information:

3 **1. Date case was filed**

4 Plaintiffs filed this case on December 10, 2009.

5 **2. List or description of all parties**

6 Plaintiffs:

7 INTERSERVE, INC. dba TECHCRUNCH, a Delaware corporation

8 CRUNCHPAD, INC., a Delaware corporation

9 Defendant:

10 FUSION GARAGE PTE. LTD., a Singapore company

11 **3. Summary of all claims, counter-claims, cross-claims, third party claims**

12 Plaintiffs allege the following claims for relief against Defendant:

- 13 1. False advertising under the Lanham Act, 15 U.S.C. § 1125;
- 14 2. Breach of fiduciary duty under California state law;
- 15 3. Misappropriation of business ideas under California state law;
- 16 4. Fraud and deceit under California state law;
- 17 5. Unlawful, unfair, or fraudulent business practices and false advertising under  
18 Cal. Bus. & Prof. C. §§ 17200 and 17500.

19 There are no other claims presently in the case.

20 Defendant may assert counterclaims if the case proceeds past the motion to dismiss stage.

21 **4. Brief description of the event underlying the action;**

22 **A. TechCrunch's Statement**

23 For more than a year, Plaintiffs (also collectively "TechCrunch") worked with Defendant  
24 (also "Fusion Garage") in a joint venture to develop the "CrunchPad," an affordable, portable  
25 webbrowsering tablet computer. TechCrunch had conceived the CrunchPad device, independently  
26 developed its original prototype, and contributed substantial intellectual and financial resources at all  
27 stages of the product's development and preparation for launch. In reliance on the parties'  
28 proclaimed partnership, TechCrunch eschewed other partnerships, invested over \$400,000, fronted

1 costs to Fusion Garage, and even brought Fusion Garage staff to its Silicon Valley offices to push  
2 forward on the project.

3 Three days before the product’s scheduled launch, in November of 2009, Fusion Garage  
4 abruptly terminated its relationship with TechCrunch and announced that it would sell the  
5 CrunchPad on its own under the name “JooJoo.” It started taking pre-orders the week TechCrunch  
6 sued.

7 The evidence uncovered to date suggests that Fusion Garage planned to push TechCrunch  
8 out of the CrunchPad project months before it actually pulled the plug. Throughout October and  
9 November of 2009, TechCrunch believed that a company called Pegatron would be manufacturing  
10 the CrunchPad. But it has since discovered that Pegatron terminated its relationship with Fusion  
11 Garage on October 9—a fact Fusion Garage concealed from TechCrunch even as Fusion Garage  
12 personnel set up shop at TechCrunch’s headquarters. Fusion Garage registered the domain  
13 “thejoojoo.com” on November 10, 2009, even while assuring TechCrunch in writing on November  
14 13, 2009 that it would meet the November 20 launch date for the CrunchPad.

15 Further, Fusion Garage’s public relations firm was ready with a choreographed smear  
16 campaign against TechCrunch by the December 7, 2009, JooJoo launch event. At the event, Fusion  
17 Garage’s CEO made multiple false and misleading statements about the nature, characteristics, and  
18 qualities of the CrunchPad/JooJoo device and TechCrunch’s relationship to the product. Fusion  
19 Garage represented that it “developed the hardware platform on our own,” and “made all the  
20 hardware design decisions for the final prototype and getting a successful contractual relationship  
21 with an ODM.” It also represented that “[i]t was the Fusion Garage shareholders who have provided  
22 the necessary funds” for the CrunchPad project. Fusion Garage repeatedly asserted that it took “all  
23 the risk” in the endeavor, “did all the work needed to move forward and bring the product to  
24 market,” and undertook “all of the physical and intellectual business actions required to take the  
25 product to market.” These statements were false.

26 Fusion Garage misled TechCrunch, and has been misleading the public about the nature of  
27 the CrunchPad/JooJoo device.

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1                                   **B.      Fusion Garage's Statement**

2                   Plaintiff TechCrunch is an Internet “blog” founded by blogger Michael Arrington.  
3 Mr. Arrington formed another company, Plaintiff CrunchPad, Inc. to acquire Fusion Garage. The  
4 parties were never able to come to terms on an acquisition and never signed a deal. Spurned and  
5 embarrassed that they have no product and could not consummate an acquisition, TechCrunch and  
6 Mr. Arrington filed this lawsuit to disrupt Fusion Garage’s introduction of its product to the market.  
7 Plaintiffs have simultaneously engaged in a public relations campaign through the TechCrunch blog  
8 to derail Fusion Garage's business. Plaintiffs are focused on systematically publishing information  
9 about this lawsuit and Fusion Garage to try and tarnish and embarrass Fusion Garage and run it out  
10 of business.

11                   Plaintiffs allege that Mr. Arrington posted on the Internet a “challenge to himself and the  
12 world” in July 2008 to develop a web tablet. TechCrunch now claims that it owns the ethereal  
13 "ideas" related to the web tablet. In fact, TechCrunch and Arrington made no contribution to Fusion  
14 Garage's product. They contributed no technology to Fusion Garage's product. Moreover,  
15 TechCrunch has no competing product. In discovery, TechCrunch has disavowed any intellectual  
16 property infringement claim.

17                   Plaintiffs allege that the parties were partners or joint venturers in connection with  
18 developing a web tablet product. However, Plaintiffs do not allege the existence of any partnership  
19 agreement, joint venture agreement, or any contract between the parties. In acquisition discussions,  
20 Plaintiffs proposed a Letter of Intent containing a "no shop" provision meaning Fusion Garage was  
21 free to shop itself to others if the parties did not consummate an acquisition within 60 days. Such a  
22 provision is utterly incongruous with Plaintiffs' claim that they were partners with Fusion Garage.

23                   Nor have Plaintiffs explained what the terms of the supposed partnership were. Mr.  
24 Arrington has filed a declaration in support of preliminary injunction motion in which he claims the  
25 parties agreed to bear their own losses and expenses if the project was "not successful," but would  
26 share the profits if the project was successful. Accordingly, Plaintiffs' position is that there was a  
27 partnership if there was an upside to TechCrunch, but no partnership if there was a downside to  
28 TechCrunch. Moreover, Mr. Arrington apparently claims he had the right to terminate the supposed

1 partnership at any time. The damages Plaintiffs seek are also inconsistent with their partnership  
2 allegations: they claim they are entitled to Fusion Garage's profits while claiming the parties are  
3 partners. Plaintiffs have also produced documentation suggesting they were considering trying to  
4 drive Fusion Garage out of business and solicit Fusion Garage's employees while now claiming they  
5 were partners with Fusion Garage. There was no partnership.

6 Given the lack of any legal relationship between the parties, Plaintiffs have asserted claims  
7 based on vague and non-specific allegations, including: "misappropriation of business ideas," false  
8 advertising under the Lanham Act, breach of fiduciary duty, fraud, and violations of California  
9 Business & Professional Code §§ 17200 and 17500. These claims are all baseless and were brought  
10 for an improper purpose. Fusion Garage has moved to dismiss all of them.

11 Plaintiffs have also filed a motion for preliminary injunction claiming they want Fusion  
12 Garage's revenues to be impounded in a Court directed account. The apparent purpose for this  
13 motion is to discover Fusion Garage's financing sources so Plaintiffs can subpoena them, pressure  
14 them, and disrupt Fusion Garage's relationships with them.

15 **5. Description of relief sought and damages claimed with an explanation as to how**  
16 **damages are computed**

17 **A. TechCrunch Statement**

18 At this time, Plaintiffs do not have a complete calculation of damages to which they may be  
19 entitled, because Plaintiffs believe that their calculation of damages is in part dependent on  
20 information to be obtained from discovery during the course of this action. But Plaintiffs are aware  
21 of at least the following damages:

22 1. \$400,000 in actual damages related to Plaintiffs' investment in the CrunchPad  
23 project; and

24 2. Approximately \$40,000 in proceeds from Defendant's sale of the  
25 CrunchPad/JooJoo, of which Defendants are entitled to at least a portion.

26 As stated in Plaintiffs' Complaint and Prayer for Relief, Plaintiffs seek, to the full extent the law  
27 permits, all actual damages, exemplary damages, Defendant's profits, restitution, and attorneys' fees  
28 and costs.

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**B. Fusion Garage Statement**

As Fusion Garage contends that none of Plaintiffs' claims have any merit, there are no damages.

**6. Status of discovery (including any limits or cutoff dates)**

On January 7, 2010, the Court granted TechCrunch's motion for expedited discovery. The parties have exchanged their initial disclosures.

To date, TechCrunch has served one set of interrogatories (nos. 1-12), and two sets of requests for production of documents. TechCrunch has also served subpoenas upon third parties PayPal, Inc., McGrath Power, and Fusion Garage, Inc. TechCrunch is working with Fusion Garage to arrange for the deposition of its principal.

To date, Fusion Garage has served one set of requests for production jointly on both Plaintiffs and one set of interrogatories separately on each Plaintiff. Fusion Garage has noticed the deposition of Interserve, Inc., and has subpoenaed third part Ron Conway for documents and deposition.

The Court has not yet held any scheduling conference in this case and there are currently no case-specific limits on discovery or a discovery cutoff.

**7. Procedural history of the case including previous motions decided and/or submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate proceedings pending or concluded, and any previous referral to a magistrate judge**

Prior and pending motions include:

Plaintiffs' Motion for Expedited Discovery (Dkt. 11)	Granted on January 7, 2010.
Defendant's Motion to Dismiss (Dkt. 20)	Pending. Hearing was set before Judge Ware for May 3, 2010, but that hearing date was vacated. Hearing is now set before Judge Seeborg for May 6, 2010.
Defendant's Motion for Protective Order (Dkt. 23)	Pending. Hearing was before Magistrate Judge Trumbull on March 16, 2010. The parties await a ruling.
Plaintiffs' Motion for Preliminary Injunction (Dkt. 26)	Pending. Hearing was set before Judge Ware for May 3, 2010, and then before



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**12. If there exists an immediate need for a case management conference to be scheduled in the action.**

The parties do not see an immediate need for a case management conference apart from the need for the initial case management conference to set dates.

Dated: April 2, 2010

WINSTON & STRAWN LLP

By: /s/  
Andrew P. Bridges  
David S. Bloch  
Matthew A. Scherb  
  
Attorneys for Plaintiffs  
INTERSERVE, INC. dba TECHCRUNCH  
and CRUNCHPAD, INC.

Dated: April 2, 2010

QUINN EMANUEL URQUHART & SULLIVAN  
LLP

By: /s/  
Claude M. Stern  
Patrick C. Doolittle  
  
Attorneys for Defendant  
FUSION GARAGE PTE. LTD.

**CONCURRENCE IN FILING**

Patrick C. Doolittle concurs in the filing of this pleading.

Dated: April 2, 2010

/s/  
Matthew A. Scherb