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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

INTERSERVE, INC. dba TECHCRUNCH, a
 Delaware corporation, and CRUNCHPAD,
 INC., a Delaware corporation,

Plaintiffs,

vs.

FUSION GARAGE PTE LTD., a Singapore
 company,

Defendant.

CASE NO. C 09-cv-5812 RS (PVT)

**REPLY BRIEF IN SUPPORT OF FUSION
 GARAGE'S MOTION TO COMPEL**

Date: April 12, 2010
 Time: 2:00 p.m.
 Judge: Hon. Patricia Trumbull

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Introduction

This is a simple motion to compel. Plaintiffs sought leave of court to take discovery prior to the Rule 26(f) Conference. Plaintiffs then filed for a preliminary injunction. In response to Fusion Garage’s Requests for Production, Plaintiffs *agreed* to produce documents. However, they only produced a small batch of documents and Fusion Garage was forced to move to compel. Accordingly, after seeking early discovery themselves, Plaintiffs turned around and stonewalled Fusion Garage in discovery, thus necessitating motion to compel practice.

On April 7, 2010, Plaintiffs produced approximately 3,500 additional pages of documents. If Plaintiffs certify that their April 7 production renders their document production complete, this motion is moot. If it is not complete, the Court should order Plaintiffs to comply with their written responses and produce all responsive documents.

Argument

Plaintiffs’ Opposition Brief to the present motion (Dkt. 52) attempts to side-step or excuse their own failure to produce documents by citing Fusion Garage’s alleged failure to produce documents. *See id.* at 1 (“it is *Defendant’s failure* to produce documents and *Defendant’s delaying tactics* – in the face of this Court’s previous order allowing expedited discovery – that should trouble the Court.”) (emphasis in original). This argument is a red herring. Plaintiffs ignore that the parties are in a fundamentally different posture with respect to discovery: Fusion Garage filed a motion for protective order regarding many of Plaintiffs’ Requests for Production, and that motion is still under submission. Moreover, Fusion Garage has objected to many of Plaintiffs’ requests and, in meet and confer discussions, the parties agreed to “table” many of Plaintiffs’ Requests for Production pending the Court’s ruling on the protective order motion.

Plaintiffs also ignore the fact that *they* were the ones who chose to file for a preliminary injunction. Thus, Plaintiffs presumably felt that they can fully and fairly litigate the preliminary injunction motion without their opponent’s documents. Given the drastic remedy Plaintiffs seek, Fusion Garage wants—and is entitled to—Plaintiffs’ documents regarding the alleged “joint venture” and other core topics that form the bases for Plaintiffs’ causes of action and their preliminary injunction motion.

1 Plaintiffs argue that Fusion Garage’s immediate demand for all responsive documents
2 creates an “impossible deadline” (*id.* at 2) and that Plaintiffs should be allowed to review and
3 produce documents at their own pace. *Id.* at 1. But any scheduling difficulties are entirely of
4 Plaintiffs’ own making. As stated above, it was Plaintiffs who chose to file for a preliminary
5 injunction before either side produced many documents. Moreover, Plaintiffs rebuffed Fusion
6 Garage’s proposal to move the preliminary injunction hearing to the end of May – a proposal that
7 Fusion Garage offered precisely so that the parties would have extra time to attempt to try and
8 resolve discovery issues. Having filed for an early preliminary injunction and having refused
9 Fusion Garage’s reasonable offer to extend the deadlines for that motion approximately a month,
10 Plaintiffs cannot now complain about the difficulties of producing documents quickly and
11 expeditiously so that Fusion Garage may review these documents and use them to oppose the
12 preliminary injunction motion.

13 For the foregoing reasons, Fusion Garage respectfully requests that the Court grant its
14 motion to compel and order Plaintiffs to produce all responsive documents.

15 DATED: April 8, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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By /s/ Patrick Doolittle
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Attorneys for Defendant Fusion Garage PTE Ltd.