

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER
TECHNOLOGIES LLC,

Plaintiff,

v.

SOFTLAYER TECHNOLOGIES, INC.,
et al.

Defendants.

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CASE NO. 6:09-cv-269-LED

Jury Trial Demanded

**BEDROCK’S REPLY IN SUPPORT OF ITS
MOTION TO COMPEL FROM AOL AND MYSPACE
A COMPLETE RESPONSE TO BEDROCK’S FOURTH INTERROGATORY**

I. ARGUMENT IN REPLY

MySpace and AOL attempt to justify their interrogatory responses by placing blame on Bedrock—particularly, by arguing that Bedrock has not come forth with a sufficient damages and infringement theories that would trigger AOL’s and MySpace’s obligations to give complete responses. Most of this briefing simply repeats Google’s and Match.com’s briefing, which is why Bedrock has asked the Court for a case management conference on the scope of discoverability in the District. *See* Dkt. No. 288. Further, these arguments are unavailing for the same reasons set out in Bedrock’s prior briefing against Google and Match.com. *See* Dkt. No. 264 at 2-4. Below, Bedrock discusses the slight ways in which MySpace’s and AOL’s briefs differ from Google’s and Match.com’s briefing.

MySpace. MySpace should be given no credit for producing documents and promising to supplement its interrogatory response—which it still has not done—after it refused to supplement its interrogatory, which forced Bedrock to file this motion to compel. To allow a party to avoid a motion to compel by such a contrivance would defeat a key purpose of the Federal Rules of Civil Procedure and the Local Rules, which is to promote voluntary discovery without the need for motions practice.

AOL. Similarly, AOL should be given no credit for supplementing its interrogatory response alongside its response to Bedrock’s motion. In any event, AOL’s response is still deficient. Bedrock’s fourth interrogatory to AOL asks:

For each AOL business unit using, running, or relying upon to any degree a server or network of servers executing any Accused Version of Linux, for each quarter from 2003 to the present, describe the following financial data: (a) revenues net of any returns, allowances, or credits; (b) costs; (c) all other expenses, with the data segregated by whatever classifications AOL makes in its normal course of business; (d) profits before taxes net of any returns, allowances, or credits; (e) the identity of documents

sufficient to show financial data requested by (a) through (d); and (f) the identity of all persons who have knowledge related to the information requested in this interrogatory.

AOL's supplemental response, however, only gives financial information related to its revenues by year. In other words, AOL's supplemental response still does not answer subparts (b)-(e) of the interrogatory, and even the disclosed revenues are not separated by quarter.

II. CONCLUSION

Because MySpace's and AOL's responses to Bedrock's fourth interrogatory was deficient at the outset of this motion and remains deficient, Bedrock respectfully requests the Court to grant its motion and enter either its proposed order or its alternative proposed order.

DATED: September 17, 2010

Respectfully submitted,
McKOOL SMITH, P.C.

/s/ Douglas A. Cawley

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 17th day of September, 2010.

/s/ J. Austin Curry _____
J. Austin Curry