

CTJ/RMT
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2009 SEP 30 AM 9:02

CLERK OF COURT

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

YAHOO! INC. and OVERTURE SERVICES, INC.
d/b/a YAHOO! SEARCH MARKETING,

Defendants.

No. 4:08-CV-626-A

RESPONSE TO THE COURT'S SEPTEMBER 29, 2009 ORDER

On September 29, 2009, third-party Papa Wolf LLC d/b/a Frequentflyerdepot.com ("Papa Wolf") filed a motion for protective order in this case. Shortly thereafter, the Court rendered an order requiring plaintiff, American Airlines, Inc. ("American"), to file by 10:00 a.m. on September 30, 2009 (1) a response to that motion and (2) a document explaining why American's counsel did not respond sooner to the September 24, 2009 letter from J. Michael Weston ("Mr. Weston"), counsel for Papa Wolf, to Scott R. Wiehle ("Mr. Wiehle"), counsel for American. American respectfully provides the following in response to that order:

**I.
RESPONSE TO THE MOTION**

On September 14, 2009, American, through Mr. Wiehle, issued a subpoena to Papa Wolf requiring only the production of documents. The subpoena did not require Papa Wolf to appear for a deposition. On September 24, 2009, Mr. Weston sent Mr. Wiehle a letter (attached to the Motion

for Protective Order) indicating, among other things, that Papa Wolf did not have any documents responsive to the subpoena. The letter did not contain any reference to a deposition. On September 29, 2009, Papa Wolf filed its motion seeking an order that “the deposition scheduled and for which Papa Wolf LLC d/b/a Frequentflyerdepot.com was served with a subpoena not be taken.” Motion at. pg. 2. The subpoena, however, does not require any deposition. Accordingly, American asserts that there is no need for the relief sought.

After the Court’s September 29, 2009 order was received by counsel for American, one of the other lawyers representing American in this case, Lars L. Berg, contacted Mr. Weston to resolve all issues related to the subpoena. Mr. Berg confirmed that American did not seek a deposition of Papa Wolf, and to the extent there were any outstanding issues related to the production of documents under the subpoena, Mr. Berg and Mr. Weston resolved those issues. Accordingly, American understands that Papa Wolf intends to file a notice withdrawing its motion for protection.

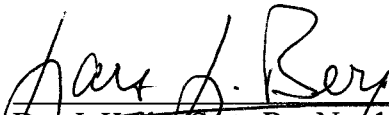
II.
EXPLANATION OF THE DELAY IN RESPONDING TO
MR. WESTON’S SEPTEMBER 24, 2009 LETTER

After receiving the Court’s September 29, 2009 order, Mr. Berg also obtained from Mr. Wiehle a detailed explanation of the circumstances leading to the delay in responding to Mr. Weston’s September 24 letter. Mr. Wiehle received that letter on Thursday, September 24. He intended to respond in enough time to avoid the filing of the motion for protective order mentioned in the letter. The letter did not request a response by a specific date, and Mr. Wiehle believed that he had adequate time to respond before any motion related to the subpoena would be necessary. He did not understand that Papa Wolf intended to file any motion on Tuesday, September 29.

Unfortunately, the press of other matters caused a delay in Mr. Wiehle's response. He did not intend anything improper by the delay; rather, he intended to respond and resolve any dispute well before any motion was filed.

Dated: September 30, 2009

Respectfully submitted,



~~Dee J. Kelly (State Bar No. 11217000)~~
~~Dee J. Kelly, Jr. (State Bar No. 11217250)~~
~~Lars L. Berg (State Bar No. 00787072)~~
~~Scott R. Wiehle (State Bar No. 24043991)~~
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Phone: (817) 332-2500
Fax: (817) 878-9280

Attorneys for Plaintiff American Airlines, Inc.

Of Counsel:

Howard S. Hogan (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Phone: (202) 955-8500
Fax: (202) 467-0539

Frederick Brown (admitted *pro hac vice*)
Jason B. Stavers (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Phone: (415) 393-8200
Fax: (415) 393-8306

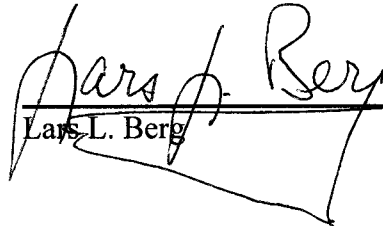
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document has been served on all parties via facsimile on September 30, 2009.

David F. Chappell
Scott A. Fredricks
CANTEY HANGER LLP
600 West Sixth Street, Suite 300
Fort Worth, TX 76102

Michael A. Jacobs
MORRISON & FORRESTER LLP
425 Market Street
San Francisco, CA 94105

J. Michael Weston
BENNETT WESTON LAJONE & TURNER PC
1750 Valley View Lane, Suite 120
Dallas, Texas 75234


Lars L. Berg