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

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
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OCT - 7 2009  
5:07  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

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

Defendants.

No. 4-08-8CV-626-A

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, American Airlines, Inc. ("American"), moves for partial summary judgment, and pursuant to Local Rule 56.3, American respectfully shows the Court as follows:

**I.**  
**SUMMARY**

Defendants, Yahoo! Inc., and Overture Services, Inc. (collectively "Yahoo") asserted twenty-two affirmative defenses in their First Amended Answer. American moves for summary judgment on thirteen of Yahoo's affirmative defenses: fair use, freedom of speech, limited remedies under contract, trademark misuse, limitations, laches, unclean hands, estoppel, privilege and justification, acquiescence, implied license, American's settlement with non-parties, and American's own conduct and responsibility for damages. Each of these affirmative defenses fails because either Yahoo does not have any evidence to support one or more of the essential elements required to prove those affirmative defenses or Yahoo cannot meet its legal burden under even Yahoo's version of the facts. American more specifically identifies in its brief each such element of each affirmative defense on which summary judgment is sought.

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**II.**  
**LEGAL AND FACTUAL GROUNDS**  
**ON WHICH AMERICAN RELIES**

The legal and/or factual grounds on which American relies are set forth in detail in American's brief.

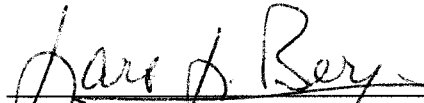
**III.**  
**APPENDIX**

American's motion and brief are accompanied by an appendix containing the evidence upon which American relies. The brief contains cites to the appendix for each assertion made by American concerning the summary judgment evidence.

**IV.**  
**PRAYER**

American respectfully requests that the Court grant its motion for partial summary judgment and dismiss Yahoo's affirmative defenses of fair use, freedom of speech, limited remedies under contract, trademark misuse, limitations, laches, unclean hands, estoppel, privilege and justification, acquiescence, implied license, American's settlement with non-parties, and American's own conduct and responsibility for damages.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

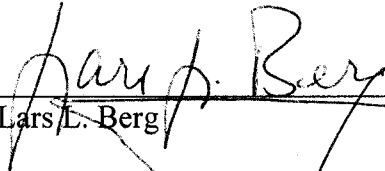
I certify that a true and correct copy of the foregoing was served on Defendants' counsel  
on the 7th day of October, 2009:

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