

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.
FORT WORTH DIVISION
2008 NOV 12 PM 4:21
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

**APPENDIX IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD IN SUPPORT OF AMERICAN'S MOTION
FOR SANCTIONS FOR FAILURE TO PRODUCE AND PRESERVE DOCUMENTS**

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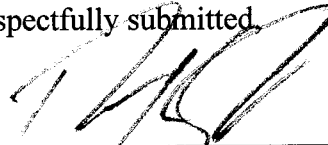
Attorneys for Plaintiff American Airlines, Inc.

American Airlines, Inc. respectfully submits this appendix in support of its Motion For Leave To Supplement The Record In Support Of American's Motion For Sanction For Failure To Produce And Preserve Documents, pursuant Local Rule 7.1(i):

Exhibits	Pages	Description
A	Supp. App. 1-15	Excerpts from the rough draft of the deposition transcript of Nam Nguyen taken November 5, 2009

November 12, 2009

Respectfully submitted,



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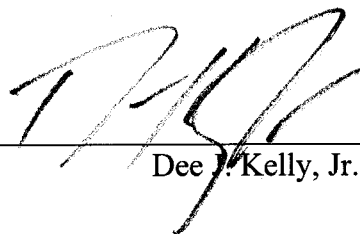
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered on November 12, 2009 to Defendant's counsel, as follows, in accordance with the Federal Rules of Civil

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A

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

--oOo--

AMERICAN AIRLINES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:08-CV-626-A
)	
YAHOO! INC. and OVERTURE)	
SERVICES, INC. d/b/a YAHOO!)	
SEARCH MARKETING,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF

NAM NGUYEN

November 5, 2009

CONFIDENTIAL

REPORTED BY: SARAH LUCIA BRANN, CSR 3887 (#424130)

SUPP. APP. 1

10:24:38 1 MR. STAVERS: Q. I would like to ask some
10:24:39 2 questions that help me understand how the search
10:24:43 3 engine results page is displayed, so that's kind of
10:24:46 4 my overlying question, just to kind of guide you as
10:24:49 5 to where we are going.

10:24:51 6 As I understand it, the search engine
10:24:53 7 results page is a page that is displayed in the web
10:24:55 8 browser of a user; is that correct?

10:24:57 9 A. Yes.

10:25:06 10 Q. What technological systems are used to
10:25:09 11 actually send the signal to the user's computer that
10:25:13 12 displays the SERP?

10:25:16 13 MR. MUINO: Objection. Calls for
10:25:18 14 speculation.

10:25:19 15 MR. STAVERS: I can't see how it could
10:25:20 16 possibly call for speculation.

10:25:23 17 MR. MUINO: Systems to transmit the
10:25:24 18 signal? It could mean the entire Internet.

10:25:27 19 MR. STAVERS: Q. Are you responsible for
10:25:28 20 the implementation and serving of the search engine
10:25:33 21 results page?

10:25:34 22 A. Yes.

10:25:34 23 Q. What systems are used to implement and
10:25:36 24 serve search engine results pages at Yahoo?

10:25:38 25 A. It's called HTTP server. That's the

10:25:38 1 generic term. The technology we use is from an open

10:25:44 2 source called Apache.

10:25:49 3 Q. So do you refer to the Apache server? Is

10:25:54 4 that a meaningful way to describe it?

10:25:56 5 A. Yes.

10:25:58 6 Q. And then is it correct, then, that the

10:26:00 7 Apache server sends the search engine results page

10:26:05 8 to the user?

10:26:05 9 A. Receives the request from the user and

10:26:07 10 sends the result back or the page back to the user

10:26:13 11 per a protocol called HTTP. And the format of the

10:26:19 12 page is called HTML.

10:26:22 13 Q. HTML?

10:26:24 14 A. Yes.

10:26:24 15 Q. Is there any JavaScript on the Yahoo

10:26:27 16 search engine results page?

10:26:29 17 A. Yes.

10:26:30 18 Q. Where? Which components of the page?

10:26:35 19 A. Search Assist, Search Monkey.

10:26:43 20 Some of these names are just code names.

10:26:50 21 Q. Anything else?

10:26:56 22 A. On the left rail, Search Pack.

10:26:59 23 Q. Uses JavaScript.

10:27:02 24 A. Yes.

10:27:03 25 Q. What about the sponsor results?

10:27:08 1 A. Not that I know of.

10:27:10 2 Q. So is it accurate -- and please correct my
10:27:13 3 language if it's wrong.

10:27:15 4 Is it accurate to say that Yahoo's Apache
10:27:19 5 server serves the sponsor results using HTML?

10:27:24 6 A. Using HTTP protocol, and the page that we
10:27:29 7 send back is in HTML format.

10:27:33 8 Q. So the page is in an HTML format.

10:27:36 9 A. Yes.

10:27:37 10 Q. Are any elements of the search engine
10:27:40 11 results page provided by third parties other than
10:27:43 12 Yahoo?

10:27:56 13 A. Could you repeat the question?

10:27:58 14 Q. Is anything on the page, such as the
10:28:04 15 sponsor results or the header or the search box or
10:28:07 16 anything on the page, is it provided directly by a
10:28:12 17 third party, meaning that the third party sends it
10:28:14 18 to the user and not Yahoo?

10:28:18 19 A. Yes.

10:28:19 20 Q. Which parts?

10:28:24 21 A. One example is when you search for
10:28:27 22 people's name or phone number, we use data from a
10:28:33 23 company called Intelius.

10:28:38 24 Q. So is there -- is Intelius actually
10:28:42 25 communicating with the user's web browser, or does

10:28:46 1 it all go through Yahoo?

10:28:48 2 A. It goes through Yahoo.

10:28:50 3 Q. So is it correct that everything that's on

10:28:53 4 the search engine results page is sent there by

10:28:56 5 Yahoo, is sent to the user by Yahoo?

10:28:59 6 A. Yes.

10:29:12 7 Q. A page that is formatted in HTML, is that

10:29:16 8 HTML formatting a text-based code?

10:29:22 9 A. Yes.

10:29:28 10 Q. And that code contains information about

10:29:31 11 the actual text itself on the page; is that correct?

10:29:39 12 A. Yes.

10:29:40 13 Q. Does it also contain information about

10:29:43 14 where that text is displayed on the page?

10:29:46 15 A. Yes.

10:29:46 16 Q. And does it contain information about the

10:29:48 17 colors and fonts that are used for the text on the

10:29:52 18 page?

10:29:53 19 A. Yes.

10:29:53 20 Q. Does it contain information about the

10:29:56 21 graphics that are displayed on the page?

10:29:59 22 A. Yes.

10:29:59 23 Q. Does it contain the graphics themselves?

10:30:07 24 A. Usually not. The graphics would be

10:30:11 25 retrieved via a different look-up.

10:30:15 1 Q. And is the look-up contained within the
10:30:17 2 HTML code?
10:30:19 3 A. Yes.
10:30:19 4 Q. And where are the graphics generally
10:30:22 5 retrieved from?
10:30:23 6 A. Another Yahoo server.
10:30:29 7 Q. Does Yahoo retain the HTML code that is
10:30:34 8 served to the user that makes up the SERP?
10:30:42 9 A. What do you mean by retain?
10:30:44 10 Q. Well, does it keep a copy of it?
10:30:46 11 A. No.
10:30:56 12 Q. Is Yahoo technically capable -- is it
10:30:58 13 possible to maintain a copy of a single -- of the
10:31:02 14 code, the HTML code, that supports a single search
10:31:05 15 engine results page?
10:31:07 16 MR. MUINO: Objection. Calls for
10:31:07 17 speculation.
10:31:08 18 THE WITNESS: I don't know.
10:31:09 19 MR. STAVERS: Q. So, am I to understand
10:31:14 20 correctly, then, that the Yahoo servers --
10:31:17 21 withdrawn.
10:31:18 22 Yahoo's systems create HTML code -- is
10:31:23 23 that accurate? -- in response to a request from the
10:31:26 24 user in the search box?
10:31:28 25 A. Yes.

10:31:28 1 Q. And then Yahoo's systems send that HTML
10:31:33 2 code back to the user's web browser; is that
10:31:35 3 correct?
10:31:36 4 A. Yes.
10:31:36 5 Q. But to your knowledge Yahoo does not keep
10:31:39 6 a copy of that code.
10:31:41 7 A. Yes.
10:31:51 8 Q. Is it possible for Yahoo's systems to send
10:31:57 9 the same HTML code that is sent to the user's web
10:32:01 10 browser to another location?
10:32:03 11 MR. MUINO: Objection. Vague and
10:32:04 12 ambiguous. Calls for speculation.
10:32:05 13 THE WITNESS: What do you mean by
10:32:06 14 possible?
10:32:08 15 MR. STAVERS: Q. Is it technically
10:32:09 16 feasible? Could you design the system such that
10:32:12 17 when it sends the HTML code to the user it also
10:32:16 18 sends it to another user or another source within
10:32:18 19 Yahoo, or simply sends it to a server somewhere?
10:32:22 20 MR. MUINO: Objection. Vague and
10:32:23 21 ambiguous. Calls for speculation.
10:32:24 22 THE WITNESS: I don't know.
10:32:25 23 MR. STAVERS: Q. you don't know?
10:32:25 24 A. I don't know.
10:32:26 25 Q. Has anyone ever asked you, besides me, if

10:32:29 1 it's possible to keep -- for Yahoo to keep a copy of

10:32:34 2 the HTML code that is sent to users that makes up

10:32:39 3 the search engine results page?

10:32:42 4 A. No.

10:32:46 5 Q. If Mr. Luong or somebody else were to ask

10:32:49 6 you to develop systems capable of doing that, how

10:32:54 7 would you go about looking into that question?

10:32:59 8 MR. MUINO: Objection. Vague and

10:32:59 9 ambiguous. Calls for speculation.

10:33:01 10 THE WITNESS: I don't know. I would have

10:33:04 11 to think about it.

10:33:05 12 MR. STAVERS: Q. I assume you have some

10:33:07 13 standard processes how you develop engineering

10:33:11 14 solutions for product management.

10:33:13 15 A. Yes.

10:33:18 16 Q. So, if you were asked to apply those

10:33:24 17 processes to the task of maintaining a copy of the

10:33:27 18 HTML code that is generated for a search engine

10:33:30 19 results page, what procedural steps would you take?

10:33:35 20 MR. MUINO: Objection. Calls for

10:33:36 21 speculation.

10:33:37 22 MR. STAVERS: Q. I understand that you

10:33:38 23 can't tell me the actual code that you would write.

10:33:40 24 But what steps would you take?

10:33:43 25 MR. MUINO: Same objection.

10:33:44 1 THE WITNESS: I would review the request.
10:33:46 2 The first thing we would do, ask a lot of questions
10:33:49 3 about the request before we go into any technical
10:33:53 4 discussion, because such a request is so vague.
10:34:00 5 MR. STAVERS: Q. Well, then, maybe you
10:34:01 6 could help me narrow the request, because it doesn't
10:34:05 7 seem vague to me. The Apache server has code;
10:34:08 8 right? And it's in HTML. It's maybe -- if printed
10:34:11 9 out, it would be a couple pages long, I assume?
10:34:16 10 You need to speak for the reporter.
10:34:19 11 A. Yes.
10:34:19 12 Q. And it takes that code and it sends it to
10:34:21 13 the user; correct?
10:34:23 14 A. Yes.
10:34:23 15 Q. So, what is vague, or what don't you
10:34:27 16 understand about a request that says, "Could we just
10:34:30 17 keep a copy of that code?"
10:34:36 18 A. First, two questions I would ask. One
10:34:41 19 would be, "Would you like a visual copy of what the
10:34:45 20 user is seeing, or would you like to copy what I
10:34:49 21 send back to the user in text form?"
10:34:53 22 Q. What is the difference between those two?
10:35:02 23 I will withdraw that question because I
10:35:03 24 think you explained the difference on the surface.
10:35:09 25 Why wouldn't a copy in text form, or --

10:35:12 1 withdrawn again.

10:35:13 2 Would a copy in text form allow you to

10:35:15 3 recreate visually what the user saw?

10:35:18 4 A. No.

10:35:19 5 Q. Why not?

10:35:20 6 A. In text form?

10:35:22 7 Q. Yes.

10:35:22 8 A. JavaScript, when we serve back JavaScript,

10:35:26 9 we would not know how it would look to the user,

10:35:30 10 because it might require some interaction with the

10:35:34 11 user image.

10:35:40 12 Q. So, talking about the JavaScript, does

10:35:41 13 that mean, for example, that certain JavaScript

10:35:44 14 areas on the page respond to the user moving their

10:35:47 15 mouse over something?

10:35:48 16 A. Yes.

10:35:51 17 Q. I think you testified that there is no

10:35:53 18 JavaScript in the sponsor results; is that correct?

10:35:56 19 A. Correct.

10:35:56 20 Q. And there is no JavaScript in the

10:35:58 21 algorithmic results; is that correct?

10:36:00 22 A. No.

10:36:01 23 Q. Is there no JavaScript in the header?

10:36:03 24 A. You were not correct about no JavaScript

10:36:06 25 in the algo results.

10:36:08 1 Q. What JavaScript is there in the algo
10:36:11 2 result?
10:36:11 3 A. We do have JavaScript in the algo result
10:36:14 4 to enable the user to see more information when they
10:36:17 5 wish.
10:36:18 6 Q. Okay. Do you recall when that feature was
10:36:22 7 implemented?
10:36:29 8 A. I don't remember.
10:36:30 9 Q. Do you recall if there has been JavaScript
10:36:33 10 on the SERP for the entire time that you have had --
10:36:40 11 that you have been a front-end engineer at Yahoo?
10:36:44 12 A. No. It was not there the whole time.
10:36:46 13 Q. Do you recall approximately when the first
10:36:47 14 JavaScript was used on the SERP?
10:36:50 15 A. I don't remember.
10:36:51 16 Q. Do you recall what it was used for?
10:36:57 17 A. Some of them, yes.
10:36:58 18 Q. Do you remember what the first or at least
10:37:01 19 some of the very early ones were?
10:37:03 20 A. Search Assist, the one as you type we give
10:37:08 21 you suggestions for the query, that would require
10:37:11 22 JavaScript.
10:37:12 23 Q. But you don't recall approximately what
10:37:14 24 year Search Assist was implemented?
10:37:19 25 A. Late 2007.

10:37:22 1 Q. Would that have been one of the earlier
10:37:25 2 uses of JavaScript on the SERP?
10:37:27 3 A. One of the earlier --
10:37:31 4 Q. One of the first times.
10:37:32 5 A. More sophisticated, yes.
10:37:40 6 Q. I think you also testified that the text
10:37:42 7 of the HTML code wouldn't provide precisely what the
10:37:46 8 user saw, because the images might be a factor.
10:37:49 9 A. Yes.
10:37:50 10 Q. What did you mean by that?
10:37:52 11 A. We give back the URL of the image, but we
10:37:56 12 wouldn't know what it would look like, because it
10:37:59 13 would require the browser to retrieve such an image
10:38:03 14 from a different server.
10:38:05 15 Q. And that would be -- would that be an
10:38:08 16 image potentially in an algorithmic result --
10:38:13 17 A. Yes.
10:38:13 18 Q. -- or just -- okay.
10:38:14 19 Would there be images in the sponsor
10:38:18 20 results?
10:38:19 21 A. Yes.
10:38:19 22 Q. Is that part of the Rich Ads in Search
10:38:22 23 program?
10:38:23 24 A. Yes.
10:38:23 25 Q. Were there images in sponsor results

10:38:26 1 before Rich Ads in Search?

10:38:33 2 A. Yes.

10:38:38 3 Q. In what context? As part of what product?

10:38:49 4 A. For example -- I don't recall, but if you

10:38:52 5 search for eBay or some of those, there is something

10:38:57 6 indicates for the link for the --

10:38:59 7 Q. Checkout?

10:39:00 8 A. Yes. Yes.

10:39:03 9 Q. Isn't that a graphic that is on a Yahoo

10:39:06 10 server, though?

10:39:07 11 A. Yes.

10:39:07 12 Q. The checkout graphic?

10:39:09 13 A. Yes.

10:39:09 14 Q. So, back to the question that you said you

10:39:11 15 would ask. You said you would ask, "Do you want the

10:39:14 16 text of the HTML or the visual that is displayed?"

10:39:20 17 A. Yes.

10:39:18 18 Q. If the answer is "We want the visual of

10:39:23 19 what was displayed," is that something that your

10:39:25 20 team could develop?

10:39:26 21 MR. MUINO: Objection. Calls for

10:39:27 22 speculation.

10:39:28 23 THE WITNESS: I don't know.

10:39:29 24 MR. STAVERS: Q. What about just text?

10:39:31 25 MR. MUINO: Same objection.

10:39:33 1 THE WITNESS: I just gave you an example
10:39:36 2 of a question.
10:39:39 3 MR. STAVERS: Q. Okay. So are you aware
10:39:44 4 of any technical impediments to retaining a text
10:39:49 5 copy of the HTML code that is generated and makes up
10:39:55 6 the SERP?
10:39:56 7 MR. MUINO: Objection. Vague and
10:39:57 8 ambiguous. Calls for speculation.
10:39:59 9 MR. STAVERS: Q. And if there is
10:40:01 10 something about my question you don't understand or
10:40:02 11 you want me to break down, please let me know.
10:40:05 12 A. I don't understand what you mean by
10:40:06 13 "technical impediment."
10:40:09 14 Q. Well, I could understand, for example,
10:40:10 15 that you wouldn't do it for privacy reasons, or you
10:40:14 16 wouldn't do it because you don't want to spend the
10:40:17 17 resources on that project versus another project.
10:40:20 18 Right? There's a lot of reasons a company might
10:40:23 19 choose not to do something.
10:40:24 20 What I want to know is, from an
10:40:26 21 engineering standpoint, are you aware of any reason
10:40:29 22 that the Apache server couldn't retain a copy of the
10:40:34 23 HTML text that it sends to the user?
10:40:39 24 MR. MUINO: Objection. Calls for
10:40:40 25 speculation.

10:40:42 1 THE WITNESS: I don't know.

10:40:46 2 MR. STAVERS: We can take a break.

10:40:48 3 MR. MUINO: All right.

10:40:48 4 MR. STAVERS: 10 minutes.

10:40:50 5 MR. MUINO: That's fine.

10:40:51 6 THE VIDEOGRAPHER: Going off the record,

10:40:52 7 the time is 10:40.

10:40:53 8 (Recess taken from 10:40 to 10:50.)

10:50:44 9 (Deposition Exhibit 1201

10:50:44 10 was marked for identification.)

10:50:45 11 THE VIDEOGRAPHER: We are back on the

10:50:46 12 record. The time is 10:50.

10:50:48 13 MR. STAVERS: Q. Mr. Nguyen, the court

10:50:49 14 reporter has handed you a document marked Exhibit

10:50:53 15 1201. You can take it. It bears the Bates number

10:50:55 16 YAH-AA 1289844.

10:51:02 17 If you are not familiar with that term,

10:51:05 18 Bates number refers to the term on the lower right.

10:51:11 19 It's a way that lawyers identify documents that have

10:51:15 20 been produced in litigation. It comes because a man

10:51:18 21 named Bates invented a stamp that would stamp

10:51:18 22 numbers, but we use computers now.

10:51:21 23 If you could briefly review this document

10:51:21 24 and tell me if you are familiar with it. And if it

10:51:22 25 helps, I will point you to page 10, because you

55

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