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November 10, 2009

Writer's Direct Contact
415.268.6685
TRodriguez@mofocom

Jason B. Stavers, Esq.
Gibson Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105-2933

Re: *American Airlines, Inc. v. Yahoo!, Inc.*

Dear Jason:

This is in response to your November 10, 2009, e-mail, in which you described what has happened to MIRS revenue/FAUDNC/VAUDNC information for 2003:

The database to which I referred is the MIRS database.

As to where this stands, AA is investigating the cost and timing of making this information available. What it will require, assuming it is possible, is for AA to review the record of each individual ticket sold during this time period, and essentially rebuild the database. Furthermore, those ticket records are raw data retained only on backup tapes. While we do not yet have a definitive cost or resource estimate, there does not appear to be any means of completing such a project in 2009.

We were very surprised to learn six days before the scheduled close of discovery that revenue information for an entire year was removed from MIRS, and that American cannot provide that information — which we requested several months ago — before the end of 2009. The sequence of events that led to this late disclosure has caused clear prejudice to Yahoo!.

After waiting two months for a witness, we deposed Mr. Broadfield in July on topics that included information stored on databases. In his deposition, Mr. Broadfield answered direct questions regarding the availability of information that has “ever” been added to MIRS. Unfortunately, Mr. Broadfield answered those questions erroneously and never corrected them:

Jason B. Stavers
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Page Two

- Q. Is there -- well, have you made inquiry as to the process retention -- let me do it this way. Have you made inquiry as to the retention of data on SPARS and whether any is either deleted or rolled off to another database?
- A. Have I made inquiry as to this case?
- Q. No, sir. I'm asking in general if you've made inquiry as to whether that on a regular basis information, electronically stored information on the database SPARS is moved to another location or is just routinely discarded?
- A. **Information is not removed from SPARS or MIRS or PNR or fares.**
- Q. **Is it removed or taken to a different database on a regular basis on any of those?**
- MR. BROWN: Asked and answered.
- A. **Nothing is removed from those four databases.**
- Q. Mr. DeCross, I believe, testified that he wasn't sure whether there was any SPARS data back before 2008. Do you know whether SPARS data is available before 2008?
- A. I know that SPARS data goes back to roughly 2000. SPARS wasn't created before then.
- Q. Okay. So any inquiry related to data that would be on SPARS from its creation in 2000 would be available today?
- MR. BROWN: What do you mean by "any inquiry"?
- MR. CHAPPELL: Okay. Good point.
- Q. My question is: If an inquiry was desired to be made of the SPARS system, has there been any data -- well, first of all, do I understand you to be saying that whatever electronic data was put into SPARS from 2000 through the present is still available?
- A. Whatever data was put into SPARS at any period is going to still be there.
- Q. And it has not been moved or taken to any other location?
- MR. BROWN: Asked and answered.
- A. Whatever information is put in there stays there.
- Q. **And is there today. And is the same true of MIRS?**
- A. **Whatever information is put into MIRS stays there.**

Yahoo! relied on this testimony to be accurate. It was not.

In early September, you and I met (with Trey Nicoud and Ted Hasse) to discuss American's production in response to our August 2009 document requests, including American's

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Page Three

production of what came to be the Excel sheets for 2004-2009 which we have been discussing. We did not learn in that meeting of the missing 2003 MIRS revenue/FAUDNC/VAUDNC information. (We assume that you did not know of this gap, but American should have advised you of that fact.) Nor did we learn of the gap when American produced Excel sheets for 2004 to 2009, and we assumed, given Mr. Broadfield's testimony, that there was an easily-correctable reason for the absence of a sheet for 2003. Only in the past several days, and then in bits and pieces, have we learned that Mr. Broadfield's testimony was flatly erroneous, that the 2003 revenue/FAUDNC/VAUDNC information is on backup tapes, and, just yesterday, that Yahoo! will not receive the information in time for trial.

All of this causes us grave concern.

The missing information is relevant to American's liability theories and damages claim. The indications of a variance between the averages of the revenue information in the Excel sheets that American has produced and the averages stated by its expert provide an additional reason the missing information is relevant. Further, we are not aware of any other source that breaks out these key metrics on an OTA-by-OTA basis.

Had Mr. Broadfield testified correctly — and his error clearly demonstrates he was not prepared to testify on his designated topics — or at least if American had identified this problem sooner, such as when it received Yahoo!'s August 2009 discovery, we would have had months for American to restore and produce the 2003 revenue/VAUDNC/FAUDNC information. Instead, we are learning — three months after we served the relevant discovery request — that the 2003 information is missing, and that Yahoo! is supposed to accept that it will not be available for trial.

Yahoo! is extremely concerned by this news. Please advise us by 5:00 p.m. on November 11, 2009, of the absolute fastest completion time for producing the 2003 information.

Sincerely,


D. Anthony Rodriguez

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

3 AMERICAN AIRLINES, INC.,)
4 Plaintiff,)
5 v.) CIVIL ACTION NO.
6) 4-08-CV-626-A
7 YAHOO! INC. and OVERTURE)
8 SERVICES, INC. d/b/a)
9 YAHOO! SEARCH MARKETING,)
10 Defendants.)

10 "CONFIDENTIAL"
11 ORAL DEPOSITION OF
12 DONALD BROADFIELD
13 JULY 22, 2009

14 *****

15 ORAL DEPOSITION OF DONALD BROADFIELD, produced as a
16 witness at the instance of the Defendants, and duly
17 sworn, was taken in the above-styled and numbered cause
18 on the 22nd day of July, 2009, from 9:02 a.m. to 6:37
19 p.m., before Julie C. Brandt, RMR, CRR, and CSR in and
20 for the State of Texas, reported by machine shorthand,
21 at the offices of Kelly Hart & Hallman LLP, 201 Main
22 Street, Suite 2500, Fort Worth, Texas, pursuant to the
23 Federal Rules of Civil Procedure and the provisions
24 stated on the record or attached hereto.

COPY

1 P R O C E E D I N G S

2 DONALD BROADFIELD,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. CHAPPELL:

6 Q. State your name, please.

7 A. Donald Broadfield.

8 Q. And Mr. Broadfield, you are here as the
9 corporate representative of American Airlines for a
10 corporate representative deposition. Am I correct, sir?

11 A. That's correct.

12 Q. I hand you what was previously marked,
13 although this particular one does not have a mark, as
14 Defendant's Exhibit No. 1, which was the notice of
15 corporate representative. Which topics are you here,
16 sir, to be the corporate representative on?

17 A. 1 through 7.

18 Q. And when did you get designated in that
19 capacity?

20 A. Two days ago.

21 Q. Can you give me an explanation of what
22 happened with -- is it Mr. Gipson?

23 A. Gipson.

24 Q. Gipson. Pardon me.

25 A. Well, for the purposes of this, it needed to

1 Q. Okay. Are there any other softwares, programs
2 such as -- is software program a correct description of
3 what SPARS is?

4 A. No, SPARS is a database.

5 Q. Okay. Are there any other databases?

6 A. Not that I'm aware of, no.

7 Q. Is there -- well, have you made inquiry as to
8 the process retention -- let me do it this way. Have
9 you made inquiry as to the retention of data on SPARS
10 and whether any is either deleted or rolled off to
11 another database?

12 A. Have I made inquiry as to this case?

13 Q. No, sir. I'm asking in general if you've made
14 inquiry as to whether that on a regular basis
15 information, electronically stored information on the
16 database SPARS is moved to another location or is just
17 routinely discarded?

18 A. Information is not removed from SPARS or MIRS
19 or PNR or fares.

20 Q. Is it removed or taken to a different database
21 on a regular basis on any of those?

22 MR. BROWN: Asked and answered.

23 A. Nothing is removed from those four databases.

24 Q. Mr. DeCross, I believe, testified that he
25 wasn't sure whether there was any SPARS data back before

1 2008. Do you know whether SPARS data is available
2 before 2008?

3 A. I know that SPARS data goes back to roughly
4 2000. SPARS wasn't created before then.

5 Q. Okay. So any inquiry related to data that
6 would be on SPARS from its creation in 2000 would be
7 available today?

8 MR. BROWN: What do you mean by "any
9 inquiry"?

10 MR. CHAPPELL: Okay. Good point.

11 Q. My question is: If an inquiry was desired to
12 be made of the SPARS system, has there been any data --
13 well, first of all, do I understand you to be saying
14 that whatever electronic data was put into SPARS from
15 2000 through the present is still available?

16 A. Whatever data was put into SPARS at any period
17 is going to still be there.

18 Q. And it has not been moved or taken to any
19 other location?

20 MR. BROWN: Asked and answered.

21 A. Whatever information is put in there stays
22 there.

23 Q. And is there today. And is the same true of
24 MIRS?

25 A. Whatever information is put into MIRS stays

1 there.

2 Q. And when was the MIRS created, approximately?

3 A. I don't know for certain. I think it was
4 about that same time.

5 Q. And what's PNR?

6 A. PNR is passenger name record.

7 Q. I'm sorry. I didn't hear you.

8 A. Passenger name record.

9 Q. So it would have my record of the multiple
10 flights to Midland in the last week?

11 A. It would be your record of each individual
12 flight that you took.

13 Q. Okay. And is that available -- excuse me.
14 How far back does that go?

15 A. I don't know.

16 Q. Prior to 1999?

17 A. I don't know.

18 Q. Okay. What is F-A-R-E-S?

19 A. Fares, the fare that's charged for a flight.

20 Q. I didn't understand you.

21 A. The fare that is charged for a flight.

22 Q. It is not an acronym?

23 A. No.

24 Q. It is actually the word. And is that data
25 available since inception?

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

3 AMERICAN AIRLINES, INC.,)
4 Plaintiff,)
5)
6 v.) CIVIL ACTION NO.
7) 4-08-CV-626-A
8 YAHOO! INC. and OVERTURE)
9 SERVICES, INC. d/b/a)
10 YAHOO! SEARCH MARKETING,)
11 Defendants.)

12 "CONFIDENTIAL"

13 REPORTER'S CERTIFICATION
14 DEPOSITION OF DONALD BROADFIELD
15 JULY 22, 2009

16 I, Julie C. Brandt, Certified Shorthand Reporter in
17 and for the State of Texas, hereby certify to the
18 following:

19 That the witness, DONALD BROADFIELD, was duly sworn
20 by the officer and that the transcript of the oral
21 deposition is a true record of the testimony given by
22 the witness;

23 That the deposition transcript was submitted on
24 7/30/09 to the witness or to the attorney
25 for the witness for examination, signature and return to
Merrill Legal Solutions by 8/30/09;

1 That the amount of time used by each party at the
2 deposition is as follows:

3 MR. CHAPPELL.....06 HOUR(S):12 MINUTE(S)

4 MR. BROWN.....00 HOUR(S):00 MINUTE(S)

5 That pursuant to information given to the
6 deposition officer at the time said testimony was taken,
7 the following includes counsel for all parties of
8 record:

9 FOR THE PLAINTIFF:

10 Frederick Brown

11 GIBSON, DUNN & CRUTCHER LLP

12 555 Mission Street

13 Suite 3000

14 San Francisco, California 94105-2933

15 415.393.8204

16 415.374.8420 (fax)

17 fbrown@gibsondunn.com

18 Lars L. Berg

19 KELLY HART & HALLMAN

20 201 Main Street

21 Suite 2500

22 Fort Worth, Texas 76102

23 817.878.3524

24 817.878.9280 (fax)

25 lars.berg@khh.com

1 FOR THE DEFENDANTS:

2 David Chappell

3 Scott Fredricks

4 CANTEY HANGER LLP

5 600 West Sixth Street

6 Suite 300

7 Fort Worth, Texas 76102

8 817.877.2800

9 817.877.2807 (fax)

10 dchappell@canteyhanger.com

11 sfredricks@canteyhanger.com

12 D. Anthony Rodriguez (via telephone)

13 MORRISON & FOERSTER LLP

14 425 Market Street

15 San Francisco, California 94105-2482

16 415.268.6685

17 415.268.7522 (fax)

18 drodriguez@mofo.com

19 That \$_____ is the deposition officer's
20 charges to the Defendants for preparing the original
21 deposition transcript and any copies of exhibits;

22 I further certify that I am neither counsel for,
23 related to, nor employed by any of the parties or
24 attorneys in the action in which this proceeding was
25 taken, and further that I am not financially or

1 otherwise interested in the outcome of the action.

2 Certified to by me July 30, 2009.

3
4
5 Julie C. Brandt

Julie C. Brandt, CSR, RMR, CRR

Texas CSR No. 4018

Expiration Date: 12/31/10

Merrill Legal Solutions

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From: Stavers, Jason B. [mailto:JStavers@gibsondunn.com]
Sent: Tuesday, November 10, 2009 3:46 PM
To: Rodriguez, D. Anthony; Brown, Frederick; dee.kelly.2@khh.com; Lars Berg; Hogan, Howard S.; scott.wiehle@khh.com
Cc: Jacobs, Michael A.; Knisely, Cyndi L.; Beard, Brooks M.; Muino, Daniel P.; Scott Fredricks; David Chappell
Subject: RE: AA v. Yahoo!: SPARS and revenue/VAUDNC information

Tony,

The database to which I referred is the MIRS database.

As to where this stands, AA is investigating the cost and timing of making this information available. What it will require, assuming it is possible, is for AA to review the record of each individual ticket sold during this time period, and essentially rebuild the database. Furthermore, those ticket records are raw data retained only on backup tapes. While we do not yet have a definitive cost or resource estimate, there does not appear to be any means of completing such a project in 2009.

- Jason

From: Rodriguez, D. Anthony [mailto:TRodriguez@mofo.com]
Sent: Monday, November 09, 2009 4:20 PM
To: Stavers, Jason B.; Brown, Frederick; dee.kelly.2@khh.com; Lars Berg; Hogan, Howard S.; scott.wiehle@khh.com
Cc: Jacobs, Michael A.; Knisely, Cyndi L.; Beard, Brooks M.; Muino, Daniel P.; Scott Fredricks; David Chappell
Subject: RE: AA v. Yahoo!: SPARS and revenue/VAUDNC information

Jason,

Could you please let me know where this stands tomorrow morning, and the name of the database?

Thank you.

Tony

Tony Rodriguez
Morrison & Foerster LLP
O: 415-268-6685
C: 415-200-6774
trodriguez@mofo.com

From: Stavers, Jason B. [mailto:JStavers@gibsondunn.com]
Sent: Friday, November 06, 2009 3:31 PM
To: Rodriguez, D. Anthony; Brown, Frederick; dee.kelly.2@khh.com; Lars Berg; Hogan, Howard S.; scott.wiehle@khh.com
Cc: Jacobs, Michael A.; Knisely, Cyndi L.; Beard, Brooks M.; Muino, Daniel P.; Scott Fredricks; David Chappell
Subject: RE: AA v. Yahoo!: SPARS and revenue/VAUDNC information

Tony,

Regarding the 12/02 to 12/03 data, that data is no longer in the database American used to produce the rest of the data. It was removed from the database in 2006, well before the standstill agreement was signed in December of that year. American is still investigating if the data can be made available in another way. However, we do not believe that there is a direct backup of this data, and therefore, it would have to be recreated from other data, if that is possible at all, which data is itself only available on backup tapes. We will get back to you with more detail as it comes available.

- Jason

From: Rodriguez, D. Anthony [mailto:TRodriguez@mofocom.com]
Sent: Thursday, November 05, 2009 2:02 PM
To: Stavers, Jason B.; Brown, Frederick; dee.kelly.2@khh.com; Lars Berg; Hogan, Howard S.; scott.wiehle@khh.com
Cc: Jacobs, Michael A.; Knisely, Cyndi L.; Beard, Brooks M.; Muino, Daniel P.; Scott Fredricks; David Chappell
Subject: AA v. Yahoo!: SPARS and revenue/VAUDNC information

Jason,

Please let me know if you guys have come up with a workaround for the SPARS manual excerpts issue. Trey's last voicemail indicated he was attempting to do so.

Please also let me know the status of 12/02 to 12/03 data and of VAUDNC information. The last word was Trey's voicemail Monday night. I'd like to know an ETA, please.

Thank you.

Tony

Tony Rodriguez
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C: 415-200-6774
trodriguez@mof.com

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November 12, 2009

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Fax No.
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Client Matter No.
01022-00529

D. Anthony Rodriguez
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

Re: *American Airlines, Inc. v. Yahoo!, Inc.*

Dear Tony:

I write in response to your November 10, 2009 letter regarding American's data production.

There is a factual inaccuracy in your letter. It is not correct that "the 2003 revenue/FAUDNC/VAUDNC information is on backup tapes." As I explained in the email quoted in your letter, it is the raw ticket records that exist, to the best of American's current knowledge, on tape. The difference is significant.

Your letter also ignores a salient point about the data in question. As American has previously explained, the 2003 data at issue (revenue by flight segment by ticketing source) was removed from the database in 2006. Thus the removal occurred before any obligation to retain data in connection with this litigation attached. At the time the obligation to retain data attached, American had in its possession processed ticketing data for 2004 forward, and it has already produced to Yahoo data for 2004 through year-to-date 2009.

With respect to Mr. Broadfield's testimony, we are investigating the issues you raise. I note, however, that Mr. Broadfield's deposition took place on July 22, 2009. Yahoo did not serve its Second Set of Requests for Production of Documents until August 6, 2009. The August 6 requests were the first time that either party suggested that data at this level of detail (revenue

D. Anthony Rodriguez
November 12, 2009
Page 2

by flight segment by ticketing source) was relevant to this litigation, or would be sought in discovery. And while American has responded to Yahoo's requests in good faith, we have seen no evidence that this detailed data breakdown is probative of any disputed fact in this litigation.

Nor does anything in your November 10 letter give us any reason to believe that this detailed data is actually relevant to the litigation. You state that the "missing information is relevant to American's liability theories and damages claim." This is followed by an unsubstantiated allusion to "indications of a variance between the averages of the revenue information in the Excel sheets that American has produced and the averages stated by its expert." But as you have been told before, there are certain passenger revenues that American cannot track by the source of the ticket. For example, when a passenger on a flight purchases a meal or drink, American does not ask them whether they bought their ticket on AA.com, via a traditional travel agent, or from an online travel agent. Similarly, when a passenger pays a fee for a checked bag, American does not track how that passenger bought his or her ticket. These revenues are included in total passenger revenue, which is what American's expert used in preparing his report. But because these revenues are not tracked by source of the ticket, they are not included in the spreadsheets prepared at Yahoo's request.

Regardless, American does not understand how this data could conceivably be relevant to its "liability theories," and American has already produced the data upon which its damages claims are based, including revenue, passenger and cost data. It has produced this data for all years relevant to this lawsuit, including 2003. It has produced this data by channel, permitting Yahoo to test American's claims about the revenues it obtains through AA.com and through OTAs. *See especially* AAY-000619555 ("2003 Marketing Department Cost of Sales").

The incremental information content of the data at issue is not at all apparent. Yahoo has never explained why it requires information about ticket sales by specific OTAs, or on specific routes. Nor has Yahoo explained why this data for 2004-2009, which American has produced, is not sufficient to answer any concerns it might have regarding American's damages claims. Nonetheless, American is working hard during a resource-constrained time period to determine if that data can be recreated. It would be unfortunate if it was doing so without any valid purpose, properly grounded in the disputed facts of this case.

As for your intent to move to compel production of portions of the SPARS manual, we look forward to speaking with you so that we can determine whether we even have a disagreement. As you have been told before, American is prepared to produce portions of the manual. Trey Nicoud was with Yahoo's expert yesterday in Dallas to permit the expert to review the manual. The expert made notes of what pages he was interested in and indicated that

D. Anthony Rodriguez
November 12, 2009
Page 3

those pages did not implicate the portions of the manual about which American is most concerned. When Trey asked, however, whether Yahoo was willing to tell us what those pages were, counsel for Yahoo declined, and said we would be hearing from you later. We look forward to seeing if we can resolve this.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason Stavers", with a long horizontal flourish extending to the right.

Jason Stavers

JBS/gms

100761342_1.DOC

G

Kelly Hart & Hallman LLP

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November 6, 2009

VIA FEDERAL EXPRESS

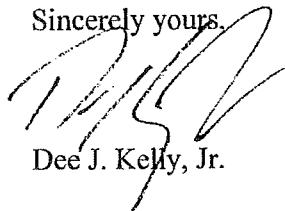
Julie Brandt, CSR, RMR, CRR
Merrill Legal Solutions
4144 N. Central Expressway, Suite 850
Dallas, TX 75204

Re: Civil Action No. 4-08-8CV-626-A; *American Airlines, Inc. vs. Yahoo! Inc.*
and Overture Services, Inc. d/b/a Yahoo! Search Marketing

Dear Ms. Brandt:

Enclosed is the original deposition transcript of Don Broadfield, taken on July 22, 2009.
Please give me a call if you have any questions.

Sincerely yours,



Dee J. Kelly, Jr.

DJK2/kdp
Enclosure

cc: D. Anthony Rodriguez
Michael Jacobs
Dan Muino
MORRISON & FOERSTER LLP

David F. Chappell
Scott Fredricks
CANTEY HANGER LLP