

ORIGINAL
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CITIZEN

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 NOV 20 PM 3:55

CLERK OF COURT

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

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

Defendants.

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Civil Action No. 4-08-CV-626-A

**DEFENDANTS' EMERGENCY MOTION FOR AN ORDER REQUIRING THE
EXCHANGE OF WITNESS NAMES AND LIMITING THE NUMBER OF WITNESSES
AND REQUEST FOR EXPEDITED CONSIDERATION**

On November 19, 2009, the Court entered an order setting a hearing on Plaintiff American Airlines, Inc.'s ("American") motion for sanction on Monday, November 30, 2009. Defendants Yahoo! Inc. and Overture Services, Inc. (collectively "Yahoo!") respectfully ask the Court to enter an order providing: (1) that by Noon on Saturday, November 21, 2009, each party provide to the opposing party the names of the opposing party's employees that each party intends to call as witnesses at the Court's scheduled November 30, 2009 hearing; and (2) that each party be limited to naming no more than three employees of the opposing party to testify at the hearing. In support of its request, Yahoo! would respectfully show as follows:

Pursuant to the joint motion of American and Yahoo!, the Court has set a hearing on American's motion for sanctions for 10:00 a.m. on Monday, November 30, 2009. The Court has ordered the parties to file and serve witness lists by 2:00 p.m. on Wednesday, November 25, 2009.

Yahoo!'s headquarters are located near San Francisco, California, and many of the potential Yahoo! employees who American may choose to call as witnesses reside in the San Francisco area and will be required to secure flights to attend the November 30 hearing. Because of the holiday weekend, Yahoo! is concerned that those Yahoo! employees whom American may choose to call to testify may have difficulty securing flights to Fort Worth, and may not be able to secure any flight if they are not informed that their presence will be needed until Wednesday, November 25. Accordingly, Yahoo! asks that the Court order American to notify Yahoo! of the names of those employees whom American intends to call to testify by Noon on Saturday, November 21, 2009, so that those employees may begin making the necessary travel arrangements. Yahoo! will do the same.

Further, Yahoo! has been unable to obtain any information from American regarding the specific Yahoo! employees it intends to call, nor the number of Yahoo! employees. During the meet and confer process, American did offer to provide by noon tomorrow its "present intent" list, but noted that this list may or may not change. That will not allow those who are added to American's list sufficient opportunity to obtain flights over the busy holiday weekend. Moreover, to give the parties guidance on how the hearing will proceed, Yahoo! requests that the Court limit to three the number of employees each party may call from the other party. Yahoo! believes this is an appropriate limitation given that, pursuant to the parties' agreement entered after American filed its motion to compel, American took the depositions of an additional five Yahoo! employees on the topics of Yahoo!'s discovery and document retention, and may present this deposition testimony to the Court to support its claims.

CERTIFICATE OF CONFERENCE

Brooks Beard, counsel for Yahoo!, called Fred Brown, counsel for American, at approximately 11:40 a.m. Pacific/1:40 p.m. Central time to confer on the subject of this motion.

During that call, Mr. Brown indicated that American is willing to supply its list of witnesses to Yahoo! on November 21, but that it would not commit that this would be its final list. Further, Mr. Brown indicated that American would likely oppose any request to limit the number of Yahoo! witnesses. Nevertheless, Mr. Brown indicated that American would require additional time to consider Yahoo!'s request before it would commit to a final position. Mr. Beard notified Mr. Brown of the urgency of this request and indicated Yahoo! would inform the Court that American had only been afforded a short time to consider Yahoo!'s request before this motion would be filed. Accordingly, given the nature and urgency of the request sought above, this motion is presented to the Court for decision.

REQUEST FOR EXPEDITED CONSIDERATION

Yahoo! respectfully requests that the Court give this motion expedited consideration so that Yahoo!'s employees may begin making travel arrangements as soon as possible.

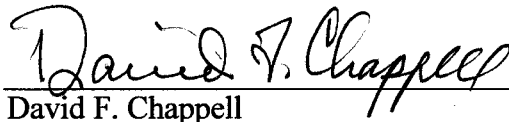
PRAYER

For the foregoing reasons, Yahoo! respectfully requests that the Court enter an order providing as follows:

(1) That each party provide to the opposing party the names of the opposing party's employees that each party intends to call as witnesses at the Court's scheduled November 30, 2009 hearing on Plaintiff's motion for sanctions by Noon on Saturday, November 21, 2009; and

(2) That each party be limited to naming no more than three employees of the opposing party to testify at the hearing.

Respectfully submitted,



David F. Chappell
Texas State Bar No. 04141000
Scott A. Fredricks
Texas State Bar No. 24012657
CANTEY HANGER LLP
Cantey Hanger Plaza
600 West Sixth Street, Suite 300
Fort Worth, Texas 76102
Telephone: (817) 877-2800
Fax: (817) 877-2807

Michael A. Jacobs (*pro hac vice*)
Lynn M. Humphreys (*pro hac vice*)
D. Anthony Rodriguez (*pro hac vice*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone: (415) 268-7000
Fax: (415) 268-7522

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on Defendants' counsel, via fax, on the 20th day of November 2009:

Dee J. Kelly
Dee J. Kelly, Jr.
Lars L. Berg
KELLY HART & HALLMAN, LLP
201 Main Street, Suite 2500
Fort Worth, TX 76102

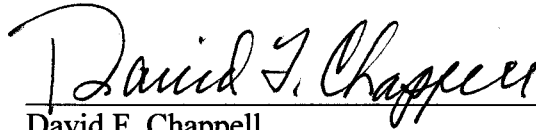
Via Hand Delivery and Via E-mail

Frederick Brown
George A. Nicoud III
Jason Stavers
GIBSON, DUNN & CRUTCHER LLP
555 Market Street, Suite 3000
San Francisco, CA 94105

Via Fax

Howard S. Hogan
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Via Fax



David F. Chappell