

ORIGINAL

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

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CLERK OF COURT

Plaintiff,

V.

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

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

Defendants.

APPENDIX IN SUPPORT OF DEFENDANTS' UNOPPOSED MOTION TO SEAL

EXHIBIT	DOCUMENT	PAGE
A	Confidentiality Agreement, effective April 22, 2009	Appx. 1 – 15
B	Declaration of Cheryl Dartt	Appx. 16 – 19

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true copy of the foregoing document has been served on counsel of record as follows:

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

Frederick Brown
Jason Stavers
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

Via Federal Express

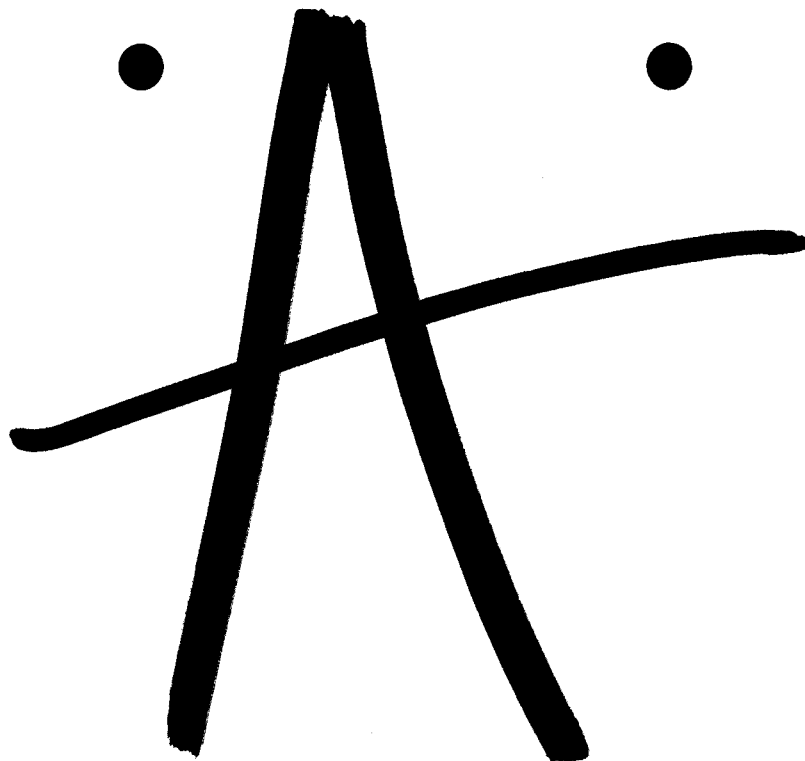
Howard S. Hogan
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Via Federal Express

Date: November 24, 2009



Scott A. Fredricks



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

5 AMERICAN AIRLINES, INC.,

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

6 Plaintiff,

7 v.

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

11 Defendant.

12 **CONFIDENTIALITY AGREEMENT (NOT FILED WITH COURT)**

13 The parties to the above styled and numbered action (the "Action") hereby agree as
14 follows:

15 1. This Confidentiality Agreement shall govern all documents, including without
16 limitation electronically stored information, tangible things, and other information (collectively
17 "information") produced in discovery in response to any formal or informal discovery requests in
18 this action including, but not limited to, information produced in response to requests for
19 production, responses to requests for admissions, answers to interrogatories, responses to
20 requests for disclosure, deposition transcripts, all information contained therein, and all copies,
21 excerpts or summaries thereof.

22 2. This Confidentiality Agreement shall govern information produced during
23 discovery by any non-parties, but only where a non-party or party requests the protection
24 provided by this Confidentiality Agreement.

25 3. By agreeing to this Confidentiality Agreement or requesting the protection of this
26 Confidentiality Agreement, no party or non-party waives its rights to object to producing any
27 information.
28

1 4. For purposes of this Confidentiality Agreement, "Confidential Information" shall
2 mean information that a party or non-party in good faith believes constitutes trade secrets or
3 confidential research and development information, or confidential commercial or financial
4 information, the disclosure of which to personnel of another party or the public would likely
5 cause injury to the business of the producing party. Information such as research and
6 development, business plans, strategic plans, technical product information, including
7 specifications, technical drawings, and test reports, and non-public financial information are
8 examples of information that may merit designation as Confidential Information pursuant to this
9 Confidentiality Agreement.

10 5. For purposes of this Confidentiality Agreement, "Highly Confidential
11 Information" shall mean Confidential Information that contains customer information, including
12 customer account information, web user information, and any other private, proprietary, or
13 confidential information (of any type) that a party or non-party in good faith believes is
14 sufficiently sensitive to warrant that it not be disclosed to anyone beyond outside litigation
15 counsel, designated in-house counsel, and other parties as identified in paragraph 12, *infra*. For
16 purposes of this Confidentiality Agreement, "Highly Confidential – Outside Counsel Only
17 Information" shall mean Highly Confidential Information containing sensitive customer
18 information, including advertiser information, web user information, and/or information
19 pertaining to competitors of the parties. If the designation of information is challenged, the
20 designation of information as Confidential Information, Highly Confidential Information, or
21 Highly Confidential – Outside Counsel Only Information will not create any presumption for or
22 against such treatment.

23 6. Information shall be designated as "Confidential Information," "Highly
24 Confidential Information," or "Highly Confidential – Outside Counsel Only Information" by
25 stamping "Confidential," "Highly Confidential," or "Highly Confidential – Outside Counsel
26 Only" by the designating party on each page of the document or discovery response. In the case
27 of any designation by a producing party (including parties to this Action and non-parties), such
28

1 designation shall generally be made prior to the production of the information. If a party that has
2 produced information without a confidentiality designation later decides to designate that
3 information as confidential, it may do so: (a) without cause within twenty-one (21) days of the
4 original production; and (b) with good cause, explained in writing, at any time. If information
5 designated as confidential after it is produced by a party, the other party shall use reasonable
6 efforts to treat the information as it is newly designated from the date of notice of the new
7 designation. The cost of treating this late designated information as confidential may be
8 considered in determining what efforts are reasonable efforts to treat the information as it is
9 newly designated.

10 7. Further, a party in this Action may designate information produced by a non-party
11 as Confidential Information, Highly Confidential Information, or Highly Confidential – Outside
12 Counsel Only Information by providing the other party to this Action with copies of any such
13 information marked as described above within twenty-one (21) days after the original production
14 of such information. To preserve the potential confidentiality of information produced by non-
15 parties, the parties agree to treat all productions of information by a non-party as Highly
16 Confidential – Outside Counsel Only Information until the expiration of the twenty-one (21) day
17 period described above. By stating that a party may designate information produced by a non-
18 party as Confidential Information, Highly Confidential Information, or Highly Confidential –
19 Outside Counsel Only Information, neither party waives or limits its right to challenge such
20 designation as unwarranted or improper.

21 8. Further, a party in this Action may designate information produced by a non-party
22 as privileged by providing the other party to this Action with written notice of the claim of
23 privilege including the reasons for the assertion of the privilege within twenty-one (21) days after
24 the original production of such information. Upon receipt of such written notice, that
25 information shall be treated as privileged unless and until a Court finds that the material is not
26 privileged.

27 9. For tangible media, such as recordings, magnetic media, floppy disks, CD-ROMs,
28

1 photographs, the producing party (which shall include any non-party producing material or
2 information in connection with the discovery taken in the Action) shall place the legend
3 "Confidential," "Highly Confidential," or "Highly Confidential – Outside Counsel Only" to the
4 material or to a container for that material, in any suitable manner. Documents produced
5 electronically in a TIFF format or similar format shall bear the legend "Confidential," "Highly
6 Confidential," or "Highly Confidential – Outside Counsel Only" on each TIFF image. If any
7 party prints Confidential Information contained in tangible media, such party will mark all such
8 printouts as containing Confidential Information, Highly Confidential Information, or Highly
9 Confidential – Outside Counsel Only Information by stamping "Confidential," "Highly
10 Confidential," or "Highly Confidential – Outside Counsel Only" on each page of the printout to
11 the extent practicable.

12 10. For transcripts of depositions or other sworn testimony, counsel for the producing
13 party shall state on the record at the time of the testimony or in written notice served on all
14 parties within ten (10) days of receipt of the transcript which portions of the testimony it deems
15 Confidential Information, Highly Confidential Information, or Highly Confidential – Outside
16 Counsel Only Information. If such designation is made during an ongoing deposition, those
17 portions of said deposition involving Confidential Information, Highly Confidential Information,
18 or Highly Confidential – Outside Counsel Only Information will be taken with no one present
19 except the court reporter and/or videographer, as well as those persons who are authorized to
20 have access to the Confidential Information, Highly Confidential Information, or Highly
21 Confidential – Outside Counsel Only Information as provided in this Confidentiality Agreement.
22 If no designation is made on the record during said deposition, any party (and if the deposition is
23 of a non-party, any non-party) shall have ten (10) days following receipt of the deposition
24 transcript to make any designation of Confidential Information, Highly Confidential Information,
25 or Highly Confidential – Outside Counsel Only Information. The legend "Confidential,"
26 "Highly Confidential," or "Highly Confidential – Outside Counsel Only" shall be affixed to the
27 cover page and the designated pages of the transcript. The Court Reporter or other person

1 recording the testimony shall segregate any designated portions of the transcript, and may furnish
2 copies of these segregated portions, in a sealed envelope, only to the witness as required by law,
3 the Court, and outside counsel of record for the parties.

4 11. All information designated as "Confidential Information" shall be used solely for
5 the purposes of prosecuting, defending, settling, or mediating this action and not for any
6 business, competitive or other purpose, or in any other action. Information designated as
7 "Confidential Information" may be disclosed by the receiving party only as follows to:

8 (i) outside counsel of record for a party in the Action, their associated attorneys,
9 paralegals, and clerical staff employed in the preparation and trial of this action;

10 (ii) subject to paragraph 14, employees of a party in the Action, only to the extent such
11 disclosure is reasonably necessary for purposes of this action;

12 (iii) subject to paragraph 14, vendors providing litigation support services in the Action;

13 (iv) subject to paragraphs 14 and 15, any expert (whether testifying or consulting) who is
14 not an employee of a party and who is retained by a party or its counsel of record in order to
15 assist in the conduct of this Action, but only to the extent that, and for the time during which,
16 such disclosure is necessary for the conduct of this Action;

17 (v) a witness at any deposition, hearing, or trial, provided that the witness (i) is employed
18 by the party producing the Confidential Information, (ii) is the author or recipient of the
19 Confidential Information, or (iii) is reasonably believed to have had access to or knowledge of
20 the Confidential Information in the past. If counsel for the producing party so requests at any
21 such deposition or hearing, the room shall be cleared of persons not authorized hereunder to have
22 access to Confidential Information;

23 (vi) court reporters and videographers while in the performance of their official duties;

24 (vii) participants in any jury research or similar research conducted by any party in this
25 Action, provided (a) no participant shall be permitted to retain or remove from the facility at
26 which such research is being conducted any Confidential Information and (b) that the
27 participants agree in writing to keep confidential and not to discuss any Confidential
28

1 Information, except in connection with the research exercise; and

2 (viii) the Court and court personnel.

3 12. All information designated as "Highly Confidential Information" shall be used
4 solely for the purposes of prosecuting, defending, settling, or mediating this action and not for
5 any business, competitive or other purpose, or in any other action. Information designated as
6 "Highly Confidential Information" may be disclosed by the receiving party only as follows to:

7 (i) outside counsel of record for a party in the Action, their associated attorneys,
8 paralegals, and clerical staff employed in the preparation and trial of this action;

9 (ii) subject to paragraph 14, for each party, one in-house attorney, plus one paralegal or
10 other non-attorney legal assistant, and clerical staff, only to the extent such disclosure is
11 reasonably necessary for purposes of this action;

12 (iii) subject to paragraph 14, vendors providing litigation support services in the Action;

13 (iv) subject to paragraphs 14 and 15, any expert (whether testifying or consulting) who is
14 not an employee of a party and who is retained by a party or its counsel of record in order to
15 assist in the conduct of this Action, but only to the extent that, and for the time during which,
16 such disclosure is necessary for the conduct of this Action;

17 (v) a witness at any deposition, hearing, or trial, provided that the witness (i) is employed
18 by the party producing the Highly Confidential Information, (ii) is the author or recipient of the
19 Highly Confidential Information, or (iii) is reasonably believed to have had access to or
20 knowledge of the Highly Confidential Information in the past. If counsel for the producing party
21 so requests at any such deposition or hearing, the room shall be cleared of persons not authorized
22 hereunder to have access to Highly Confidential Information;

23 (vi) court reporters and videographers while in the performance of their official duties;

24 (vii) participants in any jury research or similar research conducted by any party in this
25 Action, provided (a) no participant shall be permitted to retain or remove from the facility at
26 which such research is being conducted any Highly Confidential Information and (b) that the
27 participants agree in writing to keep confidential and not to discuss except in connection with the
28

1 research exercise any Highly Confidential Information; and

2 (viii) the Court and court personnel.

3 13. All information designated as "Highly Confidential – Outside Counsel Only
4 Information" shall be used solely for the purposes of prosecuting, defending, settling, or
5 mediating this action and not for any business, competitive or other purpose, or in any other
6 action. Information designated as "Highly Confidential – Outside Counsel Only Information"
7 may be disclosed by the receiving party only as follows to:

8 (i) outside counsel of record for a party in the Action, their associated attorneys,
9 paralegals, and clerical staff employed in the preparation and trial of this action;

10 (ii) subject to paragraph 14, vendors providing litigation support services in the Action;

11 (iii) subject to paragraphs 14 and 15, any expert (whether testifying or consulting) who is
12 not an employee of a party and who is retained by a party or its counsel of record in order to
13 assist in the conduct of this Action, but only to the extent that, and for the time during which,
14 such disclosure is necessary for the conduct of this Action;

15 (iv) a witness at any deposition, hearing, or trial, provided that the witness (i) is employed
16 by the party producing the Highly Confidential – Outside Counsel Only Information, (ii) is the
17 author or recipient of the Highly Confidential – Outside Counsel Only Information, or (iii) is
18 reasonably believed to have had access to or knowledge of the Highly Confidential – Outside
19 Counsel Only Information in the past. If counsel for the producing party so requests at any such
20 deposition or hearing, the room shall be cleared of persons not authorized hereunder to have
21 access to Highly Confidential – Outside Counsel Only Information;

22 (v) court reporters and videographers while in the performance of their official duties;

23 (vi) participants in any jury research or similar research conducted by any party in this
24 Action, provided (a) no participant shall be permitted to retain or remove from the facility at
25 which such research is being conducted any Highly Confidential – Outside Counsel Only
26 Information and (b) that the participants agree in writing to keep confidential and not to discuss
27 except in connection with the research exercise any Highly Confidential – Outside Counsel Only
28

1 Information; and

2 (vii) the Court and court personnel.

3 14. Prior to disclosure of any Confidential Information, Highly Confidential
4 Information, or Highly Confidential – Outside Counsel Only Information to any person
5 identified in paragraphs 11(ii), (iii), and (iv), 12(ii), (iii), and (iv), or 13(ii) and (iii) such person
6 shall be furnished a copy of this Confidentiality Agreement, shall be informed that the
7 information is Confidential Information, Highly Confidential Information, or Highly
8 Confidential – Outside Counsel Only Information and shall agree to comply with the provisions
9 of the Confidentiality Agreement by signing the “Agreement and Acknowledgement of
10 Compliance with Confidentiality Agreement” attached hereto as Exhibit A
11 (“Acknowledgment”). Executed Acknowledgements shall be maintained by counsel who
12 disclosed Confidential Information, Highly Confidential Information, or Highly Confidential –
13 Outside Counsel Only Information to the persons executing said Acknowledgment and shall be
14 served on counsel for the party who produced the Confidential Information, Highly Confidential
15 Information, or Highly Confidential – Outside Counsel Only Information no later than thirty
16 days after the final disposition of this Action, including any appeals.

17 15. Prior to disclosure of any Confidential Information, Highly Confidential
18 Information, or Highly Confidential – Outside Counsel Only Information to any person
19 identified in paragraphs 11(iv), 12(iv), and 13(iii), the disclosing party must make known the
20 following information in writing to the producing party no less than five business days before the
21 intended date of disclosure:

- 22 • the identity of the person who will receive the Confidential Information, Highly
23 Confidential Information, or Highly Confidential – Outside Counsel Only
24 Information by name and brief description, including education, present and past
employment, and general areas of expertise; and
- 25 • all other present and all prior relationships of that person with any of the parties.

26 If the producing party objects to the disclosure of Confidential Information, Highly Confidential
27 Information, or Highly Confidential – Outside Counsel Only Information to a person identified
28 in paragraphs 11(iv), 12(iv), or 13(iii), it shall serve written objections, identifying with

1 particularity the basis for the objection. Such objections shall not be unreasonably made.
2 Service of the objections shall be received within five business days after the date of receipt of
3 the identification of a person in paragraphs 11(iv), 12(iv), or 13(iii). If the parties cannot agree
4 on disclosure of Confidential Information, Highly Confidential Information, or Highly
5 Confidential – Outside Counsel Only Information to that person, the objecting party shall
6 promptly file and serve a motion for an Order forbidding disclosure. On any such motion, the
7 objecting party shall have the burden of proof. No Confidential Information, Highly
8 Confidential Information, or Highly Confidential – Outside Counsel Only Information shall be
9 disclosed to a person identified in paragraphs 11(iv), 12(iv), or 13(iii) until the validity of the
10 objection has been resolved, either by negotiation or by the Court.

11 16. In the event a party wishes to file with the Court documents, tangible things or
12 other information designated as Confidential Information, Highly Confidential Information, or
13 Highly Confidential - Outside Counsel Only Information or any pleading, motion, or other paper
14 filed with the Court containing or disclosing Confidential Information, Highly Confidential
15 Information, or Highly Confidential - Outside Counsel Only Information not so designated by
16 the filing party, the filing party shall meet and confer with the producing party to coordinate the
17 submission of a joint motion requesting that the Confidential Information, Highly Confidential
18 Information, or Highly Confidential - Outside Counsel Only Information be filed under seal.

19 The parties shall use their best efforts to facilitate the filing of the joint motion (5) business days
20 prior to filing with the Court the Confidential Information, Highly Confidential Information, or
21 Highly Confidential - Outside Counsel Only Information or the pleading, motion, or other paper
22 that will contain the Confidential Information, Highly Confidential Information, or Highly
23 Confidential - Outside Counsel Only Information. The filing party shall prepare the joint
24 motion, which must state that the information has been designated as Confidential Information,
25 Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information,
26 indicating that the information consists of trade secrets, confidential research and development
27 information, or confidential commercial or financial information, the disclosure of which would
28

likely cause injury to the business of the producing party. The producing party shall prepare a declaration to be submitted with the joint motion further explaining why the information should be sealed. No Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information shall be filed in the public record with the Court until the Court rules on the motion to seal. To allow the Court to rule on the motion to seal, a courtesy copy of the Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information shall be delivered to the judge's chambers. If the Court does not rule on the joint motion before the filing party must file with the Court the pleading, motion, or other paper that will contain the Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information, the filing party may file a redacted pleading, motion, or other paper that does not contain the Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information. Such redacted pleading, motion, or other paper shall indicate the Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information is being withheld subject to the motion to seal. Once the Court rules on the joint motion, the filing party may then substitute or supplement, without objection by the non-filing party, its pleading, motion, or other paper. Such substitution or supplementation shall be for the sole purpose of adding the redacted Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information that was the subject of the motion to seal, consistent with the Court's ruling on the joint motion, to the filing party's pleading, motion, or other paper.

17. Not later than thirty (30) days after the final settlement of the Action or final disposition, including any appeals, of this Action if not settled, all Confidential Information, all Highly Confidential Information, and all Highly Confidential - Outside Counsel Only Information including all copies of such Confidential Information, Highly Confidential Information, or Highly Confidential - Outside Counsel Only Information shall be returned to counsel for the producing party or destroyed. If destroyed, the party undertaking destruction will

1 certify to the manner, time, and place of their destruction. This paragraph does not create an
2 obligation to return or destroy attorney work product, deposition transcripts or exhibits thereto,
3 designated trial exhibits, or copies of documents filed with the Court that contain Confidential
4 Information, Highly Confidential Information, or Highly Confidential – Outside Counsel Only
5 Information.

6 18. If any of the parties believe that this Confidentiality Agreement provides
7 insufficient protection for a specific category or subset of the discovery materials they expect to
8 produce, such party may serve notice upon the requesting party and request an amendment
9 hereto. If within twenty (20) business days after such notice has been received the parties cannot
10 agree on an amendment, either party may apply to the Court for a protective order. Until the
11 parties agree to an amendment to this Confidentiality Agreement under this paragraph or until
12 the Court enters a Protective Order, this Confidentiality Agreement shall remain in full force and
13 effect. An amendment shall not affect the treatment to be accorded materials produced by a non-
14 party pursuant to this Confidentiality Agreement.

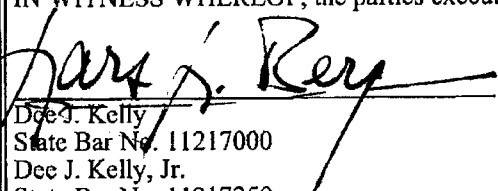
15 19. Any inadvertent failure by the producing party (including parties to this action
16 and non-parties) to designate information as Confidential Information, Highly Confidential
17 Information, or Highly Confidential – Outside Counsel Only Information shall not constitute, or
18 have the effect of, a waiver of its ability to designate such information as Confidential
19 Information, Highly Confidential Information, or Highly Confidential – Outside Counsel Only
20 Information pursuant to this Confidentiality Agreement. The receiving party's obligation to treat
21 information as Confidential Information, Highly Confidential Information, or Highly
22 Confidential – Outside Counsel Only Information shall commence upon its receipt of the
23 producing party's designation of information as Confidential Information, Highly Confidential
24 Information, or Highly Confidential – Outside Counsel Only Information.

25 20. This agreement is not a waiver of any applicable privilege or any objection that
26 might be raised as to a discovery request or the admissibility of evidence. This agreement in no
27 way operates to limit or restrict the disclosure or use of any information that is known or
28

1 becomes known through means or sources outside of this litigation, but this agreement also shall
2 not modify, amend or alter in any way any other restrictions on the disclosure or use of such
3 information that might apply (e.g., restrictions contained in a separate non-disclosure agreement
4 pursuant to which the information was obtained).

5 21. Inadvertent disclosure of any document or other information covered by the
6 attorney-client privilege, work-product or other applicable privileges during discovery in this
7 matter shall be without prejudice to any claim that such document or other information is
8 privileged. Once a party receives notice that it possesses another party's inadvertently produced
9 privileged material, that party shall not use such material and agrees to return such material
10 immediately upon request, unless and until a Court finds the material not to be privileged.
11 Non-privileged information produced during discovery is not barred from use as an exhibit at
12 trial to be entered in the public record merely because it had been designated as confidential
13 during discovery.

14
15 IN WITNESS WHEREOF, the parties execute this Agreement effective as of April 22, 2009.

16 
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19 Dee J. Kelly, Jr.
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Attorneys for Defendants

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

Attorneys for Plaintiff American Airlines, Inc.

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

5 AMERICAN AIRLINES, INC.,

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

6 Plaintiff,

7 v.

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

Defendants.

11 **AGREEMENT AND ACKNOWLEDGMENT OF COMPLIANCE WITH**
12 **CONFIDENTIALITY AGREEMENT**

13 I, _____, hereby acknowledge and agree as follows:

14 1. My address is _____

15 _____.

16 2. My current employer is _____

17 _____, whose address is

18 _____

19 3. My current occupation or job description is _____

20 _____

21 4. I have received a copy of the Confidentiality Agreement in this case on

22 _____

23 5. I have carefully read and I understand the provisions of the Confidentiality Agreement.

24 6. I will comply with all of the provisions of the Confidentiality Agreement.

25 7. Specifically, I agree to use Confidential Information, Highly Confidential Information, or
26 Highly Confidential – Outside Counsel Only Information solely in connection with this action
27 and will hold in confidence, and not disclose to anyone not qualified under the Confidentiality
28 Agreement, all Confidential Information, Highly Confidential Information, or Highly
Confidential – Outside Counsel Only Information.

8. I further agree to return all Confidential Information, Highly Confidential Information, or

1 Highly Confidential – Outside Counsel Only Information that comes into my possession (and
2 any documents or things that I prepare relating thereto) to the attorneys for the producing party
or non-party, or the attorneys for the party that I have assisted in this action either before or
within ten days after the conclusion of this action.

3 9. I understand that if I violate the provisions of the Confidentiality Agreement I may be
4 subject to sanctions by the United States District Court for the Northern District of Texas and
5 that the parties may assert other remedies against me. I hereby submit to the jurisdiction of the
United States District Court for the Northern District of Texas for such purposes.

6 DATED:

7
8 _____
(Signature)

• P •

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

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

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

Defendants.

Case No. 4:08-CV-626-A

**DECLARATION OF CHERYL DARTT IN SUPPORT OF
DEFENDANTS' UNOPPOSED MOTION TO SEAL**

I, Cheryl Dartt, declare as follows:

1. I am the Senior Director of the Marketplace Operations team at Yahoo! Inc. ("Yahoo!"). My department is responsible for monitoring the metrics and performance of Yahoo! Sponsored Search, and the sponsored search marketplace at large, and developing business strategies for Yahoo!'s sponsored search services. I have worked at Yahoo!, starting at Overture Services, since February 2003 and have held my current position since December 2006.

2. I make this declaration in support of Yahoo!'s motion to seal. I have personal knowledge of the facts set forth herein, and if called upon to do so, I could and would competently testify thereto.

3. In my position, I am knowledgeable about the Yahoo! documents listed below and the competitive business planning information and confidential consumer research they contain. Through my professional activities and based on my experience I am able to evaluate the competitive sensitivity of such data.

4. As shown more fully and specifically below, many of the documents set forth below contain competitive business planning information and confidential consumer research

that is not generally known outside Yahoo!, and for which even access is controlled within Yahoo!. These competitive business analyses and studies were developed and prepared at substantial expense to Yahoo!, are extremely valuable to Yahoo!, and could not be easily or inexpensively acquired or duplicated by Yahoo!'s competitors. Moreover, this information could be used by Yahoo!'s competitors to understand Yahoo!'s proprietary technology, and Yahoo!'s recent and future confidential business plans and strategies and thus threaten Yahoo!'s competitive position.

5. Specifically, the documents listed below and contained in the appendix tendered with Defendants' motion to seal contain the competitively sensitive information set forth below.

- A. The document with beginning bates number YAH-AA 4628327 is a presentation representing the culmination of internal research at Yahoo! performed at great expense designed to analyze and compare Yahoo!'s performance relative to that of its competitors in sponsored search. This presentation also discloses key internal metrics, including the number of customers that spend advertising revenue in sponsored search with Yahoo! on a daily basis. All of this information is highly sensitive and represents a very contemporary competitive analysis of Yahoo!'s sponsored search business.
- B. The document with beginning bates number YAH-AA 4784912 is an email that discusses revenue-per-search and revenue figures that can be used to compute overall Yahoo! revenue-per-search. This is highly sensitive information that is not shared outside of Yahoo! and is competitively valuable.
- C. The document with beginning bates number YAH-AA 4820565 is an email that describes conclusions from an internally-fielded study of Yahoo! users, their click patterns, and their perceptions of the experience on Yahoo!. Specifically, the data on the number of users that understand how to interpret North ads is sensitive.
- D. The document with beginning bates number YAH-AA 4830548 discloses the specific click-through-rate of the East portion of the search results page. These are components of revenue-per-search and are never shared outside of Yahoo!.

- E. The document with beginning bates number YAH-AA 4869949 is an email that discusses the merits and disadvantages of various page layout options. These details are an important part of page layout and monetization considerations that are highly sensitive strategic business decisions and not disclosed outside of Yahoo!.
- F. The document with beginning bates number YAH-AA 4892138 is an email that reveals specific revenue-per-search metrics and component metrics obtained from internal testing performed by Yahoo!. This testing and data is part of Yahoo!'s research and development process and not revealed outside of Yahoo!.
- G. The document with beginning bates number YAH-AA 5043974 is an email that discusses strategies for page layout testing and insights derived from internal testing performed by Yahoo!. It also comments on competitive offerings and shares views as to how Yahoo! perceives those offerings and how they may shape Yahoo!'s strategic business direction.
- H. The excerpts from the deposition of Ronald Lange describes Yahoo!'s process for gathering competitive information for testing its search product. These internal processes are never disclosed outside of Yahoo!.
- I. The excerpts from the deposition of Tim Mayer describe several metrics that Yahoo! uses to measure and consider when making launch decisions for a new page layout. The excerpts also discuss the relevance of algorithmic and sponsored search results to user queries. This information is highly sensitive and derived from internal testing performed by Yahoo!. This information is not shared outside the company.

6. As stated above, the public disclosure of these documents and information and the highly sensitive internal strategic competitive business analyses contained in these documents could be used by Yahoo!'s competitors to obtain an unfair competitive advantage that they could not otherwise legitimately obtain without tremendous effort and expense

7. In sum, I have concluded that the public disclosure of the documents set forth above would harm the competitive standing of Yahoo!.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
23rd day of November 2009.

Cheryl Dartt
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