

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWEST AIRLINES CO.,

Plaintiff,

v.

SKIPLAGGED, INC.,

Defendant.

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Civil Action No. 3:21-cv-01722

**PLAINTIFF SOUTHWEST AIRLINES CO.'S
COMPLAINT AGAINST SKIPLAGGED, INC.**

Southwest Airlines Co. (“Southwest” or “Plaintiff”) files this Complaint against Skiplagged, Inc. (“Skiplagged” or “Defendant”) and shows as follows:

I. NATURE OF ACTION

1. Almost 50 years since its first flights in 1971, Southwest Airlines has grown to become one of the most-flown airlines in the United States. Southwest prides itself on offering customer-friendly policies, including its unique “Bags Fly Free” policy (each customer can check two bags for free, subject to weight and size limits) and its “No Change Fees” policy (Southwest does not charge fees to change or cancel flights, though fare differences may apply).

2. Southwest has built a reputation for high customer satisfaction and has recently received several awards demonstrating its success, such as the 2020 J.D. Power award for best airline in North America, the Wall Street Journal’s “Best Airline” of 2020, and one of America’s Most Trusted Travel & Hospitality Brands for 2021 by Morning Consult. Southwest takes pride in these awards and one key factor in this success comes from Southwest employees showing their legendary customer service and hospitality on a daily basis.

3. To help with customer service, among other goals, Southwest maintains the exclusive online distribution rights to sell Southwest tickets to the general public through the Southwest Website and does not allow online travel agencies (“OTAs”) to sell Southwest flights without express written approval. Southwest offers its low-fare flights, ticket information, reservation details, additional booking options for Southwest flights, and ancillary services through its website at www.Southwest.com and its mobile application available via the Apple app store and Google Play app store.¹ Having customers book trips through the Southwest Website enables Southwest to efficiently communicate with its customers about important information prior to the trip or, if necessary, to timely update them on a flight’s schedule change on the day of travel.

4. Southwest has long controlled access to the Southwest Website to prohibit OTAs from selling reservations on its airline without authorization. Among other things, the Terms & Conditions for use of the Southwest Website (the “Terms & Conditions”) expressly prohibit any attempts to “page scrape” flight data and any use of the Southwest Website “for any commercial purpose” without authorization from Southwest.² This is an important distinguishing feature of its business strategy, and a source of competitive advantage.

5. In the past, Southwest has successfully prosecuted actions and obtained injunctions against website operators or OTAs attempting to scrape or display data from the Southwest Website for commercial purposes without authorization by Southwest. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004); *Southwest Airlines Co. v.*

¹ The terms “Southwest Website” or “Southwest.com” shall refer to Southwest’s public-facing front end website available at www.Southwest.com, application programming interface (“API”), and/or mobile applications, available via the Apple app store and Google Play app store. API is an interface used to programmatically access an application through a set of routines, protocols, and other tools for building software applications. The purpose of using an API is to access an application without using the standard user interface.

² A true and correct copy of the Southwest Terms & Conditions is attached as Ex. A.

BoardFirst, L.L.C., No. 3:06-CV-0891-B, 2007 WL 4823761, at *4-11 (N.D. Tex. Sept. 12, 2007); *Southwest Airlines Co. v. Infare Solutions A/S*, no. 3:10-cv-01674-M (N.D. Tex. 2010); *Southwest Airlines Co v. Checkinsooner.com, LLC*, 3:10-cv-01512-K (N.D. Tex. 2010); and *Southwest Airlines v. Roundpipe LLC, et al.*, 375 F. Supp. 3d 687 (N.D. Tex. 2019).

6. One such action is currently pending in this District against Kiwi.com, Inc. and Kiwi.com, s.r.o., (hereinafter, “Kiwi”), a Czech OTA business that owns and operates a website at www.kiwi.com (hereinafter, “Kiwi.com”), that has engaged in repeated, unlawful activity relating to the Southwest Website and ignored a series of cease and desist demands from Southwest.³

7. Southwest recently discovered that Skiplagged is displaying Southwest’s trademarks and fare information – without authorization – and, on information and belief, is collecting or scraping Southwest’s fare information from Kiwi and then directing Skiplagged’s users to complete a flight purchase on Kiwi.com. Neither Skiplagged nor Kiwi is authorized to display Southwest fares or sell Southwest flights. And despite Skiplagged claiming its website “Shows you the cheapest regular flights” and “the best available rates anywhere,” this statement is false and misleading because Skiplagged displays Southwest fares that are inflated above the actual price on the Southwest Website. *See infra* at ¶¶ 15-16, 82-83.

8. In sum, Kiwi is sharing Southwest’s data with its partner, Skiplagged, who, alone and together with Kiwi, has been using Southwest’s data and trademarks to sell tickets (including prohibited “hidden city” tickets) on Southwest Airlines at a markup, without Southwest’s authorization.

³ *Sw. Airlines Co. v. Kiwi.com, et al.*, Case No. 3:21-cv-00098 (N.D. Tex.) (the “Kiwi Litigation”).

A. Southwest filed suit against Kiwi for illegally scraping data from Southwest’s website and using it to sell tickets on Southwest’s airline without its authorization.

9. In the Kiwi Litigation, Southwest alleges that Kiwi is illegally harvesting flight schedules and airfare prices from the Southwest Website and servers in violation of the Southwest Terms & Conditions. Kiwi then uses Southwest’s data to sell airline tickets on Southwest Airlines without its authorization.

10. As alleged in the Kiwi Litigation, Kiwi has engaged in the following unlawful conduct:

- a. **Page Scraping:** Kiwi knowingly violated the Southwest Terms & Conditions through its unauthorized access and scraping of flight and pricing data from the Southwest Website;
- b. **Unauthorized Sale:** Kiwi knowingly violated the Southwest Terms & Conditions by selling Southwest tickets without approval from Southwest and therefore has engaged in unauthorized commercial activity;
- c. **Unauthorized Services:** Kiwi knowingly violated the Southwest Terms & Conditions by charging certain “service fees” that are not otherwise charged by Southwest;
- d. **Trademark Infringement:** Kiwi knowingly violated Southwest’s registered trademarks by displaying, among other things, Southwest’s famous “Heart” logo on Kiwi.com;
- e. **Unauthorized Access:** Kiwi violated federal and state law by continuing to access the Southwest Website without authorization from Southwest;
- f. **Unfair and Deceptive Practices:** Kiwi violated federal law by engaging in unfair and deceptive practices in connection with the sale of airline tickets,

including (i) selling Southwest flights without permission; (ii) failing to identify the carrier when advertising Southwest flights; (iii) adding its own service fees to the price of Southwest flights; (iv) misrepresenting Southwest's policies in an effort to bilk customers into purchasing ancillary services from Kiwi, such as customer service and checked bags, that are free with the purchase of Southwest flights; (v) failing to issue refunds to customers for cancellations on Southwest flights; and

- g. **Hidden City Tickets:** Kiwi promoted and offered "hidden city" tickets, meaning that the passenger's intended final destination is not the ticketed final destination, but rather an intermediate or connecting city.⁴ This booking practice is a violation of Southwest's Contract of Carriage. It negatively impacts Southwest's operations and causes problems (i) with checked baggage because Southwest must check baggage to the ticketed, final destination, yet the customer intends to end their trip in the connecting city; (ii) for operational employees and flight crews trying to locate connecting customers that are listed on the connecting flight's manifest; and (iii) trying to locate connecting customers which lead to flight delays that negatively impact other passengers and disrupt Southwest flight schedule and on-time performance metrics. Southwest has recently suffered multiple reportable flight delays caused by Kiwi's unauthorized sales of "hidden city" flights.

⁴ As an illustrative example, a passenger purchases a ticket from Los Angeles to New York with a connection in Las Vegas, but does not travel beyond Las Vegas. These are also known as "buy long/fly short" itineraries or "hidden city" tickets.

B. Southwest discovers that Skiplagged is displaying Southwest’s fare information (at inflated prices) by scraping or connecting to Kiwi’s website, which is also not authorized to display Southwest’s fare information

11. Recently, Southwest discovered that certain “hidden city” tickets for which Kiwi was the apparent seller were in fact obtained through a website owned by Skiplagged, www.Skiplagged.com.

12. On information and belief, Kiwi distributes *to Skiplagged* the Southwest schedules and fares Kiwi scrapes from Southwest’s website.⁵

13. On information and belief, Skiplagged has integrated Kiwi’s database into its own travel website by becoming a Kiwi “partner.” According to Kiwi’s website, OTAs and metasearch engines must become a Kiwi partner to access Kiwi’s flight and fare data and these partners are remunerated on a commission basis.⁶

14. On information and belief, Skiplagged and Kiwi work together, as partners, to market and sell tickets on Southwest Airlines at an inflated price—and earn profits on these sales.

15. Kiwi’s website describes its “B2B2C” model as follows:

Kiwi collects content from hundreds of different sources, including consolidators, web-modules, and direct APIs with carriers. ... Kiwi.com provides a unified pricing model for our B2B2C customers. Our markup contains *fees for the provision of services and a partner commission*. It is possible to receive pricing with no commission in order to make the price more attractive for the final customer. ... The prices which are returned by our Search API are always final. These include *partner commission*, guarantee costs, payment fees, Customer Support fees, infrastructure and content fees, *and Kiwi.com’s commission*. **Kiwi.com acts as the merchant**

⁵ Kiwi website, <https://partners.kiwi.com/our-solutions/tequila/> (last verified, July 11, 2021). Kiwi website, <https://www.kiwi.com/tw/pages/content/partner> (then click on OTA & metasearch) (last accessed July 12, 2021).

⁶ <https://www.kiwi.com/tw/pages/content/partner> (last accessed July 12, 2021).

of record. Our markup is dynamically calculated and varies from 5 per cent to 20 per cent.⁷

16. Kiwi and Skiplagged understand that they are able to convince buyers to purchase tickets at inflated prices by (i) including flights on airlines like Southwest that are not otherwise available on OTAs like Kayak or Expedia; and (ii) promoting improper ways to combine flights to reach a destination, like “hidden city” travel.⁸

C. Skiplagged partners with Kiwi to sell “hidden city” tickets on Southwest.

17. Skiplagged runs a search engine that claims to identify lower airfares to a given destination by, with its actual knowledge, breaching applicable contracts of carriage with the airline.

18. The name Skiplagged is a reference to the term “Skiplagging” that is the practice of booking an itinerary where the stopover (connecting city) is the true and intended destination of the traveler. Tickets purchased to travel to a stopover rather than the destination are known as “hidden city” tickets.

19. Many airlines (including Southwest) prohibit “hidden city” tickets due to logistical, operational, and public safety concerns that arise from it. Some examples include: (1) there are challenges at the airport with checked baggage because Southwest must check baggage to the ticketed, final destination, yet the customer intends to end his or her trip in the connecting city; (2) when a customer ends his or her trip in the connecting city, this presents a series of challenges for operational employees and flight crews trying to locate connecting customers that are listed on the connecting flight’s manifest; and (3) challenges arise in the amount of time trying to locate

⁷ <https://partners.kiwi.com/technology-services/b2b2c-partnership-model/> (last accessed July 20, 2021) (emphasis added).

⁸ See, e.g., <https://partners.kiwi.com/technology-services/b2b2c-partnership-model/> (last accessed June 12, 2020).

connecting customers which has led to actual flight delays that negatively impact other passengers and disrupt Southwest's flight schedule and on-time performance metrics.

20. "Hidden city" travel violates the Contract of Carriage that a passenger enters with Southwest and, more specifically, Section 2(a)(2) of Southwest's Contract of Carriage prohibits "purchasing a Ticket without intending to fly all flights to gain lower fares (hidden cities)."⁹

21. By identifying and promoting prohibited forms of travel (such as "hidden city" tickets), Skiplagged has induced the breach of the Southwest Terms & Conditions and Contract of Carriage.

22. Skiplagged.com includes repeated reference to "hidden city" tickets that it describes as "a flight where you get off at the layover rather than the final destination"¹⁰ and then explains "but there are some things to be aware of" and notes that:

- You might upset the airline, so don't do this often.

⁹ Southwest provides notice of the Contract of Carriage throughout the purchase path, among other places on the Southwest Website, and also incorporates the Contract of Carriage as part of the Terms & Conditions that provide: "[i]n some instances both these Terms [& Conditions] and separate terms and conditions will apply, including . . . [being] subject to the terms & conditions contained in Southwest's Contract of Carriage." Kiwi's website also contains terms and conditions explaining to Kiwi's users in the "Service Agreement" (Article 2.1.2) that Kiwi's services consist of "[b]rokerage of the Contract of Carriage between You [the Kiwi user] and the Selected Carrier." Article 16 of Kiwi.com's terms and conditions are labeled "Brokerage of the Contract of Carriage" and explains: "We [Kiwi] are responsible primarily for brokering the Contract of Carriage between You [Kiwi user] and a Selected Carrier."

¹⁰ <https://support.skiplagged.com/hc/en-us/articles/115003286687-What-is-a-hidden-city-flight-> (last accessed July 23, 2021).

23. On information and belief, when a Skiplagged.com user is ready to purchase a ticket on Southwest, Skiplagged.com directs the user to a page on Kiwi.com to complete the purchase and process payment.

24. Because Kiwi acts as the merchant of record, Southwest cannot easily determine from the electronic record which tickets were purchased through Skiplagged.com.

D. Southwest demands that Skiplagged cease and desist from using its trademarks and selling “hidden city” flights on its airline without authorization.

25. On June 8, 2021, Southwest wrote a letter to Skiplagged from Texas, explaining that Skiplagged was violating the Southwest Terms & Conditions by scraping and/or using data scraped from Southwest.com, promoting “hidden city” tickets, and using Southwest’s trademarked heart logo to advertise the sale of tickets on Southwest Airlines without its authorization.¹¹

26. Southwest explained that Southwest had “the exclusive distribution rights to sell Southwest flights to the general public through the Southwest Website” and never authorized Skiplagged to display or sell its fares, display its trademark logos, publish its flight or fare data, or to use the Southwest Website for or in connection with offering any third-party product or service—or use Southwest’s trademarks in doing so.¹²

27. Southwest further explained that Skiplagged was inducing Southwest customers to violate the Southwest Terms & Conditions and/or Contract of Carriage. Southwest included a complete copy of the Southwest Terms & Conditions, and the details of registered trademarks. It noted that the Southwest Terms & Conditions prohibit:

¹¹ Letter from James Sheppard (Southwest) to Skiplagged, Inc. c/o Aktarer Zaman (June 8, 2021), attached hereto as Ex. B.

¹² *Id.* at p. 1.

- Use of the Southwest Website to “copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use the Service or Company Information¹³ to create a derivative work;”
- Use of the Southwest Website “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- Engaging in any activity in connection with the Southwest Website or Company Information that is “fraudulent, unlawful, false or misleading”;
- Attempts to “harvest any information from the [Southwest Website];”
- Attempts to “infringe any intellectual property or other right of any third party;”
- Use of the Southwest Website “to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;” and
- [“U]se [of] any deep-link, page-scrape, robot, crawl, index, spider, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things to use, access, copy, acquire information, ... search, generate searches, or monitor any portion of the [Southwest Website] or Company Information[.]”¹⁴

¹³ “Company Information” is defined in the Southwest Terms & Conditions as “Information and materials concerning Southwest and its products and services, and similar items from our licensors and other third parties, including flight schedules, routes, fares, text, graphics, button icons, layout, databases, articles, posts, text, data, files, images, scripts, designs, instructions, illustrations, photographs, sounds, pictures, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Sites, audio and video clips, digital downloads, data compilations (including customer and Rapid Rewards® information), the compilation, assembly, and arrangement of the materials of the Sites, all copyrightable materials, trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Southwest, and other forms of intellectual property, and information regarding the status of Southwest flights, etc.” *See* Ex. A.

¹⁴ *See* Ex. B, letter from James Sheppard (Southwest) to Skiplagged, Inc. c/o Aktarer Zaman (June 8, 2021) at Ex. A thereto, Southwest Terms & Conditions, p. 2.

28. On June 18, 2021, outside counsel for Southwest in Texas wrote to Skiplagged again demanding that it cease and desist from all violative conduct and preserve all physical and electronic evidence in anticipation of litigation. In the June 18th letter, Southwest expressly noted that **“Skiplagged’s failure to cease and desist the conduct described herein may result in Southwest pursuing litigation against you in a Texas federal court and seeking all available legal relief, including damages and/or injunctive relief, and seeking to recover its attorneys’ fees.”**¹⁵

29. On June 21, 2021, Skiplagged replied to counsel for Southwest in Texas, asserting that it did not “web scrape” data from the Southwest.com website or obtain data from Southwest’s application programming interface or sell “hidden-city” flights on Southwest.¹⁶ And it no longer displayed any heart logo for Southwest flights.

30. On July 1, 2021, outside counsel for Southwest replied to Skiplagged’s June 21 letter again demanding that it cease and desist.¹⁷ Counsel explained that Skiplagged continued to violate the Southwest Terms & Conditions through its unauthorized publication, marketing, and sale of Southwest tickets (that falsely misrepresent actual ticket prices), even if linking to another unauthorized travel website, Kiwi.com. Southwest explained that it had filed a federal lawsuit against Kiwi that included, among other things, a claim for breach of the Southwest Terms & Conditions, and provided the relevant case number.

¹⁵ Letter from Michael Wilson to Skiplagged, Inc. c/o Aktarer Zaman (June 18, 2021), attached hereto as Ex. C (emphasis original).

¹⁶ Letter from Skiplagged, Inc. c/o Aktarer Zaman to Michael Wilson (June 21, 2021), attached hereto as Ex. D.

¹⁷ Letter from Michael Wilson to Skiplagged, Inc. c/o Aktarer Zaman (July 1, 2021), attached hereto as Ex. E.

31. Southwest warned Skiplagged that if it did not cease displaying Southwest flights at inflated prices and directing customers to Kiwi.com to purchase Southwest flights, cease promoting “hidden city” flights on Southwest Airlines, and cease interfering with Southwest’s contractual relationships with Southwest’s current and future customers, Southwest would file suit in federal district court in Texas.¹⁸

32. Southwest explained that “regardless of how Skiplagged acquires the information, Skiplagged is misleading and deceiving customers by misstating the cost of Southwest’s flights. By misrepresenting and inflating the cost of Southwest’s fares, Skiplagged is also violating federal law, which prohibits deceptive and misleading practices in the sale of air transportation.

33. On July 6, 2021, outside counsel for Skiplagged replied to Southwest’s letter.¹⁹ There, it denied that its conduct (in republishing Southwest fare data and selling Southwest flights to consumers on “hidden-city” flights, at a markup) was wrongful. It declared that it was not subject to jurisdiction in Texas and was therefore filing a defensive declaratory judgment action in New York:

Accordingly, *given your Letter’s litigation threat, Skiplagged has commenced a declaratory judgment action in the Southern District of New York*, which properly has jurisdiction over this dispute.²⁰

34. Skiplagged also claimed that it obtained its Southwest fare data from third parties—and not from Southwest.com. It denied representing to Skiplagged customers that the prices

¹⁸ *Id.*

¹⁹ Letter from Skiplagged, Inc. c/o Aktarer Zaman to Michael Wilson (July 6, 2021), attached hereto as Ex. F (emphasis added).

²⁰ *Id.*

Skiplagged charged them for Southwest flights were “the ‘actual’ prices that Southwest charges” for its flights.

35. Southwest has implemented self-help security measures, including technology blocks, in an effort to stop Kiwi (and therefore, also its “partners” like Skiplagged) from illegally scraping its data and using it to sell “hidden city” tickets on its airline, without authorization. Kiwi has continued to hack the Southwest Website (in violation of federal law and the Southwest Terms & Conditions), republish Southwest fares and flight schedules, and share it with Skiplagged, who, together with Kiwi, uses the data to sell flights on Southwest’s airline without authorization.

E. Skiplagged files a declaratory judgment action in New York to deprive Southwest of its right as plaintiff to the forum of its choice; Southwest files this suit, with the intention of consolidating it with the Kiwi Litigation.

36. On July 2, 2021, to deprive Southwest of its right to a forum of its choice, Skiplagged filed a declaratory judgment action in Federal District Court for the Southern District of New York.²¹

37. Among other things, Skiplagged and Kiwi have acted in concert—and on information and belief, pursuant to a partnership or affiliate agreement—to market and sell Southwest flights, including “hidden city” tickets. This action against Skiplagged and the Kiwi Litigation involve substantially similar facts and should be considered together. Accordingly, Southwest intends to move to consolidate this action and the Kiwi Litigation.

II. THE PARTIES

38. Southwest is a Texas corporation with its principal place of business located at 2702 Love Field Drive, Dallas, Texas 75235.

²¹ *Skiplagged, Inc. v. Southwest Airlines Co.*, Case No. 1:21-cv-05749-JPC (S.D.N.Y.).

39. Skiplagged, Inc. is a Delaware corporation with a principal place of business located at 41 E. 11th St., 9th Floor, New York, New York 10003. Skiplagged owns and/or operates Skiplagged.com.

III. JURISDICTION AND VENUE

40. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because Southwest asserts claims arising under 18 U.S.C. § 1030 and 15 U.S.C. §§ 1114, 1116, 1117, and 1125 of the Lanham Act. This Court has supplemental and pendent jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

41. This Court may also exercise jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and there is over \$75,000 in controversy.

42. Skiplagged knows, including from its correspondence with Southwest, that:

- a. Southwest is based in Texas.
- b. Use of Southwest's Website—which is necessary not only to scrape Southwest's fares and schedules, but also to communicate passenger information to Southwest on any ticket that Skiplagged or Kiwi sells—is subject to the Southwest Terms & Conditions.
- c. The Southwest Terms & Conditions prohibit the use of the Southwest Website “*for any commercial purpose*, with the exception of authorized Southwest travel agents/agencies.”
- d. Pursuant to the Southwest Terms & Conditions, neither Skiplagged nor Kiwi is authorized to scrape or publish Southwest's proprietary schedule and pricing data.
- e. Neither Skiplagged nor Kiwi is authorized to market or sell Southwest tickets on their websites.

- f. Southwest does not authorize the sale of “hidden city” tickets, the sale of which substantially harms Southwest, as does the misrepresentation of its prices and policies, the unauthorized sale of its products at a markup, and use of its trademarks—all of which are prohibited.
- g. The Southwest Terms & Conditions contain a forum selection clause that applies to “all disputes”:

Forum Selection

These Terms and the relationship between you and Southwest shall be governed by the laws of the State of Texas without regard to any conflict of law provisions. **You agree to the personal and exclusive jurisdiction of the courts located within Dallas, TX. You hereby consent to the exclusive jurisdiction and venue of the State and Federal courts in Dallas, Texas in all disputes.**²²

43. Although Southwest notified Skiplagged that neither it nor Kiwi is allowed to scrape, publish, or distribute Southwest’s data, or to market or sell tickets on Southwest pursuant to the Southwest Terms & Conditions, Skiplagged has continued to use data from Kiwi to wrongfully publish and market Southwest flights on Skiplagged and direct customers to its partner, Kiwi, to process payment on the sale and collect its commission.

44. In connection with its unauthorized republication of Southwest fares and flight schedules and its unauthorized sales of Southwest flights and services, Kiwi is accessing Southwest’s computer systems located in Texas and in this District without authorization, bypassing Southwest’s security systems intended to block automated traffic and bots from using the Southwest Website, and hacking the Southwest API that is accessible only through the Southwest Website—and then distributing that data to *Skiplagged*.

²² Ex. A, Southwest Terms & Conditions at 3 (emphasis in original).

45. Skiplagged knows that Kiwi's use of Southwest's data and sale of tickets on Southwest Airlines is unauthorized, but Skiplagged continues to republish that data *and sell tickets through Kiwi* on its website, Skiplagged.com.

46. This Court has jurisdiction over Skiplagged and all of Southwest's claims because:

- a. Skiplagged knowingly used trademarks that belong to Southwest without Southwest's permission to market and sell tickets on Southwest Airlines without authorization;
- b. Skiplagged knowingly has used Southwest's trademarks to market prohibited forms of travel, including "hidden city" tickets, to travelers in Texas—diluting Southwest's trademarks and causing foreseeable confusion as to the origin of certain services;
- c. Skiplagged knowingly induces Texas citizens to breach their contracts of carriage with Southwest—causing foreseeable injury to Southwest in Texas;
- d. Skiplagged markets Southwest flights to travelers in Texas, and knowingly convinces travelers domiciled in Texas to breach their contracts of carriage with Southwest—a Texas entity;
- e. Skiplagged, in cooperation and partnership with Kiwi, induces Kiwi to breach its agreement with Southwest by sharing Southwest's data and directing customers to Kiwi.com to book "hidden city" fares;
- f. Skiplagged acts as Kiwi's partner, and collectively uses Southwest's Company Information to generate profits for Kiwi and Skiplagged on Southwest bookings.

47. Southwest's claims arise out of the "access to ... or use" of Southwest's Website by Skiplagged, alone and in partnership with Kiwi. Under the Southwest Terms & Conditions, it is agreed that:

[A]ny transactions carried out through the Sites will be deemed to take place in the State of Texas, United States of America, regardless of the jurisdiction where [it] may be located or reside....

48. Skiplagged, both alone and in partnership with Kiwi, has committed torts in this District, breached or induced breaches of contract in this District, violated Texas statutory law in this District, and systematically conducts business in this District. Skiplagged also has purposefully availed itself of the forum by soliciting business from Texas residents and purposefully directing its actions towards Texas, including by offering and selling flights in Texas, and soliciting business from Texas residents.

49. Skiplagged has offered and facilitated the sale of Southwest flights to airports in Texas cities, including in this District.

50. On information and belief, Skiplagged has sold, using Southwest's proprietary fare data and trademarks (or caused the sale of, by directing customers to submit payment through Kiwi.com), over 1,000 flights on Southwest.

51. Skiplagged knows and understands that, in connection with the purchase of Southwest flights, Kiwi interacts with Southwest computer systems located in Texas and in this District, and Skiplagged and Kiwi are selling the services of Southwest, a Texas company with its base of operations in this District. On information and belief, Skiplagged has derived substantial revenues and profits from such contacts with Texas and can reasonably anticipate being hailed into court in Texas to answer for its actions.

52. On information and belief, a significant number of travelers residing in the Dallas area have purchased tickets on Southwest through Skiplagged's website.

53. The injuries Skiplagged inflicts on Southwest are felt in this District, and Skiplagged knew that serious harmful effects from its conduct would occur here.

54. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the claims asserted in this action arose in this District and a substantial part of the activities, conduct and damages have occurred in Texas.

55. During all relevant times, Skiplagged has knowingly induced Kiwi to repeatedly, knowingly and intentionally access and obtain Southwest Company Information from Southwest servers located in this judicial district without Southwest's authorization, which information is shared with its partner, Skiplagged. Skiplagged, in turn, used Southwest's information—that it knew Kiwi had improperly obtained—to direct customers to purchase flights (including “hidden city” tickets) on Southwest at inflated prices, through Kiwi—which it knew was not authorized to sell them.

IV. FACTS GIVING RISE TO THIS ACTION

A. Southwest's Operation and Website.

56. Since its first flight in June 1971, Southwest has provided affordable flights to business and leisure passengers for almost 50 years. Southwest is one of the most-flown airlines in the United States. In the highly competitive airline industry, Southwest has been successful in large measure because of Southwest's commitment to customer service and consumer loyalty, including its well-known promises of fares with “no hidden fees” and “no change fees” (though fare differences may apply), and allowing its customers to directly book tickets on Southwest.com.

57. Southwest owns and operates the Southwest Website. Southwest also maintains the exclusive online distribution rights to sell Southwest tickets to the general public through the

Southwest Website and does not allow the sale of Southwest flights without express written approval.

58. Southwest has long prevented website operators and OTAs from selling its flights and the Southwest Terms & Conditions for the Southwest Website include a list of Restricted Activities that prohibit attempts to “page scrape” or using the Southwest Website “for any commercial purpose” without permission from Southwest.²³ Such restrictions are permitted under federal law.²⁴ Southwest’s fares and flight schedules are proprietary. Although they are published openly on the internet, they are subject to specific use restrictions and may not be republished or used for commercial purposes without Southwest’s express permission.

59. To protect the security of its website and ensure normal operations, Southwest makes its website and the proprietary contents available for consumers’ use subject to the Terms & Conditions. An interactive link on each page of Southwest’s website, including the homepage, references the Terms & Conditions.

60. Because use of the Southwest Website constitutes acceptance of the Terms & Conditions, the Terms & Conditions constitutes a valid and enforceable contract between Southwest and those who access the website.

²³ See Ex. A, Southwest Terms & Conditions at 2.

²⁴ See 14 C.F.R. § 256.6 (“Nothing in this section requires an air carrier, foreign air carrier, or ticket agent to allow a system to access its internal computer reservation system or to permit ‘screen scraping’ or ‘content scraping’ of its Web site; nor does it require an air carrier or foreign air carrier to permit the marketing or sale of the carrier’s services through any ticket agent or other carrier’s system. ‘Screen scraping’ as used in this paragraph refers to a process whereby a company uses computer software techniques to extract information from other companies’ Web sites without permission from the company operating the targeted Web site.”). To the extent that any common law right to scrape “publicly available” data exists, this section preempts it.

61. Southwest has sent multiple cease and desist letters to Skiplagged, informed Skiplagged of the Kiwi Litigation, and identified the relevant Terms & Conditions.²⁵

62. The Terms & Conditions for use of the Southwest Website specifically prohibit, among other things, the following user conduct:

- a. Use of the Southwest Website to “copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use the Service or Company Information to create a derivative work;”
- b. Use of the Southwest Website or Company Information “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- c. Engaging in any activity in connection with the Southwest Website or Company Information that is “fraudulent, unlawful, false or misleading;”
- d. Attempts to “harvest any information from the [Southwest Website];”
- e. Attempts to “infringe any intellectual property or other right of any third party;”
- f. Use of the Southwest Website “to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;” and
- g. “[U]se [of] any deep-link, page-scrape, robot, crawl, index, spider, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things to use, access, copy, acquire information, . . . search, generate searches, or monitor any portion of the [Southwest Website] or Company Information[.]”²⁶


²⁵ Ex. E, Letter from Michael Wilson to Skiplagged c/o Aktarer Zaman (July 1, 2021).

²⁶ See Ex. A, Southwest Terms & Conditions at 2.




63. The Terms & Conditions also provide that, by accessing the Southwest Website, or using the content made available through the website, Skiplagged accepts and agrees to the Southwest Terms & Conditions. As described herein, Skiplagged is aware that it and Kiwi are using the Southwest Website and content from the Southwest Website.



B. Southwest's Registered Trademarks.

64. Southwest is the owner of, among other things, the federal trademark registrations listed below (hereinafter collectively referred to as the "Southwest Marks"):²⁷

Trademark	Date	Services	No.
SOUTHWEST AIRLINES	Registered: Dec. 8, 1992	(Int'l Class: 39) transportation services; namely, transportation of cargo and passengers by air	Reg. No.: 1,738,670
SOUTHWEST	Registered: Aug. 15, 2006	(Int'l Class: 39) Transportation of passengers and/or goods by air	Reg. No.: 3,129,737
	Registered September 8, 2015 Int'l Class: 35 First Use: September 8, 2014 Filed: October 1, 2014	(Int'l Class: 35) providing electronic on-line information services, namely, the provision of advertisements and business information in respect of travel, tourism and entertainment through a computer database; advertising services and promotion services by data communications for service providers in the travel industry; on-line direct electronic marketing services and advertising services for service providers in the travel industry; providing online information to others, namely, advertisements and solicitations	Reg. No.: 4,806,962

²⁷ True and correct copies of the registration certificates for the Southwest Marks are available free of charge from the USPTO's Trademark Electronic Search System (TESS) database available at <https://www.uspto.gov/trademarks-application-process/search-trademark-database>.

Trademark	Date	Services	No.
	Registered July 7, 2015 Int'l Class: 16 First Use: September 8, 2014 Filed: December 1, 2014	(Int'l Class: 16) printed matter, namely, publications, magazines, and books all featuring information about the airline and travel industry	Reg. No.: 4,768,717
	Registered April 14, 2015 Int'l Class: 39 First Use: September 8, 2014 Filed: September 8, 2014	(Int'l Class: 39) air transportation of passengers and freight; air transportation services featuring a frequent flyer bonus program; airline transportation services; delivery of goods by air; freight transportation by air; making reservations and bookings for transportation; making transportation bookings and reservations for others by means of a website; on-line transportation reservation and travel ticket reservation services; online transportation reservation services; providing a website featuring information in the field of air transportation; providing automated check-in and ticketing services for air travelers; transport by aircraft; transport by air; transport of passengers; transport of persons and goods; transportation of passengers and/or goods by air; travel agency services, namely, making reservations and bookings for transportation	Reg. No.: 4,720,322
	Registered April 21, 2015 Int'l Class: 09 First Use: September 8, 2014 Filed: September 22, 2014	(Int'l Class: 09) computer application software for mobile phones, namely, software for delivery of personalized travel information; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; computer software for the delivery of personalized travel information that may be downloaded from a global computer network; downloadable mobile applications for providing personalized travel information namely flight check-in, flight status, and flight and car rental information and services; downloadable software in the nature of a mobile application for the delivery of personalized travel information	Reg. No.: 4,723,791

Trademark	Date	Services	No.
	Registered April 21, 2015 Int'l Class: 43 First Use: September 8, 2014 Filed: September 22, 2014	(Int'l Class: 43) making hotel reservations for others; providing a website featuring information in the field of hotels and temporary accommodations for travelers; providing personalized information about hotels and temporary accommodations for travel via the internet	Reg. No.: 4,723,789
	Registered January 26, 2016 Int'l Class: 41 First Use: September 8, 2014 Filed: May 22, 2015	(Int'l Class: 41) providing information on entertainment, sporting, and cultural events and venues, amusements parks, tourist attractions, and recreational activities; ticket reservation and booking services for entertainment, sporting, and cultural events and venues, amusement parks, tourist attractions, and recreational services	Reg. No.: 4,892,223

65. Southwest spends substantial time, money, and effort advertising and promoting its products and services using its trademarks throughout the United States. The Southwest Marks provide Southwest with the exclusive right to use the registered marks in connection with air transportation and other travel services, as well as the right to exclude third parties from unauthorized use of the marks. Through years of nationwide and continuous use and advertisement, Southwest has established enormous goodwill with respect to these marks, and they are Southwest's valuable intellectual property. The Southwest Marks have become famous, distinctive and well known, and the public accepts the marks as indicative that Southwest is the source of those services.

C. Skiplagged's Wrongful, Unauthorized, and Misleading Conduct in partnership with Kiwi.

66. On information and belief, Skiplagged, acting in concert with Kiwi as its partner, has (i) infringed Southwest's Marks by displaying Southwest's name and Heart logo on the Skiplagged website; (ii) used those marks without Southwest's authorization to market and sell

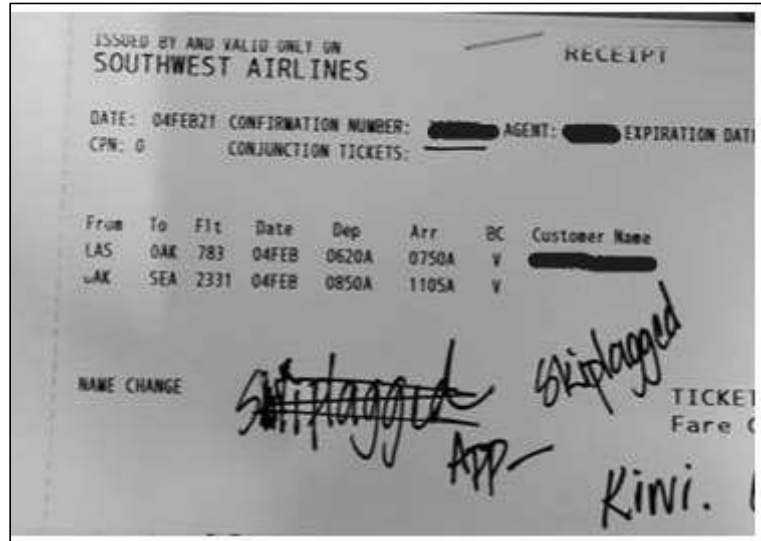
tickets on Southwest flights; (iii) enticed and encouraged Southwest customers to breach their contract of carriage with Southwest; (iv) aided and abetted Kiwi's infringement of Southwest's Marks; and (v) aided and abetted Kiwi's breach of the Southwest Terms & Conditions.

67. Skiplagged is aware that, in connection with promoting and selling Southwest flights and services, Kiwi knowingly and intentionally targets the Southwest Website to harvest Southwest's fare and pricing information for its own commercial benefit and without Southwest's authorization, and that Skiplagged and Kiwi use Southwest's information in a manner that is fraudulent, false or misleading, and that violates the Terms & Conditions of the Southwest Website.

68. On information and belief, Skiplagged, as a Kiwi partner, connects to Kiwi's database of available flights and fares—including the data Kiwi illegally scrapes from Southwest's website. According to Kiwi's website, parties like Skiplagged must sign a contract to access Kiwi's API and are remunerated on a commission basis.²⁸

69. On or about February 2021, Southwest's employees reported problems and challenges with "hidden city" tickets that, according to the customer, were located through searches on Skiplagged and then purchased through Kiwi. The Southwest employee took a photo of the boarding pass and made hand-written notes, reflecting a conversation with the customer, that the Southwest fare was displayed on Skiplagged and then the trip itinerary was sent by Kiwi.

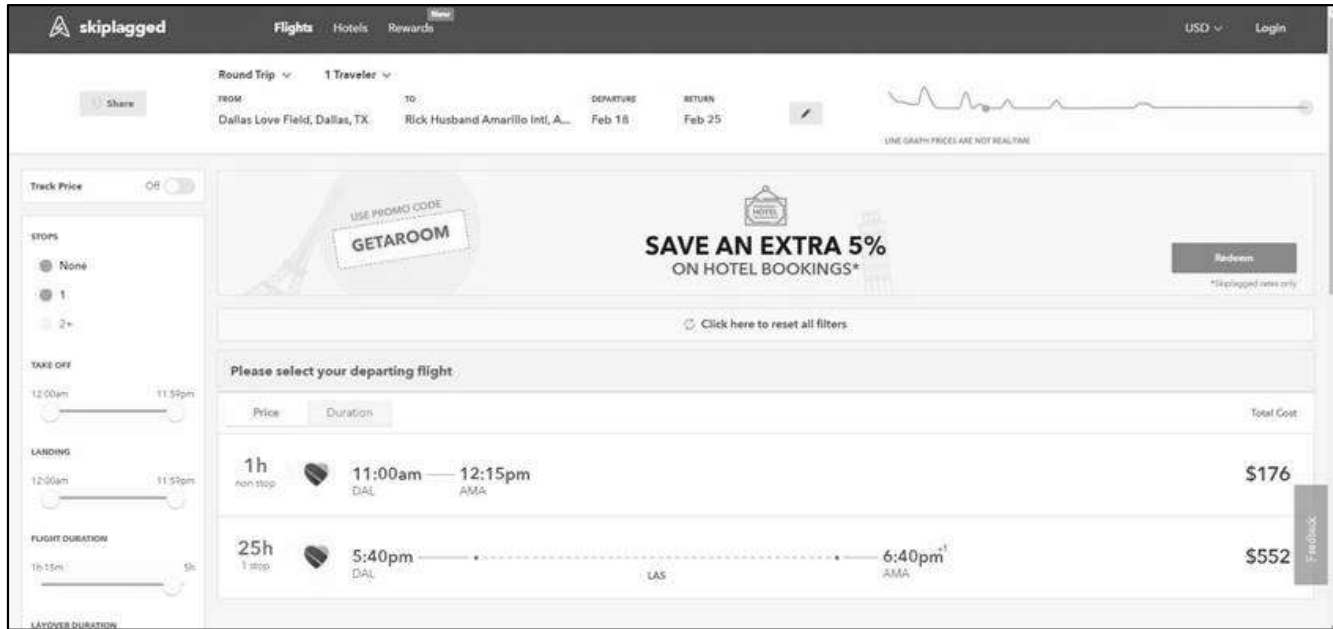
²⁸ <https://www.kiwi.com/tw/pages/content/partner> (last accessed July 12, 2021).



70. As Southwest investigated Skiplagged’s connection to Kiwi, it learned that this particular passenger’s itinerary included (a) a booking email domain of @kachipytel.com; (b) that it included a false billing address; and (c) was for a prohibited “hidden city” ticket where the passenger was booked to travel from Las Vegas, Nevada to connect in Oakland, California (Flight 783) and then take another flight to Seattle, Washington (Flight 2331); however, the customer only intended to travel to Oakland, California (on Flight 783).

71. On information and belief, a booking that is displayed on Skiplagged and booked through Kiwi, the reservation contains the email domain of @kachipytel.com and Southwest’s records show over 1,500 reservations with an email domain of @kachipytel.com and where the passengers trip originated from or landed in one of Southwest’s Texas cities. There are more than 500 reservations with an email domain of @kachipytel.com and where the customer’s trip originated from or landed in Dallas, Texas.

72. In addition, Southwest discovered Skiplagged’s infringing use of Southwest’s famous “heart” trademark, as found in the Skiplagged website screenshot below:



73. Skiplagged has infringed the Southwest Marks by displaying its well-known heart logo on the Skiplagged website, to benefit from its goodwill and generate commissions for itself and Kiwi on sales of Southwest flights.

74. On information and belief, Kiwi acts as the merchant of record to process payment for tickets on Southwest purchased by customers from Skiplagged's website. However, when booking at ticket on Southwest, Kiwi includes a fake address as part of the booking detail and some examples include: (a) for a flight departing out of Austin, TX, the billing city is listed as "Morganchester, WV;" (b) for a flight departing out of Dallas, TX, the billing city is listed as "North Susanborough, TX"; (c) for a flight departing of Austin, TX, the billing city is listed as "New Karen, TN"; and (d) for a flight departing out of Dallas, TX, the billing city is listed as "Lake Allisonport, GA." Other fake cities (with reservations showing @kachipytel.com email domain) include "East Jesus, OK" or "East Laurabury, NC" or "East Markchester, WY." These are not real cities in the United States and, therefore, show that Skiplagged and/or Kiwi are is a

violation of the Southwest Terms & Conditions which prohibits, among other things, “any speculative, fraudulent, or false reservation.”

75. When a customer clicks to purchase a flight found on Skiplagged.com, the customer is routed to a page hosted on Kiwi.com to collect payment information.

76. On information and belief, Skiplagged has sold thousands of flights on Southwest through Kiwi.com.

77. When reselling Southwest flights, Skiplagged, alone and through its agent and partner Kiwi, acknowledges that purchases are subject to the Southwest Terms & Conditions, stating: “All services provided by Southwest Airlines are subject to their Terms & Conditions. More information is available on their website.” Skiplagged sells these flights with knowledge it and its customers are bound by the Southwest Terms & Conditions.

E-ticket

Kiwi.com booking number: 76677832

Reservation number (PNR): K8SGJ8



✈ **Flight information**

Burbank - Hollywood Burbank **BUR** 2019 Oct 1 20:50 Local time

Oakland - Oakland International **OAK** 2019 Oct 1 22:00 Local time

Flight no: WN1440 Airline: Southwest Airlines Economy

👤 **Passengers**

Mark Hursh PNR: K8SGJ8

⌚ *Waiting for airline check-in to open on 1 Oct*

2× Checked baggage 78 × 52 × 28 cm — 23 kg

1× Cabin baggage 60 × 40 × 25 cm — 7 kg

1× Personal item 47 × 34 × 21 cm — 5 kg

It is usually much cheaper to order checked baggage with us in advance than to pay for it at the airport.

☑ **Check-in**

⌚ **Waiting for airline check-in to open on 1 Oct**

We have your details. We'll process your boarding passes and send them to you by email on or before 2 Oct.

📌 **E-ticket notice**

All services provided by Southwest Airlines are subject to their Terms and Conditions. More information is available on their website.

78. Kiwi's terms and conditions state that "a Selected Carrier's terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking."

Article 9. Conditions of Carriage

1. You acknowledge that a Selected Carrier's terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking. By concluding the Service Agreement You hereby acknowledge that the Flight(s) included in Your Booking may not be part of the "frequent flyer programs" of the Selected Carrier(s). This article 9.1 also applies to the terms and conditions of the airlines, railway and other transportation companies which are offered to You based on (i) application of the Kiwi.com Guarantee or (ii) voluntary change of the Booking based on Your request.

79. Skiplagged's use of the Southwest Marks to identify and sell flights on Southwest in partnership with Kiwi negatively impacts Southwest's reputation. For example, booking Southwest flights through Skiplagged is more expensive than booking on the Southwest website because Skiplagged and Kiwi charge additional fees. Thus, Skiplagged and Kiwi are not merely scraping data and republishing it; they are improperly extracting data from the Southwest Website and trading on Southwest's reputation for having no hidden fees.

80. Southwest has received significant complaints and inquiries from customers who purchased Southwest flights from Skiplagged and/or Kiwi. These complaints include that Skiplagged and/or Kiwi are (i) selling Southwest flights without permission; (ii) failing to identify the carrier when advertising Southwest flights; (iii) adding their own service fees to the price of Southwest flights; (iv) misrepresenting Southwest's policies in an effort to deceive customers into purchasing ancillary services from Skiplagged and/or Kiwi, such as customer service and checked bags, that are free with the purchase of Southwest flights; (v) failing to issue refunds to customers for cancellations on Southwest flights even after Southwest refunded the credit card used by Kiwi

to purchase the ticket; (vi) not providing customers with notices about schedule changes or delays; (vii) not allowing customers to change or cancel reservations; (viii) misrepresenting checked bag policies and baggage fees charged by Skiplagged and/or Kiwi; and/or (ix) leading customers to mistakenly believe that Skiplagged and/or Kiwi are Southwest's authorized agent and blaming Southwest for Skiplagged and/or Kiwi's conduct.

81. Various circumstances (i.e., cancelled flights, delayed flights, or rescheduled flights) necessitate the timely communication of information to customers and the issuance of refunds in many cases. Skiplagged's and/or Kiwi's unauthorized sales of Southwest flights interfere with Southwest's ability to issue timely communications and refunds to customers because Kiwi uses its own email addresses and credit cards (not the customer's) when booking flights purchased through Skiplagged and Kiwi, thus preventing Southwest from directly communicating with customers and directly issuing refunds to customers. In some cases, the customer blames Southwest for the issue, even though Skiplagged and Kiwi are the direct cause of the problem.

D. Skiplagged and Kiwi Inflate Fares and Charges Service Fees That Are Not Collected By Southwest.

82. Skiplagged, alone and in partnership with Kiwi, does not identify the flight prices or additional charges in a transparent or straightforward manner. By way of example and comparison, the Southwest Website shows a total price of \$229.95 for a flight from Dallas, Texas (DAL) to Amarillo, Texas (AMA) with an outbound flight on July 12, 2021 and a return flight on July 17, 2021 (the "Dallas-Amarillo Flight"):

southwest.com/air/booking/price.html

Log in Español

Southwest JUL 12 - 17 ✈ DAL → AMA TOTAL **\$229.95** ✓

Trip & Price Details

Price Payment Confirmation

✈ Flight Modify

<p>Mon 7/12 DAL → AMA 1 hr 15 min Nonstop <u>Wanna Get Away®</u></p> <p>12:15 PM 1:30 PM</p>	<p>Price per Passenger \$187.12</p> <p>Taxes and fees per Passenger \$42.83</p>
<p>Sat 7/17 AMA → DAL 1 hr 15 min Nonstop <u>Wanna Get Away®</u></p> <p>6:25 AM 7:40 AM</p>	<p>Total per Passenger \$229.95</p> <p>Passenger(s) x1</p>
<p>Flight total \$229.95</p>	

83. But Skiplagged, alone and in partnership with Kiwi, inflates the price of the Dallas-Amarillo Flight to \$267 by adding a “Service Fee” or “Other Fees” to the actual ticket price:

skiplagged.com/flights/DAL/AMA/2021-07-12/2021-07-17#trip=WN346,WN3286

Off

Your departing flight

1h non stop

Please select

Price

11:59PM

11:59PM

4h 39m

24h 46m

1h non stop

1h non stop

6h 1 stop

7h 1 stop

Dallas - Amarillo

Monday, July 12

1h15m | non stop | 1 Traveler

SOUTHWEST AIRLINES

12:15p ————— **1:30p**

DAL AMA

Dallas to Amarillo | 1h15m | WN 346

Hotels | Need a hotel in Amarillo? Save up to 60%!

Search Hotels

Amarillo - Dallas

Saturday, July 17

1h15m | non stop | 1 Traveler

SOUTHWEST AIRLINES

6:25a ————— **7:40a**

AMA DAL

Amarillo to Dallas | 1h15m | WN 3286

\$267

1 Adult | No Children

Book Now

84. Skiplagged and Kiwi also promise an “Automatic flight check-in,” which violates the Terms & Conditions on the Southwest Website because “online check-in providers may not use Southwest web pages to check-in customers online or attempt to obtain for them a boarding pass in any certain boarding group.”²⁹ Moreover, on information and belief, Skiplagged, alone and in partnership with Kiwi, does not actually provide customers with an automatic flight check-in service, despite promising it.

85. Skiplagged, alone and in partnership with Kiwi, also misrepresents that Southwest flights purchased through Skiplagged and Kiwi.com are nonrefundable or subject to change fees, which is not true because Southwest’s fare policies have “No Change Fees” (though fare differences may apply); and tickets are always refundable (i.e., Business Select or Anytime fares) or reusable as travel credit (i.e., Wanna Get Away fares).

86. Skiplagged, alone and in partnership with Kiwi, also misrepresents Southwest’s ticket policies by indicating a customer would need to pay an additional costs for “Premium Services” to get email support or avoid fees for other services. In effect, Skiplagged, in partnership with Kiwi, is seeking to further increase the price of a Southwest flight for “services” that are not otherwise collected by Southwest because it does not charge any fees for email support or customer service.

87. Skiplagged also proposes undesirable and inefficient routes and connections without adequate disclosure to customers of potential issues with such routes., including “hidden city” tickets, which are prohibited by Southwest’s Contract of Carriage.

²⁹ See Ex. A, Southwest Terms & Conditions at 2.

88. These and other unlawful, deceptive, and harmful practices by Skiplagged and Kiwi deliver inferior service, charge hidden fees, and directly contradict Southwest’s policies, all of which harm Southwest’s reputation and customer goodwill.

E. Skiplagged and Kiwi have Refused to Stop their Wrongful Conduct.

89. Several Southwest departments have dedicated company time and resources to investigate the unauthorized access of the Southwest Website relating to flights sold by Skiplagged and Kiwi.

90. In late 2020, Southwest leadership teams received complaints from its frontline employees (i.e., customer service and ground operations) about problems caused by Kiwi’s unauthorized sales of Southwest flights. During the ensuing investigation, Southwest learned that Kiwi was cheating customers on refunds, advertising disruptive “hidden city” flights that cause operational delays, and engaging in unfair and deceptive practices. This conduct violates the Southwest Terms & Conditions and federal law,³⁰ and causes irreparable harm to Southwest’s business, reputation, and its brand.

91. Some of these “hidden-city” fares were being booked through Kiwi’s partner’s website, Skiplagged.com—a website devoted, as its name implies, to helping customers identify “hidden-city” fares.

92. Skiplagged’s activities are causing dilution of the quality of the famous Southwest Marks and other harm to Southwest, its business reputation and goodwill, for which Southwest has no adequate remedy at law.

³⁰ See 49 U.S.C. § 41712(a) (prohibiting any such “unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.”); 14 C.F.R. § 256.6 (allowing carriers to restrict sales of flights).

93. Skiplagged’s activities are likely to cause, and have caused, confusion. Skiplagged’s conduct is misleading and deceiving to the public and is likely to lead (and has led) the public to wrongly conclude that the goods and services offered by Skiplagged originate with, are sponsored by, and/or are authorized by Southwest—all to the damage and harm of Southwest and the public.

F. Southwest demands that Skiplagged cease and desist; Skiplagged refuses to do so.

94. On June 8, 2021, Southwest wrote to Skiplagged from Texas, explaining that Skiplagged was violating the Terms & Conditions of Southwest.com by scraping and/or using data scraped from Southwest’s Website, promoting “hidden city” tickets, and using Southwest’s trademarked heart logo to advertise the sale of tickets on Southwest without its authorization.³¹

95. Southwest explained that Southwest had “the exclusive distribution rights to sell Southwest flights to the general public through the Southwest Website” and never authorized Skiplagged to display its fares or sell its flights, display its trademark logos, publish its flight or fare data, or to use the Southwest Website for or in connection with offering any third-party product or service—or use Southwest’s trademarks in doing so.³²

96. Southwest explained that Skiplagged was inducing Southwest customers to violate the Southwest Terms & Conditions and/or Contract of Carriage. Southwest included a complete copy of its Terms & Conditions, and details of registered trademarks. It noted that Skiplagged was violating the Terms & Conditions of Southwest’s website, which prohibit:

³¹ Ex. B, Letter from James Sheppard (Southwest) to Skiplagged, Inc. c/o Aktarer Zaman (June 8, 2021).

³² *Id.* at p. 1.

- a. Use of the Southwest Website to “copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use the Service or Company Information to create a derivative work;”
- b. Use of the Southwest Website “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- c. Engaging in any activity in connection with the Southwest Website or Company Information that is “fraudulent, unlawful, false or misleading”;
- d. Attempts to “harvest any information from the [Southwest Website];”
- e. Attempts to “infringe any intellectual property or other right of any third party;”
- f. Use of the Southwest Website “to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;” and
- g. [“U]se [of] any deep-link, page-scrape, robot, crawl, index, spider, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things to use, access, copy, acquire information, . . . search, generate searches, or monitor any portion of the [Southwest Website] or Company Information[.]”³³

97. On June 18, 2021, outside counsel for Southwest in Texas wrote to Skiplagged, Inc., again asking that it cease and desist from all violative conduct and preserve all physical and electronic evidence in anticipation of litigation. Reiterating its grievances, Southwest expressly noted that **“Skiplagged’s failure to cease and desist the conduct described herein may result in Southwest pursuing litigation against you in a Texas federal court and seeking all available**

³³ See Ex. B, Letter from James Sheppard (Southwest) to Skiplagged, Inc. c/o Aktarer Zaman (June 8, 2021) at Ex. A thereto, Southwest Terms & Conditions, p. 2.

legal relief, including damages and/or injunctive relief, and seeking to recover its attorneys’ fees.”³⁴

98. On June 21, 2021, Skiplagged replied to counsel for Southwest in Texas, asserting that it did not “web scrape” data from the Southwest.com website or obtain data from Southwest’s application programming interface or sell “hidden-city” flights on Southwest.³⁵ And it no longer displayed any heart logo for Southwest flights.

99. On July 1, 2021, counsel for Southwest in Texas replied to Skiplagged’s July 21 letter, again demanding that it cease and desist.³⁶ The letter explained that Skiplagged continued to violate the Southwest Terms & Conditions through its unauthorized publication, marketing, and sale of Southwest fares (that falsely misrepresent actual ticket prices) by linking to another unauthorized travel website, Kiwi.com. Southwest explained that it had filed a federal lawsuit against Kiwi that included, among other things, a claim for breach of the Southwest Terms & Conditions, and directed Skiplagged to the Kiwi Litigation case number.

100. Southwest warned Skiplagged that if it did not cease displaying Southwest flights at inflated prices and directing customers to Kiwi.com to purchase Southwest flights, cease promoting “hidden city” flights on Southwest, and cease interfering with Southwest’s contractual relationships with Southwest’s current and future customers, Southwest would file suit in Federal District court in Texas.³⁷ It explained that regardless of how Skiplagged acquires the information, Skiplagged is misleading and deceiving customers by misstating the cost of Southwest’s flights.

³⁴ Ex. C, Letter from Michael Wilson to Skiplagged, Inc. c/o Aktarer Zaman (June 18, 2021) (emphasis original).

³⁵ Ex. D, Letter from Skiplagged, Inc. c/o Aktarer Zaman to Michael Wilson (June 21, 2021).

³⁶ Ex. E, Letter from Michael Wilson to Skiplagged, Inc. c/o Aktarer Zaman (July 1, 2021).

³⁷ *Id.*

By misrepresenting and inflating the cost of Southwest fares, Skiplagged is also violating federal law, which prohibits deceptive and misleading practices in the sale of air transportation.

101. On July 6, 2021, outside counsel for Skiplagged replied to Southwest's letter.³⁸ There, Skiplagged denied that its conduct (in republishing Southwest fare data and selling Southwest reservations to consumers on "hidden-city" flights, at a markup) was wrongful. It declared that—given that Southwest was going to file suit—Skiplagged had filed a defensive declaratory judgment action in New York:

Accordingly, **given your Letter's litigation threat, Skiplagged has commenced a declaratory judgment action in the Southern District of New York**, which properly has jurisdiction over this dispute.³⁹

102. Southwest, however, is the true plaintiff in this matter.

103. Since filing the Kiwi Litigation, Southwest has implemented self-help security measures in an effort to stop Skiplagged and Kiwi from illegally scraping and using its data and using it to sell tickets on its airline without authorization. But Skiplagged, together with its partner, Kiwi, has continued to hack the Southwest Website (in violation of federal law and the Southwest Terms & Conditions), republish Southwest fares and flight schedules, and publish and promote flights on Southwest on *Skiplagged.com*, without authorization.

G. Skiplagged knowingly encourages Southwest customers to violate their Contracts of Carriage with Southwest.

104. Southwest customers who book through Skiplagged.com (with Kiwi.com as merchant of record) often travel on "hidden city" fares which occurs when a passenger's intended final destination is not the final arrival city on his or her itinerary, but rather an intermediate or

³⁸ Ex. F, Letter from Skiplagged, Inc. c/o Aktarer Zaman to Michael Wilson (July 6, 2021).

³⁹ *Id.* (emphasis added).

connecting city. In its simplest form, a passenger purchases a ticket from City 1 to City 2 to City 3, but does not travel beyond City 2. This is sometimes referred to as “skiplagging.”

105. This booking practice is a violation of Southwest’s Contract of Carriage which details “Prohibited Booking Practices” within Section 2(a)(2) as prohibiting “[p]urchasing a Ticket without intending to fly all flights to gain lower fares (hidden cities).”⁴⁰ By promoting prohibited forms of travel on Skiplagged.com, Skiplagged induces passengers to breach the Southwest Terms & Conditions and/or Contract of Carriage.

106. Skiplagged *knowingly* encourages customers to breach its contract of carriage with airlines, including Southwest. For example, in 2015, Skiplagged’s founder used the website Reddit to make an open call for donations acknowledged that there were “a few caveats” to using the Skiplagged website: “(1) you’d have to book a round-trip as two one-ways (which Skiplagged handles automatically), (2) you can only have carry-ons, *and* (3) *you may be breaking an agreement with the airlines known as a contract of carriage, where it might say you can’t miss flights on purpose.*”⁴¹

⁴⁰ Southwest provides notice of the Contract of Carriage throughout the purchase path, among other places on the Southwest Website, and also incorporates the Contract of Carriage as part of the Terms & Conditions that provide: “[i]n some instances both these Terms [& Conditions] and separate terms and conditions will apply, including . . . [being] subject to the terms & conditions contained in Southwest’s Contract of Carriage.” Kiwi’s website also contains terms and conditions explaining to Kiwi’s users in the “Service Agreement” (Article 2.1.2) that Kiwi’s services consist of “[b]rokerage of the Contract of Carriage between You [the Kiwi user] and the Selected Carrier.” Article 16 of Kiwi.com’s terms and conditions are labeled “Brokerage of the Contract of Carriage” and explains: “We [Kiwi] are responsible primarily for brokering the Contract of Carriage between You [Kiwi user] and a Selected Carrier.”

⁴¹ United Airlines sued me last year for creating Skiplagged, https://www.reddit.com/r/IAmA/comments/3ux82r/united_airlines_sued_me_last_year_for_creating/ (posted November 30, 2015) (emphasis added).

Basically, hidden-city is where your destination is a stopover; you'd simply leave the airport when you arrive at your destination. It turns out booking this way can save you hundreds of dollars on over 25% of common routes, especially in the USA. New York to San Francisco example. There are a few caveats, of course: (1) you'd have to book a round-trip as two one-ways (which Skiplagged handles automatically), (2) you can only have carry-ons, and (3) you may be breaking an agreement with the airlines known as contract of carriage, where it might say you can't miss flights on purpose.

107. Skiplagged.com warns its users: “Do not overuse hidden-city itineraries. Do not fly hidden-city on the same route with the same airline dozens of times within a short time frame. . . . **You might upset the airline, so don’t do this often.**”⁴²

- **Do not overuse** hidden-city itineraries. Do not fly hidden-city on the same route with the same airline dozens of times within a short time frame.
- In rare times of irregular operations such as bad weather, your itinerary may change at the discretion of the airline (2% chance).
- You might upset the airline, so don't do this often.



⁴² Skiplagged website, <https://skiplagged.com/about> (last accessed July 14, 2021) (emphasis added).

108. Skiplagged runs a search engine specifically designed to identify opportunities where travelers can pay less for airfare to a given destination by breaching their contract of carriage with the airline.

109. “Hidden city” travel is prohibited by Southwest and other commercial airlines because of the significant logistical, operational, and public safety concerns it causes. Hidden city travel negatively impacts Southwest’s operation in numerous ways. For example, flight crews and ground operations employees in connecting cities will attempt to locate connecting passengers (or “through” passengers) for the final leg of the flight, or delay flights when passengers are missing—unaware that a passenger has ended his or her trip in the connecting city. The practice negatively affects Southwest’s ability to estimate passenger headcounts, causing potential disruptions at the airport gate and maintenance adjustments, such as variations in the amount of jet fuel needed for each flight and proper passenger distribution within the plane. Customers with “hidden city” tickets will refuse to gate-check bags when it is necessary to do so, and may become upset—wasting airline resources, delaying take-off, and causing delay to other passengers requiring assistance. Some customers—who are unaware or forget that airlines are not equipped to handle “hidden city” travel—will check bags that continue to the trip’s destination, leaving the passenger unable to retrieve them at the layover, and further straining resources. Flight delays and disruptions have a significant negative impact on the other passengers’ experience on the flight and, thus, with Southwest, while causing disruption to Southwest’s flight schedule systemwide.

110. Skiplagged’s promotion of “hidden city” ticketing also causes irreparable harm to Southwest’s ability to obtain new customers. That is because when a passenger does not travel on the final leg of the trip, that passenger removes a seat that could have been sold to a prospective Southwest customer. That prospective Southwest customer may choose to travel on a different

airline and, therefore, Southwest would also likely lose the sales revenue for ancillary services, such as EarlyBird Check-in, car rental deals, or hotel packages. Other disappointed customers may switch away from Southwest to another airline if Southwest's flights are "full."

H. Kiwi Continues to Hack Southwest's API and Bypass Its Security to provide Southwest's data to Skiplagged; Skiplagged continues to Aid and Abet Kiwi by using Southwest's data to Generate Commissions.

111. In early February 2021, as Southwest's investigation continued and Southwest's technology department learned more about Kiwi's actions, Southwest implemented technical measures to identify and monitor Kiwi's automated access of Southwest.com.

112. Over the next several weeks, Southwest implemented various security measures to block Kiwi's scraping, but Kiwi developed other hacks.

113. Among other things, Kiwi began hacking Southwest's API at <https://www.southwest.com/api/airbooking/v1/air-booking/page/air/booking/confirmation> with automated bots (referenced herein as "API Hacking").

114. With each blocking measure Southwest implements, Kiwi continues to hack Southwest.com by changing the way it architects its automated scripts to access, scrape, and republish data from Southwest.com.

115. Southwest has invested significant resources in an effort to prevent Skiplagged and Kiwi from using its proprietary flight schedule and pricing data, trademarks and brand name to sell tickets on its flights without its authorization.

116. Skiplagged is aware of these unauthorized hacking activities but continues to aid and abet Kiwi's behavior by continuing to use the Southwest data Kiwi provides to generate more unauthorized sales of Southwest flights, and thus, more commissions for Kiwi, all with full knowledge of the Southwest Terms & Conditions.

V. CAUSES OF ACTION

COUNT ONE: Trademark Infringement and Contributory Trademark Infringement Under 15 U.S.C. § 1114.

117. Southwest realleges and incorporates the allegations above, as if fully set forth herein.

118. The services for which Skiplagged and Kiwi used and/or uses the Southwest Marks are identical and/or substantially similar to services offered by Southwest.

119. Skiplagged's conduct, alone and in partnership with Kiwi—including its prominent use of Southwest's protected "Heart" mark on Skiplagged.com in conjunction with promoting and re-selling Southwest's fares—has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Skiplagged with Southwest, or as to the origin, sponsorship, approval or legitimacy of Skiplagged's goods and services by Southwest.

120. The acts of Skiplagged, alone and in partnership with Kiwi, constitute infringement of one or more of the Southwest Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114 as represented in U.S. Federal Registration Nos. 1,738,670; 3,129,737; 4,806,962; 4,768,717; 4,720,322; 4,723,791; 3,027,789 and 4,892,223.

121. Southwest has suffered and will continue to suffer irreparable harm as a result of Skiplagged's infringement of the Southwest Marks, alone and in partnership with Kiwi.

122. Southwest is entitled to monetary damages, or disgorgement of Skiplagged profits, for Skiplagged's infringement, alone and in partnership with Kiwi.

123. Skiplagged, alone and in partnership with Kiwi, has acted with knowledge of Southwest's ownership of the Southwest Marks and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized by these marks. Skiplagged, alone

and in partnership with Kiwi, has willfully infringed one or more of the Southwest Marks, and the intentional nature of Skiplagged's actions make this case exceptional under 15 U.S.C. § 1117(a).

124. Southwest has been, is now, and will be irreparably harmed by Skiplagged's infringement and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Skiplagged, alone and in partnership with Kiwi, will continue to infringe the Southwest Marks.

COUNT TWO: False Designation of Origin and Unfair Competition Under 15 U.S.C. § 1125(a).

125. Southwest repeats and realleges the allegations above as if fully set forth herein.

126. The conduct of Skiplagged, alone and in partnership with Kiwi, has and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Skiplagged with Southwest, or as to the origin, sponsorship or approval of Skiplagged's goods and services by Southwest. For example, consumers associate the "Heart" logo with Southwest, known for having "no change fees" (though fare differences may apply) and "no hidden fees;" yet customers purchasing Southwest flights through Skiplagged (alone and/or in partnership with Kiwi) are charged both.

127. The acts of Skiplagged, alone and in partnership with Kiwi, constitute false designation of origin which is likely to cause and have caused confusion in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

128. The intentional nature of Skiplagged's actions, alone and in partnership with Kiwi, entitles Southwest to recover profits, damages, costs, and attorney's fees under 15 U.S.C. § 1117(a).

129. Southwest has suffered, and will continue to suffer, irreparable harm as a result of such false designation of origin by Skiplagged, and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Skiplagged, alone and in partnership with Kiwi, will continue to misrepresent and

mislead the public that its services are in some manner connected with, sponsored by, affiliated with, related to, or approved by Southwest.

COUNT THREE: Dilution Under 15 U.S.C. § 1125(c).

130. Southwest repeats and realleges the allegations above as if fully set forth herein.

131. Southwest is engaged in substantially exclusive use of the Southwest Marks.

132. The Southwest Marks are widely recognized by the consuming public of the United States to indicate Southwest as the source of services provided.

133. The Southwest Marks have achieved fame under the relevant provisions of the Lanham Act.

134. Skiplagged's infringing use of the Southwest Marks occurred after the Southwest Marks achieved such fame.

135. Skiplagged, alone and in partnership with Kiwi, has acted with knowledge of Southwest's ownership of the Southwest Marks and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized by these marks.

136. Skiplagged's conduct, alone and in partnership with Kiwi, has and is likely to continue to dilute the value of one or more of the Southwest Marks. For example, customers associate the "Heart" logo with Southwest, known for having "no change fees" (though fare differences may apply) and "no hidden fees;" yet customers purchasing Southwest flights through Skiplagged's website and Kiwi are charged both.

137. The acts of Skiplagged, alone and in partnership with Kiwi, constitute a dilution, including dilution by tarnishment, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

138. Skiplagged's intentional use of one or more of the Southwest Marks, alone and in partnership with Kiwi, has caused the Southwest Marks to lose the distinctive quality associated with Southwest's exclusive use of the Southwest Marks.

139. The acts of Skiplagged, alone and in partnership with Kiwi, have caused harm to the reputation of the Southwest Marks due to the deceptive, poor quality, and nature of the services and products provided by Skiplagged, alone and in partnership with Kiwi.

140. The intentional nature of Skiplagged's actions, alone and in partnership with Kiwi, entitles Southwest to recover profits, damages and costs, and attorney's fees under 15 U.S.C. § 1117(a).

141. Southwest has suffered, and will continue to suffer, dilution of the Southwest Marks as a result of such actions by Skiplagged, and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Skiplagged, alone and in partnership with Kiwi, will continue to dilute the Southwest Marks.

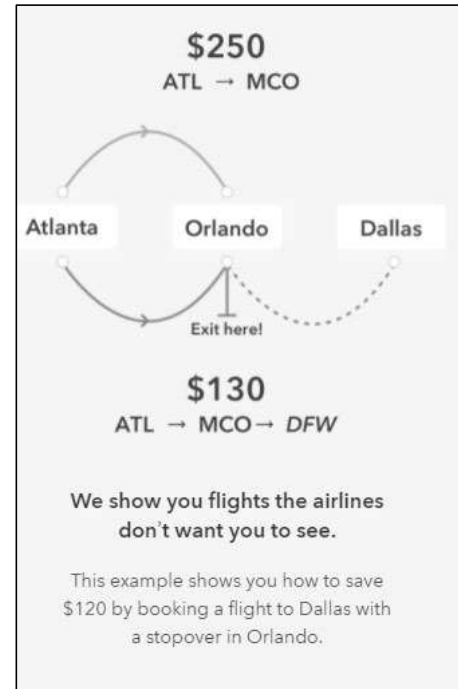
COUNT FOUR: Tortious Interference with Contract (Contract of Carriage Between Southwest and its Customers).

142. Southwest realleges and incorporates the allegations above, as if fully set forth herein.

143. Skiplagged runs a search engine specifically designed to identify opportunities where travelers can pay less for airfare to a given destination by breaching their contract of carriage with the airline.

144. As its name implies, Skiplagged.com identifies and promotes “hidden city” travel. Its search engine allows users to search for “hidden city” travel opportunities by identifying travel itineraries where the layover is the user’s intended destination.⁴³

145. This booking practice is a violation of Southwest’s Contract of Carriage which details “Prohibited Booking Practices” within Section 2(a)(2) as prohibiting “[p]urchasing a Ticket without intending to fly all flights to gain lower fares (hidden cities).”⁴⁴



146. By promoting prohibited forms of travel, Skiplagged knowingly encourages and induces customers to breach the Southwest Terms & Conditions and/or Contract of Carriage.

147. For example, in an open call on the website, Reddit, for donations to pay for its legal team in 2015, Skiplagged’s founder acknowledged that by using Skiplagged’s service, “**you**

⁴³ *Id.*

⁴⁴ Southwest provides notice of the Contract of Carriage throughout the purchase path, among other places on the Southwest Website, and also incorporates the Contract of Carriage as part of the Terms & Conditions that provide: “[i]n some instances both these Terms [& Conditions] and separate terms and conditions will apply, including . . . [being] subject to the terms & conditions contained in Southwest’s Contract of Carriage.” Kiwi’s website also contains terms and conditions explaining to Kiwi’s users in the “Service Agreement” (Article 2.1.2) that Kiwi’s services consist of “[b]rokerage of the Contract of Carriage between You [the Kiwi user] and the Selected Carrier.” Article 16 of Kiwi.com’s Terms and Conditions are labeled “Brokerage of the Contract of Carriage” and explains: “We [Kiwi] are responsible primarily for brokering the Contract of Carriage between You [Kiwi user] and a Selected Carrier.”

may be breaking an agreement with the airlines known as a contract of carriage, where it might say you can't miss flights on purpose."⁴⁵

148. Skiplagged also warns its users: "Do not overuse hidden-city itineraries. Do not fly hidden-city on the same route with the same airline dozens of times within a short time frame. . . .

You might upset the airline, so don't do this often."⁴⁶

- **Do not overuse** hidden-city itineraries. Do not fly hidden-city on the same route with the same airline dozens of times within a short time frame.

149. Skiplagged warns travelers against entering their frequent flyer information because "[i]f you do, *the airline might invalidate any miles you've accrued with them.*"⁴⁷

- **Don't associate a frequent flyer account** – If you do, the airline might invalidate any miles you've accrued with them.

150. When reselling Southwest flights, Skiplagged, alone and in partnership with Kiwi, acknowledges that purchases are subject to the Southwest Terms & Conditions, stating: "All services provided by Southwest Airlines are subject to their Terms & Conditions. More information is available on their website."

151. When purchasing a flight through Skiplagged, Kiwi's Terms and Conditions state that "a Selected Carrier's terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such

⁴⁵ United Airlines sued me last year for creating Skiplagged, available at https://www.reddit.com/r/IAmA/comments/3ux82r/united_airlines_sued_me_last_year_for_creating/ (posted November 30, 2015) (last accessed July 14, 2021) (emphasis added).

⁴⁶ Skiplagged website, <https://support.skiplagged.com/hc/en-us/articles/115003286687-What-is-a-hidden-city-flight-> (last accessed July 14, 2021) (emphasis added).

⁴⁷ Skiplagged website, <https://support.skiplagged.com/hc/en-us/articles/115003286687-What-is-a-hidden-city-flight-> (last accessed July 14, 2021) (emphasis added).

terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking.”

Article 9. Conditions of Carriage

1. You acknowledge that a Selected Carrier's terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking. By concluding the Service Agreement You hereby acknowledge that the Flight(s) included in Your Booking may not be part of the “frequent flyer programs” of the Selected Carrier(s). This article 9.1 also applies to the terms and conditions of the airlines, railway and other transportation companies which are offered to You based on (i) application of the Kiwi.com Guarantee or (ii) voluntary change of the Booking based on Your request.

152. Skiplagged knew that, in connection with the publication and purchase of Southwest flights, Kiwi interacts with Southwest computer systems located in Texas and in this District, and that it is selling the services of Southwest, a Texas company with its base of operations in this District.

153. Skiplagged’s activities impede Southwest’s ability to do business and cause substantial injury. Hidden city travel is prohibited by most commercial airlines because of the significant logistical, operational, and public safety concerns it causes. Hidden city travel negatively impacts Southwest’s operation, and has a significant negative impact on the other passengers’ experience on the flight and, thus, with Southwest.

154. Skiplagged’s promotion of hidden city ticketing also causes irreparable harm to Southwest’s ability to obtain new customers. For example, when a passenger does not travel on the final leg of the trip, that passenger removes a seat that could have been sold to a prospective Southwest customer. That prospective Southwest customer may choose to travel on a different airline and, therefore, Southwest would also likely lose the sales revenue for ancillary services, such as EarlyBird Check-in, car rental deals, or hotel packages.

COUNT FIVE: Tortious Interference with Contract (Contract Between Southwest and Kiwi).

155. Southwest realleges and incorporates the allegations above as if fully set forth herein.

156. Skiplagged is aware that the Southwest Terms & Conditions do not allow Kiwi or other parties to scrape its data or sell flights on its airline without its permission. Skiplagged is aware that the Southwest Terms & Conditions prohibit:

- a. Use of the Southwest Website to “copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use the Service or Company Information to create a derivative work;”
- b. Use of the Southwest Website “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- c. Engaging in any activity in connection with the Southwest Website or Company Information that is “fraudulent, unlawful, false or misleading;”
- d. Attempts to “harvest any information from the [Southwest Website];”
- e. Attempts to “infringe any intellectual property or other right of any third party;”
- f. Use of the Southwest Website “to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;” and
- g. [“U]se [of] any deep-link, page-scrape, robot, crawl, index, spider, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things to use, access, copy, acquire

information, . . . search, generate searches, or monitor any portion of the [Southwest Website] or Company Information[.]”⁴⁸

157. Southwest informed Skiplagged that Kiwi was violating the Southwest Terms & Conditions by scraping data from the Southwest Website, publishing or distributing it, and by selling tickets on Southwest’s airline.

158. Each time Skiplagged convinces a user on its website to purchase a ticket on Southwest’s airline, and directs that customer to Kiwi to finalize their purchase, Skiplagged is knowingly inducing Kiwi to breach its agreement with Southwest.

COUNT SIX: Unjust Enrichment Under Texas Common Law.

159. Southwest realleges and incorporates the allegations above as if fully set forth herein.

160. Skiplagged, alone and through its partnership with Kiwi, has been unjustly enriched by taking undue advantage of Southwest’s fare information. Skiplagged has benefitted from the use of Southwest’s proprietary information and makes a profit from marketing Southwest flights through its website without Southwest’s authorization. Without authorization, Skiplagged, alone and through its partnership with Kiwi, has taken undue advantage of Southwest’s fare information in violation of the Lanham Act and encouraged Southwest customers to breach their contracts of carriage for Skiplagged’s own benefit (disrupting service and increasing Southwest’s costs).

⁴⁸ See Ex. B, letter from James Sheppard (Southwest) to Skiplagged, Inc. c/o Aktarer Zaman (June 8, 2021) at Ex. A thereto, Southwest Terms & Conditions, p. 2.

161. Southwest has been and continues to be injured by the conduct and unlawful acts of Skiplagged (both alone and through its partnership with Kiwi) and is entitled to restitution and equitable damages under quasi-contract theories of recovery.

VI. ATTORNEY'S FEES

162. Southwest realleges and incorporates the allegations above as if fully set forth herein.

163. Southwest was required to retain the undersigned's services in the prosecution of this claim. Pursuant to at least Texas Civil Practice & Remedies Code §§ 38.001 and 143.002, Southwest seeks reasonable and necessary attorney's fees.

VII. APPLICATION FOR INJUNCTIVE RELIEF

164. As set forth above, the actions of Skiplagged, alone and through its partnership with Kiwi, in violation of the Lanham Act and Texas law, has caused, and is continuing to cause, substantial and irreparable damage to Southwest for which there is no adequate remedy at law. Skiplagged, alone and through its partnership with Kiwi, has improperly used, and will continue to improperly use, the Southwest Marks unless this Court prevents it from doing so. Southwest will continue to lose control over its own reputation and goodwill, and the public and consumers likely will continue to be confused, misled, and deceived by the fact that Skiplagged, alone and through its partnership with Kiwi, offers competing or related services under the Southwest Marks. Southwest has a substantial likelihood of success on the merits and is, therefore, entitled to an injunction preventing Skiplagged's continued infringement, including an injunction against Skiplagged's continued use of the Southwest Marks.

165. Southwest requests that Skiplagged, and all companies owned or controlled by it either directly or indirectly, its employees, representatives, agents, members, and others acting in

concert with it, be preliminarily and permanently enjoined from: (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on any website, including Skiplagged.com, through its mobile applications or elsewhere; (3) using the Southwest Marks, including the famous "Heart" logo, in violation of U.S. trademark law; (4) accessing or using the Southwest Website and data in violation of the Southwest Terms & Conditions, or partnering with others to do so.

VIII. PRAYER FOR RELIEF

Southwest respectfully requests an order and/or judgment:

A. That Defendant, its officers, members, managers, affiliates, agents, employees, servants, representatives, any entities owned or controlled by them, and all persons acting under or in concert with them, be preliminarily enjoined throughout the pendency of this lawsuit, and permanently enjoined thereafter, from: (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on its website, Skiplagged.com, through its mobile applications or elsewhere; (3) use of the Southwest Marks, including its famous "Heart" logo, in violation of U.S. copyright law; and (4) accessing and using the Southwest Website and data in violation of the Southwest Terms & Conditions;

B. That the Defendant be enjoined from using the Southwest Marks, or any other mark, word or name confusingly similar to or including those marks, in the ordinary course of business;

C. That the Defendant be required to account for and pay to Southwest all profits and benefits they derived as a result of the activities complained of herein;

D. That the Defendant be required to pay to Southwest actual, consequential, and compensatory damages sustained as a result of the activities complained of herein;

E. That the Defendant be required to pay increased damages due to their willful infringement;

F. That the Defendants be required to pay pre-judgment and post-judgment interest at the highest rates allowed by law;

G. That the Defendants be required to pay costs and attorney's fees; and

H. For such other and further relief as this Court deems just and proper.

Dated: July 23, 2021

Respectfully submitted,

By: /s/ Michael C. Wilson

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