

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

AMERICAN AIRLINES, INC.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:11-CV-244-Y
	§	
TRAVELPORT LIMITED, et al.	§	<b>(Relates to Motion Referred to Magistrate Judge Cureton)</b>
	§	
Defendants.	§	

**PLAINTIFF AMERICAN AIRLINES, INC.’S  
OPPOSITION TO DEFENDANT ORBITZ WORLDWIDE, LLC’S MOTION  
FOR AN ORDER PERMITTING IT TO SHARE CERTAIN DOCUMENTS  
WITH IN-HOUSE COUNSEL PURSUANT TO THE PROTECTIVE ORDER**

Plaintiff American Airlines, Inc. (“American”) hereby serves its Opposition to Orbitz Worldwide, LLC’s (“Orbitz”) Motion for an Order Permitting Orbitz to Share Certain Documents with In-House Counsel Pursuant to the Protective Order (the “Motion”).

Orbitz’s Motion should be denied because it is premature, and is an attempt to gain an unfair advantage at the same time that Orbitz has, for months, refused to produce its own documents. Orbitz complains that it needs to share certain documents produced by American in discovery with one of its in-house counsel because these documents supposedly are “critical to Orbitz’s defense.” (Mot. at 1.) Yet, Orbitz has denied American the same opportunity to prepare its case by producing only *eleven* pages of documents as of the date it filed its Motion.

American is not opposed to a process by which all parties can agree, in an even-handed manner, upon a core set of documents that are important for in-house counsel to review to help prepare the case for trial. Indeed, American proposed that the parties agree on a process to do just that. (See Jan. 20, 2012 Email from Yolanda C. Garcia to Brendan A. McShane (App. at 1 (Ex. 1)).) American was willing to discuss a *mutual* exchange of documents to be shared

with in-house counsel immediately and well in advance of trial. Because Orbitz had failed to produce documents, American asked that this discussion occur after Orbitz produced a substantial amount of its documents.<sup>1</sup> Moreover, because trial is not currently scheduled, and there is no other imminent event regarding Orbitz in this lawsuit, Orbitz has no urgent need to share American's highly confidential documents with its inside counsel, and no justification for pressing this issue at the same time that it is in flagrant violation of its own document production obligations.

Nevertheless, instead of agreeing to American's reasonable request, Orbitz filed this Motion, which easily could have been resolved or at least significantly limited, through the parties' mutual negotiation of documents to be reviewed by in-house counsel. Orbitz's Motion simply wastes judicial and party resources and should be denied. Instead, Orbitz should be ordered to confer with American with respect to this Motion after Orbitz has completed its document production.

### **I. ARGUMENT AND AUTHORITIES**

As the court explained in *Dondi Properties Corp. v. Commerce Savings & Loan Assoc.*, 121 F.R.D. 284, 286 (N.D. Tex. 1988), "valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. . . . Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case . . . ." 121 F.R.D. at 286. Orbitz's unnecessary Motion is

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<sup>1</sup> American also is concerned about the potential for inequitable treatment if it grants Orbitz's requests, but then the other defendants do not permit American's in-house counsel to see important documents in this case. To that end, on February 26, 2012, American requested that Sabre and Travelport permit certain of American's in-house counsel to review Sabre's and Travelport's documents. Sabre and Travelport have not responded to this request.

precisely the type of tactic that the court contemplated in *Dondi*. Rather than waste the Court's resources, Orbitz should just produce documents to American as it is required to do under the Federal Rules of Civil Procedure. At that time, the Parties can continue to meet and confer to determine which documents can be shared with their respective in-house counsel.

Although Orbitz contends that American has failed to productively meet and confer, American has in fact conducted itself reasonably and in good faith. To date, American has produced over a million pages of documents to Orbitz in response to various discovery requests. Orbitz, on the other hand, has consistently shirked its discovery obligations and now comes to the Court seeking unjustified relief with unclean hands. Indeed, American needed to file a motion to compel in this Court after Orbitz had produced a mere *eleven* pages of documents in response to discovery requests that American served in July 2011. American withdrew its motion to compel after Orbitz assured American that it would promptly produce documents. Yet, on February 10, 2012, Orbitz produced a mere 3,500 more documents— a drop in the bucket compared to the sizeable document productions from American in this case; and critically, Orbitz produced no email correspondence after 2008. Orbitz made a further production of about 3,700 documents on February 24, 2012.

Orbitz first contacted American seeking permission to show certain confidential documents to its in-house counsel on January 10, 2012. (*See* Jan. 10, 2012 Letter from Brendan A. McShane to Margaret H. Allen and Yolanda C. Garcia (App. at 5-6 (Ex. 2)).) During a subsequent telephonic meet and confer, Orbitz appeared willing to offer American the opportunity for American's in-house counsel to review the same amount of Orbitz's documents after Orbitz had completed its document production. But now Orbitz's Motion does not even offer that. On January 20, 2012, American responded to Orbitz that the Parties should "discuss a

mutual ask to allow certain doc[ument]s to be shown to in[-]house counsel, and we [American] think mutuality is fair given we all would like [the] opportunity for our in-house counsel to give input to prepare for depos[itions] and trial.” (See Jan. 20, 2012 Email from Yolanda C. Garcia to Brendan A. McShane (App. at 1 (Ex. 1)).) American further noted that it had previously asked defendants if all Parties would agree to allow certain in-house counsel to review documents produced in this case but defendants had declined that request. (*Id.*) Orbitz repeated its request, and American again responded that the parties should agree to a process by which in-house counsel for all of the parties could have access to important documents produced by another party. (See Jan. 31, 2012 Email from Yolanda C. Garcia to Brendan McShane (App. at 7 (Ex.3)).) Without adequately responding to American’s reasonable proposal, Orbitz brought the instant Motion on February 9, 2012.

Orbitz continues its unreasonable behavior in the context of this Motion and its requested relief. Specifically, Orbitz has failed to consider American’s reasonable proposal and wants to have its in-house counsel obtain access to confidential material while depriving American’s in-house counsel of the same opportunity. Orbitz’s position prejudices American, circumvents meaningful dialogue, and deprives American of the opportunity to meaningfully prepare for litigation. Moreover, there is hardly a need for this Motion at this time. Orbitz has not sought any depositions, there is no trial date set, and the parties have a significant amount of document production to complete. In short, there is no compelling need for Orbitz to show these documents to its in-house counsel to prepare for trial at this time, and Orbitz should have waited until it had completed its document production to American before concluding that it had exhausted the ability to confer on this issue.

## **II. CONCLUSION AND REQUESTED RELIEF**

American respectfully requests that this Court deny Orbitz's Motion, so that the Parties may continue their discussions and reach a resolution concerning all parties' in-house counsel's access to highly confidential documents once Orbitz has substantially completed its production.

Dated March 1, 2012

Respectfully submitted,

s/ Yolanda Cornejo Garcia \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system pursuant to the Court's Local Rule 5.1(d) this 1st day of March, 2012.

s/ Yolanda Cornejo Garcia \_\_\_\_\_