

**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.	§	(Relates to Motion Referred to Magistrate Judge Cureton)
	§	
Defendants.	§	

**PLAINTIFF AMERICAN AIRLINES, INC.’S SUPPLEMENTAL BRIEF IN
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 Supplemental Brief in 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”), to apprise the Court of recent developments regarding the status of the parties’ disputes as to sharing documents designated by a producing party under the First Amended Stipulated Protective Order (the “Protective Order”) with in-house counsel for the receiving party.

As American explained in its Opposition filed on March 1, 2012, American has sought for all of the parties in this case, including Sabre Inc., Sabre Holdings Corporation, and Sabre Travel International Ltd. d/b/a Sabre Travel Network (collectively, “Sabre”), Travelport Ltd. and Travelport, L.P. (“collectively, “Travelport”), and Orbitz (with Travelport and Sabre, the “Defendants”) to come together and agree upon a process by which Plaintiff and Defendants (collectively, the “Parties”) can resolve the issue of how and when documents designated under the protective order can be shared with the Parties’ respective in-house counsel. The applicable Protective Order was the result of the Parties’ mutual negotiations, and American believes that

the present disagreements between the parties with respect to whether the producing party or receiving party has the burden, and what that burden is, should be likewise resolved through agreement of the parties. In short, the Parties should be ordered to confer.

American's overarching concerns, and the reason it believes Orbitz's Motion should be denied in favor of providing the Parties with an opportunity to resolve these issues amicably, are the triple risks that: (1) the Parties would promote divergent and adopt different and conflicting standards under the Protective Order for when in-house counsel should be able to see confidential documents, (2) the Parties' time and resources would be wasted on piecemeal negotiations whenever they wanted to disclose a document to in-house counsel, and (3) the Court would be flooded by serial discovery motions similar to, and in the wake of, Orbitz's Motion. Since filing its Opposition, American's concerns and the dangers posed by these risks have been realized:

- **Sabre's Position.** American reached out to counsel for Sabre and sought their permission to show documents produced by Sabre to American in-house counsel. (*See* Ltr. from Y. Garcia to S. Kaiser dated Feb. 26, 2012 (App. 3, Ex. 2).) Sabre flatly refused and failed to give any reason for its refusal. (*See* Ltr. from S. Kaiser dated Mar. 9, 2012 (App. 6, Ex. 4).)
- **Travelport's Position.** American also reached out to counsel for Travelport and sought their permission to show their documents to American's in-house counsel. (*See* Ltr. from Y. Garcia to C. Feeney dated Feb. 26, 2012 (App. 1, Ex. 1).) Travelport's position appears to be that the receiving party should be obligated to show how its outside counsel would benefit from showing the documents to in-house personnel, and how this need outweighs the producing party's interests in keeping the information from being disclosed. (*See* Email from J. Pentz to Y. Garcia dated Mar. 2, 2012 (App. 5, Ex. 3).) That said, Travelport also said that it would be willing to consider an approach whereby the parties could agree to share certain documents with the respective clients. (*Id.*)
- **Orbitz's Position.** Orbitz's Motion neither sets forth a cogent standard for when documents should be permitted to be shown to in-house counsel, nor cites to any caselaw in support of its position that the documents produced by American

should be permitted to be shown to Orbitz's in-house counsel. (*See generally* Mot.) This underscores the need for the parties' to come to a negotiated agreement: Orbitz cannot articulate an acceptable standard because the Protective Order is a product of negotiated agreement between the Parties. In its reply brief, Orbitz appears to put forth the position that it would be the producing party's burden to show that the receiving party's request to show documents to its in-house counsel is improper, or that the documents are somehow inappropriate for disclosure. (*See Reply in Support of Orbitz's Mot.* at 1.)

These documents and correspondence reflect the Parties' divergent positions with respect to the framework regarding when documents designated under the Protective Order can be shown to in-house counsel under the Protective Order. As stated, American does not think it makes sense for these issues to be resolved through piecemeal negotiations or serial motions to the Court, all of which risk inconsistent results under the protective order. Instead, American believes that these issues and the standard that should be used under the negotiated protective order to determine which documents can be reviewed by in-house counsel once a request is made should be resolved through a group conference in accordance with *Dondi Properties Corp. v. Commerce Savings & Loan Assoc.*, 121 F.R.D. 284, 286 (N.D. Tex. 1988) (“[V]aluable 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 . . .”). American has notified the Parties of each others' divergent positions and has requested that the Parties confer on these issues in the hopes of resolving them amicably. (*See* Email from Y. Garcia dated Mar. 21, 2012 (App. 7, Ex. 5).)

Orbitz's Motion can and should be resolved by conference of the parties, and American respectfully requests that the Court order the parties to confer on these issues. Orbitz's Motion wastes judicial and party resources and should be denied.

Dated: March 22, 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 22nd day of March, 2012.

s/ Yolanda Cornejo Garcia