

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

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

TRAVELPORT LIMITED, et al.,

Defendant.

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CASE NO. 4:11-cv-00244-Y

**HEWLETT PACKARD COMPANY'S
MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT**

TO THE HONORABLE TERRY R. MEANS,
UNITED STATES DISTRICT JUDGE

Hewlett Packard Company ("HP") files this Motion for Protective Order and Brief in Support, stating as follows:

1. On or about August 10, 2012, Travelport Ltd. and Travelport, LP (herein collectively "Travelport") served HP with a subpoena duces tecum, a true and correct copy which is attached hereto as Exhibit A. Travelport agreed to extend the time for HP to serve its objections and otherwise respond to the subpoena until September 5, 2012, via the email agreement that is attached hereto as Exhibit B.

2. The parties to this proceeding, with the exception of Sabre, have previously requested that discovery in this matter be stayed in order to allow the parties adequate time within which to conduct a mediation and other settlement negotiations that potentially could resolve the matter. This stay is being sought in order to avoid the expense and inconvenience of completing discovery in these proceedings. Given the parties' belief that such discussions could

be fruitful, HP, as a non-party, has at least an equal interest in a stay that would avoid the expense and inconvenience of being required to provide third-party discovery in the Litigation.

3. Although the subpoena was directed to HP and served upon it via its registered agent in New York, the documents sought are in the possession, custody, or control of HP Enterprise Services, LLC (“HPES”) at its facility in Plano, Collin County, Texas. Accordingly, as an initial matter, HP seeks a protective order requiring that any documents to be produced in response to the subpoena be produced at the offices of its attorney, Tim Gavin, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 901 Main Street, Suite 5500, Dallas, Texas 75202.

4. HP would further show that Travelport and HPES are direct competitors in the market for computerized reservation systems (“CRS”) in the airline industry. For example, HPES has provided and currently services the CRS operated by United Continental Holdings. HPES previously operated the CRS system for Continental Airlines, and upon its merger with United Airlines, HPES and Travelport were in direct competition for the combined business, which ultimately went to HPES. Furthermore, HPES and Travelport continue to compete head to head in efforts to obtain CRS contracts with other airlines.

5. Given that Travelport and HPES are direct competitors, it would be extremely prejudicial to HPES to be required to produce any documents regarding procedures followed in designing, creating, or operating any form of CRS system. The Jetstream project as to which Travelport has sought discovery required HPES to create an enhanced CRS system for American Airlines. Consequently, it would be extremely injurious to HPES to be required to produce documents detailing its design and creation of the CRS system that was the subject of Jetstream (See Declaration of Eugenio Lobo, Exhibit C).

6. In the subpoena Travelport seeks to require HPES to produce substantial documents pertaining to its contracts and other interactions with American Airlines, including those relating to the Jetstream product. This product is not a GDS product, which HP understands is the market involved in the underlying case. HP has served its objections to these specific document requests, a true and correct copy of which is attached hereto as Exhibit D and incorporated herein by reference for all purposes. In those objections, HP has agreed to produce the information that it understands to be relevant to positions being taken by Travelport in this cause, but has objected to producing any additional documents in order to avoid providing Travelport or its counsel with HPES's confidential trade secret information. Specifically, HP has agreed to make available the portions of its contract with American Airlines that reflect restrictions placed upon HPES's use of GDS technology. In addition, HP has agreed to produce the portions of the contract specifying HPES's obligation to incorporate Legacy AA systems within the Jetstream product. Finally, HP has agreed to produce the agreement whereby the Jetstream project was terminated, as well as the order entered by the bankruptcy court approving such termination (such documents collectively referred to as "the Offered Materials"). To the extent Travelport seeks any documents beyond the Offered Materials, the request is overly broad, unduly burdensome, and onerous, and seeks the production of trade secret or other confidential business information, and this court accordingly should enter an order protecting HP from such requests.

ARGUMENT AND AUTHORITIES

7. Rule 26(c)(1) authorizes a third party who has been served with a subpoena to move for a protective order in the court where the action is pending. HP has invoked this provision in light of the fact that its headquarters is in Texas and because this court is more

knowledgeable regarding the technology at issue in the litigation and hence is better able to rule upon the confidential nature of the information being requested. Rule 26(c)(1)(g) specifically authorizes this court to enter an order requiring that any trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way. Courts have been particularly receptive to such motions brought by non-parties from whom such confidential information is sought. *In re: Vitamins Antitrust Litigation*, 267 F.Supp. 2d 738, 741-42 (So. Dist. Ohio, 2003) (court quashed subpoena seeking trade secrets given that third party was direct competitor of parties to the litigation in which discovery was sought). As established by the declaration of Eugenio Lobo, which is attached hereto as Exhibit C and incorporated herein by reference for all purposes, the information sought by Travelport is precisely the type of confidential commercial information that should not be revealed, particularly given HPES's willingness to produce the information that is truly relevant to Travelport's defenses.

8. HP accordingly seeks an order from this Court requiring that in response to the Subpoena, HP only be obligated to produce the Offered Materials and no other documents that might otherwise be responsive.

WHEREFORE, HP respectfully prays that its motion for protective order be granted and that this Court enter an order requiring that its confidential research, development or commercial information not be revealed and that it only be required to produce the Offered Materials, and granting HP all other and further relief to which it is entitled.

Respectfully submitted,

/s/ Tim Gavin

Tim Gavin
State Bar No. 07769800
CARRINGTON COLEMAN SLOMAN
& BLUMENTHAL, LLP
901 Main Street, Suite 5500
Dallas, Texas 75202
Tel: (214) 855-3000
Fax: (214) 855-1333

*Attorney for Defendant
HP Enterprise*

CERTIFICATE OF CONFERENCE

On September 5, 2012, prior to the filing of this motion, the undersigned conferred with Steig Olson, counsel for Travelport, by telephone in an attempt to postpone the filing of this motion in light of the pending request for stay, and alternatively, to limit the subpoena to the Offered Materials. Agreement could not be reached, and the motion accordingly is opposed.

/s/ Tim Gavin

Tim Gavin

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2012, I caused a true and correct copy of Motion for Protective Order and Brief in Support to be served vial email, upon each of the following:

R. Paul Yetter
Yetter Coleman LLP
909 Fannin St., Suite 3600
Houston, Texas 77010
pyetter@yettercoleman.com

*Attorney of Record for Plaintiff
American Airlines, Inc.*

Scott A. Fredricks
Cantey Hanger LLP
600 West 6th Street, Suite 300
Fort Worth, Texas 76102
sfredricks@canteyhanger.com

*Attorney of Record for Defendants
Sabre, Inc., Sabre Holdings Corp.,
and Sabre Travel International, Ltd.*

John J. Little
Little Pederson Fankhauser LLP
901 Main Street, Suite 4110
Dallas, Texas 75202
jlittle@lpf-law.com

*Attorney of Record for Defendant
Orbitz Worldwide LLC*

Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
steigolson@quinnemanuel.com

*Attorney for Defendant
Travelport Limited and Travelport LP*

/s/ Tim Gavin