

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

American Airlines, Inc., a Delaware corporation, §
§
Plaintiff, §
§
vs. §
§
Sabre, Inc., a Delaware corporation; Sabre §
Holdings Corporation, a Delaware corporation §
and Sabre Travel International Ltd., a foreign §
corporation, d/b/a Sabre Travel Network; §
§
Travelport Limited, a foreign corporation and §
Travelport, LP, a Delaware limited partnership, §
d/b/a Travelport; §
§
and §
§
Orbitz Worldwide, LLC, a Delaware limited §
liability company, d/b/a Orbitz; §
§
Defendants. §

Civil Action No. 4:11-cv-0244-Y

DECLARATION OF ROBERT N. BROWN

I, Robert N. Brown, do hereby declare under penalty of perjury as follows:

1. I am over 21 years of age, and I am competent to make this affidavit. The statements herein are true and made of my personal knowledge unless stated otherwise. I make this affidavit in opposition to the motion of American Airlines, Inc. (“American”) to compel non-parties Southwest Airlines Co. (“Southwest”) and AirTran Airways, Inc. (“AirTran”) to produce documents and in support of the motion of Southwest and AirTran for a protective order.

2. I am the Director of Sales and Distribution for Southwest. I have had that position since 2006. I have worked for Southwest for a total of 19 years in positions in sales and marketing. In my current position, I am responsible for managing the different corporate distribution channels that Southwest uses to sell tickets, including direct sales

through internet sites and call centers, systems that Southwest has developed to communicate fare and schedule information directly to corporate travel departments and travel agents, and sales through Global Distribution Systems (“GDSs”). I am familiar with Southwest’s relationships with GDSs, including Sabre, Inc. (“Sabre”) and Travelport Limited (“Travelport”), and Southwest’s relationships with other companies that work with Southwest to develop systems and strategies to distribute tickets, schedule, fare and availability information through other channels. I am also familiar with Southwest’s strategies to distribute tickets and information in the most efficient and cost effective manner possible.

3. In May 2011, Southwest acquired the shares of AirTran. Like Southwest, AirTran is a low-cost carrier and has different cost structures and strategies from “legacy” carriers such as American. AirTran is being operated as a separate carrier while Southwest integrates AirTran’s aircraft and operations into Southwest. As a result, AirTran uses substantially the same distribution channels and strategies that it used before the acquisition. Since the acquisition, I have managed AirTran’s corporate distribution channels and have become familiar with its corporate distribution strategies, agreements and systems.

Southwest’s Distribution Strategies and Systems

4. Southwest has been in business for approximately 40 years. In that time, it has grown from a small regional carrier with service limited to a few cities in Texas to the nation’s largest domestic carrier as measured by originating domestic passengers boarded. Southwest has achieved that success by differentiating itself from the legacy airlines, such as American. Southwest provides low cost service, which it can provide

because it has one of the lowest cost structures among domestic airlines. Southwest's cost structure and low fares give Southwest a significant competitive advantage over competing airlines. Through a variety of strategies, Southwest has been able to achieve and maintain high levels of customer loyalty.

5. Southwest does business differently than most of the legacy carriers, which is one of the reasons Southwest has been successful. One of the important differences is the strategy that Southwest uses to distribute and sell tickets directly to its customers.

6. Most legacy carriers, like American, have followed a strategy to sell a significant portion of their tickets through GDSs. GDSs are computerized reservation systems that provide airlines' fare and flight schedule information to travel agents so they can compare and identify travel options available for their customers. Several companies offer GDS services, including Travelport, which I understand is a party to this lawsuit.

7. Southwest does business differently. There are advantages to using GDSs, such as the exposure they provide for an airline's fares and services to a large number of travel agents. However, those advantages come with a cost, because GDSs charge airlines for the tickets they sell. In addition, depending on how an airline structures its distribution strategy, it can become dependent on GDSs.

8. In 1994, Southwest decided to follow a different strategy. Previously, it had relied on GDSs for a significant portion of its distribution and sales. At that time, Southwest decided to significantly limit its sales through GDSs. As part of Southwest's ongoing efforts to maintain a low cost structure, it decided to reduce its distribution costs

by ending its relationships with most of the GDSs. Southwest developed innovative strategies to market and distribute directly to its customers.

9. Southwest took significant business risks by making the decision to move away from distributing through GDSs because it risked losing ticket sales. But Southwest chose to take that risk in order to reduce its costs and avoid becoming dependent on GDSs.

10. As a result of that decision, Southwest developed an innovative marketing and distribution strategy which differs from most other airlines. Southwest developed marketing strategies to distribute directly to customers without the intermediary of a GDS. As Southwest gained experience with strategies that worked well, Southwest has refined and improved its strategies. Over time, Southwest established highly successful internet sites to sell tickets directly to customers—Southwest.com (which is for consumers generally) and SWABIZ.com (which targets business travelers). Southwest has devoted substantial human and financial resources (well into the hundreds of millions of dollars over many years) to develop, improve and operate its two web sites. We consider their technology and operation to be highly proprietary.

11. Southwest follows a number of confidential strategies to encourage customers to visit its internet sites and to purchase tickets directly from Southwest. This strategy lowers Southwest's costs and is therefore an important reason that Southwest can offer lower fares. The strategy also creates a direct relationship with the customer, which builds customer loyalty and encourages customers to return to Southwest's web sites to purchase tickets in the future directly from Southwest.

12. Our strategies have been successful, and they give Southwest a significant advantage over competitors like American. Now, Southwest sells approximately 85% of its tickets directly to customers through its internet portals and call centers. Based on published reports, my understanding is that Southwest's share of direct sales is significantly higher than that of competing airlines. Thus, Southwest has lower distribution costs and more direct interaction with customers than its competitors, both of which give Southwest a significant competitive advantage.

13. Southwest supplements its direct sales with a combination of other distribution strategies. Southwest distributes fare, schedule and availability information and tickets through two other channels without using GDS systems.

(a) First, Southwest uses a system called Booking Builder to provide a desktop application for travel agents to access Southwest's fares and schedule. Booking Builder was developed and is operated by a vendor. Booking Builder operates as an intermediary between Southwest's web site and travel agent's desktops. When a travel agent searches for schedules on a route served by Southwest, Booking Builder notifies the travel agent and allows the travel agent to connect to SWABIZ.com, Southwest's internet site for business travelers. On SWABIZ.com, the travel agent uses the site just as any individual customer would. The travel agent's computer is not connecting directly with Southwest's reservation system. Once the transaction is completed, Booking Builder transfers the information to the travel agent's back office for billing and record keeping purposes. Southwest has spent, and continues to spend, substantial sums to set up this system, test its operation and ensure that customer data is secure.

(b) Second, Southwest has developed Southwest Gateway Services, which is an internet interface developed by Southwest that connects Southwest fares and schedules to booking tools operated by third parties called Concur, Rearden, GetThere and Egencia. (We are considering entering into agreements with companies providing other booking tools, and those discussions and evaluations are highly confidential.) Those are all internet sites that corporate travel departments or travel agents can use to search for flight and fare information and purchase tickets. None of those systems operates on the travel agents' desktop; rather, they are internet applications. The users' computers are not connecting directly with Southwest's reservation system. Southwest has invested millions of dollars to develop, test and operate Southwest Gateway Services with these vendors' systems, and we consider the technology we developed to be highly confidential.

14. I understand that American argues that information about those systems used by Southwest is relevant to rebut arguments by Travelport that American's so-called Direct Connect system is technically and commercially flawed. Although I have little knowledge of American's system, it is very unlikely that our different systems will shed any light of whether American's system has technical or commercial flaws.

15. There is no clear definition of "direct connect" systems in the industry because there are so many variations of distribution channels. For example, some "direct connect" systems operate like American's and operate on the travel agent's desktop, while others are stand-alone web sites. We sometimes refer to our distribution through

Concur, Rearden, GetThere and Egencia as “direct connects,” even though they operate very differently from American’s Direct Connect system.

16. The technology used by different systems varies significantly among the types of systems and among airlines. A system like American’s will require programming to operate on the travel agent’s desktop. A system like Concur or Rearden require creating an internet web site and do not operate on the travel agent’s desktop. The fact that the Concur internet site works would not answer any questions about whether American’s computer programs are flawed.

17. In addition, any system operated by a third party (such as a GDS or the systems like Concur used by Southwest) must obtain fare and flight information from the airline’s reservation system. However, those systems vary significantly between airlines. Each airline develops and modifies its computerized reservation system to meet its own needs. Because each airline’s system is different, the technical issues to connect to the system will likely be different. As discussed above, Southwest’s systems do not communicate schedule or fare information to a travel agent’s desktop. Instead, Booking Builder invites travel agents to Southwest’s internet site, and Concur, Rearden, GetThere and Egencia are internet sites that communicate with Southwest’s reservation system through Southwest’s confidential and proprietary internet protocol. Because Southwest’s internal reservation system no doubt differs significantly from American’s, the technology to communicate with those systems would also be different. In short, the fact that Southwest has developed technology that allows Concur to work with Southwest’s reservation system will shed no light on whether there are flaws in the technology that American developed for its desktop Direct Connect system.

18. I understand that American also argues that information about Southwest's systems may rebut arguments that American's system is flawed commercially. However, the commercial success of a distribution channel depends on many different factors that will vary according to the airline and to the system. Customers must be willing to use a particular system. Southwest's direct connect systems require customers to go to SWABIZ or third party web sites like Concur; American's apparently requires travel agents to use a system operating on their desktop. Because the systems function differently, customers will accept them differently. Further, customer acceptance depends on how easy a particular system can be used; American's may be cumbersome, while Concur may be intuitive and easy. Customer acceptance will also depend on marketing and promotion by the airline and the vendor. It also depends on the loyalty of customers and their desire to fly on a particular airline. Southwest has worked hard in a variety of ways to create a particularly loyal customer base compared to competing airlines. There are so many differences among airlines and their distribution channels, that the commercial success of one will not explain whether another system and strategy has commercial flaws.

19. In addition to the direct distribution channels described above, Southwest has contracts with only two GDSs—Sabre and Travelport. A relatively small percentage of our sales are through GDS systems. GDSs offer different levels of service, and Southwest has negotiated commercial and financial terms that best fit Southwest's model. Based on published reports, the terms of Southwest's GDS contracts may be different than the terms of American's contracts with Travelport and Sabre. Because Southwest follows a different model, and has structured its model to be less dependent on GDSs,

one would expect that the terms of Southwest's contracts would be different and negotiated to suit Southwest's needs. We believe that the price and other terms of our contracts give Southwest a competitive advantage, and we treat the contract terms as highly confidential. Southwest would lose that competitive advantage if American were able to use Southwest's contracts to try to obtain the same terms.

20. Because of Southwest's success, several competitors appear to be trying to copy Southwest's ticket distribution strategy. For example, according to published reports, American is trying to develop strategies to encourage customers to purchase tickets directly from American without using GDSs, much like Southwest has successfully done. The disclosure of documents showing how Southwest has been successful would give competitors insight into Southwest's proprietary distribution strategy, business model and overall success. Southwest has refined and improved its strategies and systems based on hard work and experience, and the disclosure of the information would give competitors a shortcut to the most effective direct sales strategies. In short, the disclosure of this information would likely lead Southwest to lose the competitive advantages it now enjoys in direct customer sales and its lower cost structure.

21. American seeks documents about our "technological capability," which would reveal the proprietary technology Southwest has developed and could guide a competitor trying to develop technology that equals or betters Southwest's. Further, as discussed above, the technology that Southwest has developed almost certainly is different than the technology used by American's different systems. American also seeks documents concerning "distribution of SWA products and services to business travelers

served by travel agents or travel management companies.” Not only would that encompass just about every document concerning sales to business travelers, but it would reveal our strategies, business plans, and future plans for selling tickets to business travelers. American seeks “communications with GDSs regarding any Direct Connect initiative,” which would reveal not only the confidential information behind our current channels but also our highly confidential plans for the future. American also seeks documents about “whether and to what extent SWA does or should use, or limit its use of, a GDS, including cost comparisons.” Such documents would reveal our confidential internal analysis to develop low cost distribution channels, which is one of the keys to our success as a low cost carrier. American also seeks “[a]ll documents concerning distribution of SWA’s content through GDSs or to their subscribers.” That request has virtually no limits and could encompass every document about every one of the thousands of fares and schedules and millions of tickets distributed by a GDS. It would also encompass our confidential past, present, and future plans for distribution using GDSs. In sum, the information American seeks goes to the heart of our successful business strategy, is highly confidential, and would guide a competitor to copy Southwest’s success.

22. I understand that American has also served a subpoena seeking testimony from Southwest on a number of topics. One category is the “technological capability of Southwest and the GDS to implement a Direct Connect distribution model.” A similar category is the “technological aspects” of Southwest’s connection to “Travelport’s Universal Desktop and participation in Travelport’s uAPI.” Those categories would encompass Southwest’ proprietary technology about a connection that is not industry

standard, which it has developed at significant cost and effort. Further, Southwest's technology is almost certainly different than American's because of the fundamental differences between the systems. Another category is the "distribution of products and services to business travelers served by travel agents or Travel Management Companies." We employ unique strategies for marketing and distribution to business travelers which are highly confidential. In addition, when a customer purchases a ticket, we often do not know if the passenger is traveling on business, for pleasure or a combination. Another category is "[c]ommunications with GDSs regarding any Direct Connect initiative," which would go explain the fundamentals of our unique and confidential strategies. Another category is "Southwest's internal analyses of whether it should use, or limit its use of, a GDS and the costs of direct distribution versus distribution through a GDS." This goes to the heart of our direct distribution strategy. It would be our analysis of what works, what needs improvement, what we decided not to pursue, and would give a shortcut to a competitor developing its own direct distribution strategy. This category would also cover the cost information that gives Southwest a competitive advantage as a low cost carrier. Another category is the "commercial aspects of Southwest's Direct Connect arrangements." I am not sure what that phrase means, but it would encompass the commercial terms we have negotiated to pursue our strategies and maintain our competitive advantages.

23. Southwest goes to great lengths to maintain that information as confidential. To guard the secrecy of Southwest's distribution strategy and thriving business model, only a small number of people in the Distribution team and senior management of our company know the details about the strategy and business plans.

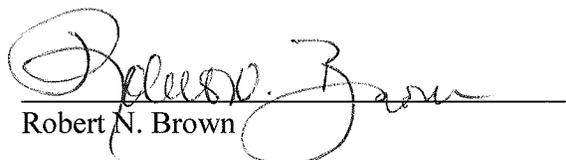
Similarly, only a small number of people know details about the terms of our GDS contracts. All persons with knowledge about the agreements are required to sign confidentiality agreements to further protect the terms and details of our distribution agreements. Our computer system allows only a limited number of people to have access to the business plans and other strategic documents concerning our distribution channels, and passwords are necessary to log into the system. We also have confidentiality provisions in our GDS agreements and in our agreements with the vendors who provide Booking Builder, Concur, Rearden, GetThere and Egencia. The employees who work on distribution are subject to confidentiality provisions in our employment agreements. In sum, Southwest has developed a different distribution model from competing airlines, and we zealously protect the information about our distribution strategies from disclosure, particularly to our competitors.

AirTran's Distribution Systems and Strategies

24. As discussed above, in May 2011 Southwest acquired AirTran. AirTran is currently operated as separate carrier using the distribution channels it had developed over time. Like Southwest, AirTran is a low cost carrier. AirTran has contracts with the major GDSs, with price and other terms that were negotiated to meet AirTran's needs. The terms of those contracts will likely say little about the terms offered to other airlines. AirTran also sells tickets through its web site, airtran.com, and it has developed confidential plans and strategies to encourage more customers to purchase tickets directly from AirTran. By following those strategies, AirTran has increased the percentage of direct sales and has reduced its distribution costs. The lower costs allow AirTran to offer lower fares.

25. In addition, AirTran has a direct distribution channel through Concur. As explained above, it is a web site where corporate travel departments can make reservations. AirTran also has an agreement with a third party to provide AirTran Vacation, which is another internet site where consumers can make airline, hotel, and other reservations. Because these are all internet sites, information about them would say almost nothing about “direct connect” systems designed to operate on a travel agent’s computer. In addition, AirTran uses a system developed by Farelogix, which provides information from AirTran’s computerized reservation system to Concur for travel agents and corporate customers. I understand that American also works with Farelogix, so it would have substantially the same information as AirTran concerning the operation of the Farelogix system. Further, because AirTran’s computerized reservation system is almost certainly different from American’s, the ability of Farelogix to work with AirTran’s system would not provide useful information about Farelogix’s operation with American’s system. AirTran considers information about its distribution channels to be highly confidential.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 6th, 2013.


Robert N. Brown

Certificate of Service

This is to certify that I have served a copy of the foregoing Declaration of Robert N. Brown on the parties to this action via the Court's electronic case filing system on this the 6th day of February, 2013.

/s/ Elizabeth Brandon