

**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.

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Civil Action No. 4:11-cv-0244-Y  
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(Relates to Motion Referred to  
Magistrate Judge Cureton)

**MOTION OF NON-PARTIES SOUTHWEST AIRLINES AND  
AIRTRAN AIRWAYS FOR A PROTECTIVE ORDER**

1. Since 2011, Defendant American Airlines, Inc. (“American”) has embarked upon a campaign to obtain highly confidential and proprietary commercial information from non-parties Southwest Airlines Co. and AirTran Airways, Inc. (collectively, “Southwest”),<sup>1</sup> through a variety of discovery subpoenas requesting documents and testimony in two different, but related, proceedings. American’s aggressive attempts to wrest documents and information from Southwest about its highly confidential distribution strategies and methods paint a vivid picture of American’s admitted purpose in seeking this discovery: to emulate Southwest’s unique

<sup>1</sup> Southwest acquired AirTran in May 2011. They continue to operate as separate airlines while Southwest integrates AirTran into its operations. For purposes of this motion, Southwest and AirTran will be referred to together as “Southwest” unless the context requires otherwise.

business model in an attempt to gain a competitive advantage in the airline marketplace. American wants Southwest to turn over documents and provide testimony on Southwest's roadmap to commercial success.

2. Airlines, however, have choices about the methods they use to distribute fare, schedule, and availability information. There are various costs and benefits associated with selecting each distribution method, and airlines must weigh those when they elect to pursue a particular distribution strategy. Global Distribution Systems ("GDSs"), such as Defendant Travelport, are computerized reservation systems used by travel agents to book airline tickets, and they constitute but one method of distribution that airlines can choose to utilize. Airlines are free to elect not to do business with GDSs, recognizing that such a choice may come at a cost.

3. American structured its business to be dependent on GDSs, and now it dislikes the consequences. In contrast, Southwest sells relatively few tickets through GDSs. Many years ago, Southwest took the business risk of reshaping its distribution strategy to limit sales through GDSs, and it developed a new business model to sell directly to customers. This strategy has reduced its costs, advanced its strategy to compete as a low-cost carrier, and allowed it to develop customer loyalty. Southwest has flourished as a result.

4. American has had less success and is in bankruptcy. It would like to pursue a strategy similar to Southwest's but it has been unable to do so commercially. And, unlike Southwest, it is unwilling to take the business risks of ending its relationships with GDSs to free itself of contract terms it dislikes. Instead, it asks the Court to help it achieve the same business advantages without taking the risks. And it has subpoenaed Southwest's information to help it achieve that end. Unlike other third-party subpoenas requesting disclosure of confidential or trade secret information from a competitor, a protective order would be manifestly unable to

protect Southwest's information from American in this case. This is because American seeks the information precisely to achieve, through litigation, a similar distribution model.

5. As a result, American's Subpoena for to Produce Documents ("Document Subpoena) and Subpoena to Take Deposition Testimony ("Deposition Subpoena") (collectively, the "Subpoenas") seeking information from Southwest about its business strategies, should be quashed or modified for the following reasons:

6. **First**, much of the information sought pertains to Southwest's highly sensitive commercial, proprietary, and trade secret information. This information contains the secrets to Southwest's success in developing its unique distribution model. Disclosure of this information to anyone, particularly a direct competitor like American, would be extremely detrimental to Southwest's business prospects and competitive advantage in the marketplace.

7. **Second**, the testimony sought is not relevant to the issues in this case, and American has not shown a substantial need for the information. In order to overcome Southwest's showing that the information requested contains protected commercial, proprietary, and trade secret information, American must demonstrate that the information is both necessary and relevant to its case. It has failed to do so. American's First Amended Complaint<sup>2</sup> does not mention Southwest, Southwest's distribution strategies, Southwest's GDS contracts, or the vendors Southwest uses as distribution channels. American contends that Southwest's information is relevant to rebut Travelport's defenses (citing sealed documents unavailable to Southwest). However, as demonstrated in the Declaration of Robert N. Brown, submitted herewith, Southwest's so-called distribution systems function very differently than American's. American is trying to develop computer programs to operate on a travel agent's desktops, while

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<sup>2</sup> American appears to have filed a Second Amended Complaint in this case (Dkt. 159); however, that document was filed under seal and has not been provided to Southwest. All references, therefore, are to the First Amended Complaint (Dkt. 46).

Southwest's systems refer travel agents and corporate travel departments to web sites. American's system is designed for travel agents to connect directly to its reservation system; Southwest's is not. Therefore, the success of Southwest's system will offer no insight at all into whether American's system is flawed. At the very least, the very limited relevance of Southwest's information is far outweighed by the harm to Southwest of disclosing the information.

8. **Third**, American's document requests and deposition topics are overbroad, ambiguous, and unduly burdensome. American has refused Southwest's offer to compromise by providing its GDS contracts and detailed data, insisting it wants the most highly sensitive documents describing the details of Southwest's strategies. It has not explained why the data is insufficient, and its broad requests indiscriminately seek Southwest's information about subjects wholly unrelated to Travelport or its actions. Compounding the deficiencies, the Topics, as drafted, contain ambiguities that prevent Southwest from readily identifying and preparing for the scope of the deposition.

9. **Finally**, the Second Amended Stipulated Protective Order in place ("Protective Order") (Dkt. No. 374) fails to provide adequate protection for the interests of non-parties like Southwest.

10. As a result, Southwest requests that the Court modify the Subpoenas to limit the scope of American's document requests and deposition topics to the quantitative data Southwest has offered, but not descriptive information about its competitive strategies and analysis. The Federal Rules of Civil Procedure afford District Courts broad discretion in matters concerning discovery. *See Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 220 (5th Cir. 2000) (*quoting Wyatt v. Kaplan*, 686 F.2d 276, 283 (5th Cir. 1982)). Pursuant to FED. R. CIV. P. 26(c)(1), "[t]he

Court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . . specifying terms, including time and place, for the disclosure or discovery.” In evaluating whether good cause exists for the issuance of a protective order, “[t]he court must balance the competing interests of allowing discovery and protecting parties and deponents from undue burdens.” *Bucher v. Richardson Hosp. Authority*, 160 F.R.D. 88, 92 (N.D.Tex. 1994) (Kaplan, J.). Rule 26 authorizes a Court to enter a protective order “requiring that a trade secret or other confidential research, development or commercial information *not be revealed* or be revealed only in a specified way.” Fed. R. Civ. P. 26(c)(1)(G) (emphasis added). Southwest has offered to provide American the GDS contracts and quantitative data showing (1) ticket sales and ticket sales by distribution channel, and (2) data regarding payments to and from GDSs. Southwest has conferred with American in good faith to limit the Subpoenas to the proffered categories, but American has refused to the proposed limitations. Southwest, therefore, seeks this order of protection.

11. For these reasons and those discussed more fully in (1) Memorandum of Non-Parties Southwest and AirTran in Opposition to American’s Motion to Compel and in Support of Their Motion for a Protective Order, (2) the Declaration of Robert N. Brown, and (3) the Appendix in Support of Memorandum, all filed simultaneously herewith, Southwest and AirTran respectfully request that the Court issue a protective order to protect their commercially-sensitive, confidential information, and such other relief to which they may be entitled.

Dated: February 6, 2013

Respectfully submitted,

/s/ Elizabeth C. Brandon

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and AirTran Airways, Inc*

*\*Application Pro Hac Vice Pending*

### **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 6th day of February, 2013.

/s/ Elizabeth C. Brandon  
Elizabeth C. Brandon

### **CERTIFICATE OF CONFERENCE**

As reflected in the above Motion, counsel for Southwest conferred with counsel for American in good faith to resolve the issues in this Motion. American refused to agree to Southwest's proposed modifications thus necessitating this Motion.

/s/ Elizabeth C. Brandon  
Elizabeth C. Brandon