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AMERICAN AIRLINES, INC.

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IN THE JUDICIAL DISTRICT OF

v.

TARRANT COUNTY, TEXAS

KAYAK SOFTWARE CORPORATION

d/b/a Kayak.com and Sidestep.com

\_\_\_\_\_ JUDICIAL DISTRICT

**ORIGINAL PETITION**

Plaintiff American Airlines, Inc. (“American”), through its attorneys, brings this action against defendant Kayak Software Corporation d/b/a Kayak.com and Sidestep.com (“Defendant”) for injunctive relief and damages. Based on actual knowledge as to itself and its own acts, and on information and belief as to all other persons and matters, American respectfully alleges as follows:

**Discovery Level**

1. Discovery should be conducted under a Level 2 plan.

**Nature of the Action**

2. This suit is to stop Defendant’s ongoing violations, and recover damages for prior violations, of the terms of its contract with American to distribute American fares and related information. American gave access to its valuable fare and inventory content for use on Defendant’s Kayak.com and Sidestep.com websites, but only subject to specific rules and restrictions. Defendant intentionally violated these rules in order to secure lucrative referral or other fees from third parties in connection with sending them bookings on American flights or giving them preferred rights, which caused American to incur substantial, unwarranted costs. Even now, despite terminating its relationship with American, Defendant continues to access and use American’s name and fare and inventory content without permission, in violation of governing Texas law.

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 TARRANT COUNTY  
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 THOMAS A. WILDEB  
 DISTRICT CLERK

### **Parties**

3. American is a Delaware corporation with its worldwide headquarters in this County, at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

4. Defendant Kayak Software Corporation, which does business as Kayak.com and Sidestep.com, is a Delaware corporation with its principal place of business on the Internet and its headquarters and home office address at 27 Ann Street, Suite 300, Norwalk, Connecticut 06854. It may be served with process by serving the Texas Secretary of State, Citations Unit, 1019 Brazos Street, Room 214, James E. Rudder Building, Austin, Texas 78701, as its agent for service because defendant engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas. The Texas Secretary of State shall then mail a copy of the process by registered or certified mail, return receipt requested, to Defendant's home office address listed above.

### **Jurisdiction and Venue**

5. The Court has subject matter jurisdiction over this case, as the amounts in controversy are within its jurisdictional limits.

6. The Court has personal jurisdiction over Defendant, a foreign corporation that maintains its principal place of business on the Internet. Defendant consented to jurisdiction in this Court for this matter. It also breached a contract entered into in and governed by the laws of this State, and it systematically did and still does conduct substantial business in this State.

7. Venue is proper in this County, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002. Defendant consented to venue here, and a substantial part of the activities, events, and damages at issue occurred in this County.

## **Facts Giving Rise to this Action**

### **A. American's efforts to reduce costs and protect its property**

8. In the past 75 years, American grew to be one of the largest commercial airlines in the world. Faced with ever increasing fuel and other expenses, American has taken aggressive steps in recent years to reduce costs, including the cost of distributing its fares. It also has made significant efforts to protect its valuable, proprietary data. In these regards, American has sought both to grow and protect its low-cost Internet-based means of distributing its fares and serving its customers, including the AA.com® website ("AA.com").

9. In reducing costs and maintaining control over its fare distribution system, American recognizes the importance of safeguarding its proprietary data and valuable name and marks. It has structured its contractual relationships with fare distributors with careful attention to confirming and clarifying ownership and use rights regarding its fare, inventory, and other proprietary data, as well as its marks.

10. American authorizes only certain channels for the display or distribution of its fare and inventory data ("Fare Content"). These include its own reservations center, AA.com, and certain global distribution systems and online travel companies. The use of American's property, distribution of its fares, and use of its name are predicated on these companies' adherence to rules, practices, and contracts that American has negotiated and promulgated with them.

### **B. Defendant's contractual promises to American**

11. Defendant is a software company that operates a consumer website located at [www.kayak.com](http://www.kayak.com). The Kayak.com site displays airfares from a variety of airlines and other websites. When a consumer chooses a particular fare on Kayak.com, Defendant is supposed to link the consumer directly to the supplier website for booking. On May 12, 2005, American and

Defendant entered into an Access and Use Agreement (“Agreement”), which gave Defendant access to American’s Fare Content, through a special link to AA.com, for display on Kayak.com.

12. The Agreement confirmed that American owns its Fare Content, but allowed Defendant to access the Fare Content according to specific rules and subject to numerous restrictions and limitations. For example, the Agreement required all booking and ticketing of American fares to be done on AA.com, and it prohibited Defendant from using masking technologies. It also prohibited Defendant from biasing its display of airfares such that American’s fares would be disadvantaged.

13. Further, the Agreement specified that Defendant shall not use American’s name without prior written approval. Defendant had a limited right to use American’s trade name in connection with the authorized display of American Fare Content. Defendant agreed not to contest or deny American’s right and title in its trade names, and unauthorized use of American’s name constitutes a material breach of the Agreement. These restrictions regarding unauthorized use of American’s trade names survived termination of the Agreement.

14. Defendant also operates a consumer website located at [www.sidestep.com](http://www.sidestep.com), which is similar to Kayak.com. American previously authorized the display of American Fare Content on Sidestep.com as well, according to specific rules and subject to numerous restrictions and limitations.

### **C. Defendant’s violation of the Agreement**

15. Defendant recently began violating the Agreement by accessing, receiving, and distributing American Fare Content through other online travel companies, in addition to the proper means specified in the Agreement. In particular, Defendant displayed American Fare Content obtained from Orbitz.com and Cheaptickets.com. Defendant would

display American Fare Content from Orbitz and Cheaptickets on Kayak.com above the AA.com listings.

16. This siphoning of American Fare Content from other websites undermined American's efforts to reduce its distribution costs and violated the plain terms of the Agreement. When Kayak.com sent consumers to book American fares through the Orbitz or Cheaptickets sites, American was forced to pay a booking fee, unlike bookings made through AA.com as required by the Agreement. Further, because American guarantees that its lowest published fares are found on AA.com, and AA.com does not charge any service fee for bookings, the addition of improperly obtained American fares from other websites was of no benefit to consumers.

17. Defendant's motive for taking American Fare Content from other sites was purely financial. Orbitz and Cheaptickets, with whom American has separate agreements regarding access and display of American Fare Content, paid Defendant for referrals for consumer traffic and bookings that it sent to their sites, or for certain preferred rights on Kayak.com.

**D. Defendant's termination of the Agreement and ongoing violations**

18. American tried to resolve this situation with Defendant, but it refused to honor the terms of the Agreement. On June 30, 2008, Defendant terminated the Agreement effective August 1, 2008.

19. Defendant still accesses American Fare Content, but it has stopped displaying American's pricing data on Kayak.com and Sidestep.com. It continues to show American flights on the sites, and it still directs consumers to book American flights on Orbitz.com and Cheaptickets.com. In particular, when there is an American flight that serves the route requested by a consumer, Kayak.com and Sidestep.com display the fares for all other

carriers. At the bottom of the display, Defendant lists “American Airlines” and certain flight information next to a link titled “Info.” The link takes consumers to Orbitz.com or Cheaptickets.com for the pricing data and for booking purposes. All of this is without American’s consent.

20. Defendant has discussed the parties’ disagreements on Internet websites and blogs, making false and misleading statements about the parties’ relationship. By making these public statements, Defendant has breached the confidentiality provisions of the Agreement.

21. American has asked Defendant to stop using American’s trade name, which is a registered trademark, and to stop listing American flights with links to the other websites. Defendant refuses, even though it knows that its conduct is wrongful. Its breach of the Agreement is knowing and intentional. American has no choice but to file this action to protect its rights.

**First Cause of Action  
(Breach of Contract)**

22. American realleges the material facts in the preceding paragraphs.

23. The Agreement is a valid, enforceable contract binding on Defendant, and American is entitled to sue for its breach. American has met all conditions precedent to and otherwise complied with the Agreement.

24. Defendant has breached and is breaching the Agreement. It sent bookings of American fares through third parties rather than through AA.com. It is accessing American Fare Content by means other than those provided in the Agreement and displaying that Fare Content for booking through Kayak.com and Sidestep.com. It is continuing to display American Fare Content and its tradename without authorization, after it terminated the

Agreement. It is making misleading public statements about the parties' conduct under the Agreement.

25. American has been, is, and will continue to be damaged by Defendant's breaches. To the extent that American's legal remedy is not adequate to compensate for irreparable injury inflicted by Defendant, American is entitled to injunctive relief.

**Second Cause of Action  
(Declaratory Judgment)**

26. American realleges the material facts in the preceding paragraphs.

27. There is a real, substantial, and justiciable controversy about the rights and status of the parties under the Agreement. Declaratory relief will resolve the controversy. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.001, *et seq.*, American seeks a declaration of the respective rights and duties of the parties under the Agreement. All persons that have any interest in the declarations sought by American are parties to this proceeding.

28. American has been, is, and will continue to be damaged by Defendant's breaches. To the extent that American's declaratory remedy is not adequate to avoid continued irreparable injury inflicted by Defendant, American is entitled to injunctive relief.

**Attorney Fees**

29. American has been required to retain attorneys to protect its rights and prosecute this claim. Pursuant to Tex. Civ. Prac. & Rem. Code § 38.001, American is entitled to recover its reasonable attorney fees and costs necessarily expended in this matter.

**Prayer for Relief**

Therefore, after trial or final hearing, plaintiff American Airlines, Inc. respectfully requests that the Court enter judgment against Defendant, as follows:

1. For declaratory relief that the Agreement prohibits Defendant from displaying American's flight information and trade name on Kayak.com or Sidestep.com without prior written authorization from American.

2. For preliminary and permanent injunctive relief, that Defendant, and its officers, agents, representatives, servants, employees, attorneys, successors, and assigns, and all others in active concert or participating with it, be enjoined and restrained from displaying American's flight information and trade name on Kayak.com or Sidestep.com without prior written authorization from American;

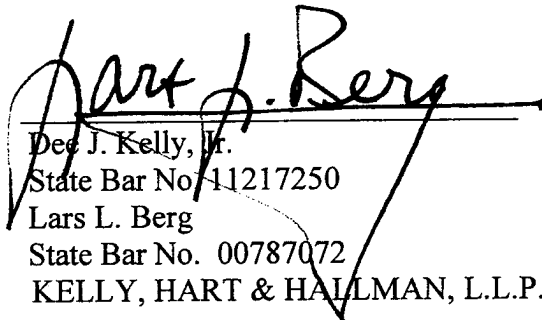
3. For all compensatory damages incurred by American, to the extent such damages are calculable;

4. For disgorgement by Defendant of all proceeds it has received from referral or other fees in connection with its wrongful display of American Fare Content;

5. For all reasonable attorney fees and costs incurred by American; and

6. For all other relief, at law or in equity, to which American is entitled.

Respectfully submitted,

  
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