

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWEST AIRLINES CO.,

Plaintiff,

v.

KIWI.COM, INC. and

KIWI.COM S.R.O.,

Defendants.

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Civil Action No. 3:21-cv-00098-E

PLAINTIFF SOUTHWEST AIRLINES CO.’S SECOND AMENDED COMPLAINT

Southwest Airlines Co. (“Southwest” or “Plaintiff”) files this Second Amended Complaint against Kiwi.com, Inc. and Kiwi.com s.r.o. (collectively, “Kiwi” or “Defendants”) and shows as follows:

I. NATURE OF ACTION

1. Just over 50 years since its first flights in 1971, Southwest Airlines has grown to become one of the most-flown airlines in the United States. In peak travel seasons during 2019, Southwest operated more than 4,000 daily departures among a network of more than 100 destinations in the United States and 10 additional countries. In 2020, Southwest added service to new destinations in Hawaii, Florida, Colorado, and has added service to more U.S. cities throughout 2021. Southwest prides itself on offering customer-friendly policies, including its unique “Bags Fly Free” policy (each customer can check two bags for free, subject to weight and size limits) and its “No Change Fees” policy (Southwest does not charge fees to change or cancel flights, though fare differences may apply).

2. Through its website at www.Southwest.com and its mobile application available via the Apple app store and Google Play app store (the “Southwest Website” or “Southwest.com”), Southwest offers its customers low-fare flights, along with providing ticket information, reservation details, and additional booking options for Southwest flights and ancillary services.

3. Southwest maintains the exclusive online distribution rights to sell Southwest tickets to the general public through the Southwest Website and does not allow online travel agencies (“OTAs”) to sell Southwest flights without express written approval. Southwest has long controlled access to the Southwest Website and, in doing so, prevents OTAs or travel websites from unauthorized sale of flights. Among other things, the Terms & Conditions for use of the Southwest Website expressly prohibit any attempts to “page scrape” flight data and any use of the Southwest Website “for any commercial purpose” without authorization from Southwest.¹

4. In the past, Southwest has successfully prosecuted actions and obtained injunctions against website operators or OTAs attempting to scrape data from the Southwest Website for commercial purposes without authorization by Southwest. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435 (N.D. Tex. 2004); *Southwest Airlines Co. v. BoardFirst, L.L.C.*, No. 3:06-CV-0891-B, 2007 WL 4823761, at *4-11 (N.D. Tex. Sept. 12, 2007); *Southwest Airlines Co. v. Infare Solutions A/S*, no. 3:10-cv-01674-M (N.D. Tex. 2010); *Southwest Airlines Co v. Checkinsooner.com, LLC*, 3:10-cv-01512-K (N.D. Tex. 2010).

5. Kiwi operates an OTA business at Kiwi.com that has engaged in repeated, unlawful activity on the Southwest Website, and ignored a series of cease-and-desist demands from Southwest. Kiwi’s unlawful conduct includes:

¹ A true and correct copy of the Terms & Conditions is attached as Exhibit A.

- a. **Page Scraping:** Kiwi has knowingly violated the Terms & Conditions through its unauthorized scraping of flight and pricing data from the Southwest Website;
- b. **Unauthorized Sale:** Kiwi has knowingly violated the Southwest Terms & Conditions by selling Southwest tickets without approval from Southwest and therefore has engaged in unauthorized commercial activity;
- c. **Unauthorized Services:** Kiwi has knowingly violated the Southwest Terms & Conditions by charging certain “service fees” that are not otherwise charged by Southwest;
- d. **Trademark Infringement:** Kiwi has knowingly violated Southwest’s registered trademarks by displaying, among other things, Southwest’s famous “Heart” logo on the Kiwi website;
- e. **Unauthorized Access:** Kiwi has violated federal and state law by continuing to access the Southwest Website without authorization from Southwest;
- f. **Unfair and Deceptive Practices:** Kiwi has violated federal law by engaging in unfair and deceptive practices in connection with the sale of airline tickets, including (i) selling Southwest flights without permission; (ii) failing to identify the carrier when advertising Southwest flights; (iii) adding its own service fees to the price of Southwest flights; (iv) misrepresenting Southwest’s policies in an effort to bilk customers into purchasing ancillary services from Kiwi, such as customer service and checked bags, that are free with the purchase of Southwest flights; (v) failing to issue refunds to customers for cancellations on Southwest flights; and
- g. **Hidden City Tickets:** Kiwi has promoted and offered “hidden city” tickets, meaning that the passenger’s intended final destination is not the ticketed final

destination, but rather an intermediate or connecting city.² This booking practice is a violation of Southwest’s Contract of Carriage. It negatively impacts Southwest’s operations and causes problems (i) with checked baggage because Southwest must check baggage to the ticketed, final destination, yet the customer intends to end their trip in the connecting city; (ii) for operational employees and flight crews trying to locate connecting customers that are listed on the connecting flight’s manifest; and (iii) trying to locate connecting customers which leads to flight delays that negatively impacts other passengers and disrupts Southwest flight schedules and on-time performance metrics. Southwest has recently suffered multiple reportable flight delays caused by Kiwi’s unauthorized sales of “hidden city” flights.

6. Kiwi’s conduct is unlawful, deceptive, and harmful to Southwest’s customers because Kiwi misrepresents Southwest’s policies and charges unsuspecting customers fees for things that are free on the Southwest Website. Such conduct not only harms the consumers, but also Southwest by eroding consumer goodwill, tarnishing and diluting Southwest’s brand and trademarks, and commercializing Southwest’s proprietary information without authorization.

7. On multiple occasions since 2018, Southwest has sent Kiwi written cease-and-desist demands in emails and letters—sent to Kiwi’s chief legal counsel and to Kiwi’s registered agents in the United States—demanding that Kiwi stop this unlawful conduct.³ Southwest

² As an illustrative example, a passenger purchases a ticket from Los Angeles to New York with a connection in Las Vegas, but does not travel beyond Las Vegas. These are also known as “buy long/fly short” itineraries.

³ A true and correct copy of an email chain with cease-and-desist emails to Kiwi dated September 17, 2018, and August 28, 2019, is attached as Exhibit B, and a true and correct copy of a cease-and-desist letter to Kiwi dated December 11, 2020, is attached as Exhibit C.

specifically referenced the Terms & Conditions for use of the Southwest Website and even attached a copy of the Term & Conditions, pointing out examples of why Kiwi's conduct was unlawful, improper, and a violation of Southwest's legal rights.

8. Kiwi received the cease-and-desist notices and responded to them with emails seeking to form a business relationship with Southwest.⁴ Although Southwest made it very clear that it has no interest in forming a business relationship with Kiwi and that Kiwi should immediately cease and desist its ongoing unlawful, deceptive, and harmful conduct, Kiwi has ignored those demands. Instead, Kiwi has provided Southwest reports detailing its commercial use of the Southwest Website through a purported Kiwi account representative.⁵

9. In late November 2020, Southwest began to receive reports (from its employees) and complaints (from its customers) about problems and challenges presented by tickets purchased through Kiwi which included (i) customers calling Southwest's Customer Relations department because they had not received a refund on flights purchased through Kiwi (even though records showed a refund was issued to the purchaser, Kiwi); and (ii) operational disruptions caused by Kiwi's sales of "hidden city" flights.

10. Southwest sent a final cease-and-desist letter to Kiwi on December 11, 2020, but Kiwi failed and refused to cease its unlawful conduct. Accordingly, Southwest filed this suit to enjoin Kiwi's unauthorized access to the Southwest Website, to stop the misuse and infringement of Southwest's registered trademarks, and to recover damages for Kiwi's unauthorized activities.

⁴ A true and correct copy of an email response from Kiwi dated September 11, 2019, is attached as Exhibit D.

⁵ A true and correct copy of an email from Kiwi to Southwest dated July 14, 2020, is attached as Exhibit E.

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