

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|--------------------------|---|------------------|
| | X | |
| SKIPLAGGED, INC. | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION NO. |
| | : | |
| v. | : | |
| | : | |
| SOUTHWEST AIRLINES, CO., | : | |
| | : | |
| Defendant. | : | |
| | X | |

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Skiplagged, Inc. (“Skiplagged”) for its Complaint against Defendant Southwest Airlines, Co. (“Southwest”) alleges as follows:

NATURE OF THE ACTION

1. This is an action arising from Southwest’s threat to sue Skiplagged, a free internet travel information service, on the theory that Skiplagged is bound by the terms and conditions on the Southwest.com website, Skiplagged is inducing breach of those terms and conditions by others, and that, by Skiplagged’s publication of Southwest airfare pricing on Skiplagged.com that is purportedly inconsistent with Southwest’s own pricing offered on Southwest.com, Skiplagged has violated Federal law.

2. In fact, Skiplagged does not use the Southwest website to obtain information for Skiplagged.com and has not agreed to any of Southwest’s terms and

conditions, Skiplagged's provision of information related to Southwest flights and airfares does not breach any obligation or induce anyone else to breach an obligation to Southwest, nor does Skiplagged misrepresent anything with respect to the airfare prices published on Skiplagged.com. Accordingly, by this action, Skiplagged seeks a declaration that it is not bound by the Southwest.com terms and conditions, is not liable to Southwest for tortious interference or for inducing others to breach Southwest's terms and conditions and that it has not violated Federal law.

THE PARTIES

3. Skiplagged, Inc. is a Delaware corporation with a principal place of business located at 41 E 11th St, 9th floor, New York, NY, 10003. Skiplagged is an on-line provider of travel information, including airfares, but does not directly sell airline tickets, but rather directs users to other sites to complete purchases for which Skiplagged is paid commissions.

4. Southwest Airlines, Co. is a Texas corporation with its principal place of business located at 2702 Love Field Drive, Dallas, Texas 75235. Southwest is a low-cost airline, principally serving domestic routes, and is an e-commerce vendor of its tickets through Southwest.com.

JURISDICTION AND VENUE

5. Diversity jurisdiction exists pursuant to 28 U.S.C. § 1332. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

6. Venue in the Southern District of New York is proper pursuant to 28 U.S.C. § 1391 because Skiplagged is located in this District and a substantial part of the events or omissions on which the claims asserted herein occurred in this District,

including threatening communications by Southwest to Skiplagged in this District. In addition, upon information and belief, Southwest is subject to this Court's general jurisdiction due to Southwest's extensive activities in New York.

GENERAL ALLEGATIONS

7. Skiplagged.com is an internet search tool that allows users to find competitive rates for airfare and hotels.

8. Upon information and belief, Southwest is a low-cost airline that operates primarily in the United States, including numerous routes into and out of New York state.

9. On June 8, 2021, and again on June 18, 2021, Southwest wrote to Skiplagged in New York, alleging, among other things, that Skiplagged was unlawfully "web scraping" data from Southwest.com and from Southwest's application programming interface ("API") and reproducing data on Skiplagged's website without permission from Southwest purportedly in violation of Southwest's terms and conditions that purportedly apply to visitors to Southwest.com. In addition, Southwest demanded that Skiplagged remove the Southwest "heart logo" from Skiplagged.com and cease publishing "hidden-city" ticketing information.

10. On June 21, 2021, Skiplagged advised Southwest in writing that Skiplagged did not "scrape" any data from Southwest.com or obtain data from Southwest's application programming interface, had ceased displaying any "heart logo" for Southwest flights, and did not sell "hidden-city" flights on Southwest airlines.

11. On July 1, 2021, Southwest wrote again to Skiplagged in New York alleging that:

a. Skiplagged was violating Southwest terms and conditions by publishing Southwest airfares and web-linking to other travel sites that were purportedly not authorized by Southwest to publish or sell tickets on Southwest flights;

b. Skiplagged was inducing Kiwi.com to breach Southwest's website terms by directing traffic to Kiwi.com where Southwest fares are displayed and sold, thereby tortiously interfering with Southwest's terms and conditions;

c. Skiplagged was aiding and abetting breach of Southwest's terms and conditions; and

d. Skiplagged was in violation of 49 U.S.C. § 41712(a) through "unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation".

12. Skiplagged does not access Southwest.com or use the Southwest API to obtain data published on Skiplagged.com and is not bound by the Southwest terms and conditions.

13. By providing free information to website visitors, including links and routing to third party travel sites, Skiplagged does not interfere with any contractual relationship between Southwest and anyone, nor does Skiplagged induce anyone to breach any agreement with Southwest.

14. Skiplagged does not directly sell tickets for Southwest flights on Skiplagged.com, but instead directs purchasers to sellers to complete their ticketing requirements.

COUNT I
Declaratory Judgment

15. Skiplagged repeats, realleges, and incorporates by reference as though fully set forth herein each and every allegation contained in Paragraphs 1 through 14 of this Complaint.

16. As set forth above, an actual controversy exists between Skiplagged and Southwest.

17. A court order will resolve the conflict between Skiplagged and Southwest.

JURY DEMAND

Skiplagged demands a jury trial of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Skiplagged requests that the Court enter an Order:

- A. Entering the following declaratory judgment:
1. Skiplagged is not bound by the Southwest terms and conditions;
 2. Skiplagged has not tortiously interfered with Southwest's contractual relations;
 3. Skiplagged has not induced others to breach their obligations, if any, to Southwest; and
 4. Skiplagged has not violated 49 U.S.C. § 41712(a).
- B. Awarding any such other and further relief as the Court deems proper.

Dated: July 2, 2021

Respectfully Submitted,

Skiplagged, Inc.

By its attorney,

/s/Irwin B. Schwartz

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