

AMERICAN AIRLINES, INC.	§	IN THE JUDICIAL DISTRICT OF
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
KAYAK SOFTWARE CORPORATION	§	
d/b/a Kayak.com and Sidestep.com	§	96 <sup>th</sup> JUDICIAL DISTRICT

**KAYAK SOFTWARE CORPORATION'S ORIGINAL ANSWER & COUNTERCLAIMS**

Comes now, Defendant Kayak Software Corporation ("Kayak") and files its Original Answer & Counterclaims to Plaintiff American Airlines, Inc.'s ("American Airlines") Original Petition.

Factual Background

1. The internet has become a key channel through which travel products are sold. The internet is frequently the first place consumers will look to shop for flights, rental cars, hotels or cruises. Recognizing this, airlines, rental companies, hotel chains and cruise lines now sell directly to consumers through their internet websites. Additionally, online travel agencies have sprung up offering their own selection of travel products and bundles of travel products. Industry studies show consumers visit three to four websites before making a purchase because they do not trust that any one site has all the best deals. Kayak was founded to simplify consumers' internet travel shopping experience.

2. Kayak is a travel search engine designed to search hundreds of travel websites from around the world and provide travelers with comprehensive results in an easy to use display whether the traveler is looking to book a flight, a hotel, a cruise or a rental car. Kayak does not sell any of these travel products nor does it filter or suppress

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search results. Instead, Kayak provides a single portal from which a traveler can search and compare hundreds of travel products from all manner of suppliers and online travel agencies. Once the consumer has found the flight, car, hotel or cruise product that fits his or her particular schedule or budget, Kayak sends that consumer directly to the chosen provider's website to make the purchase. This solution provides consumers with a single, comprehensive and objective search engine and provides travel suppliers, like American Airlines, with a distribution channel shown to provide higher yields and increased customer loyalty by driving travel shoppers back to their websites.

3. On January 10, 2004, Kayak and American Airlines entered into an Access and Use Agreement in which American Airlines granted Kayak permission to access American Airlines' fare and inventory information for the purpose of providing this data to Kayak's customers searching for airline flights. Significantly, the parties agreed that this data would be displayed on Kayak in such a way as to never "create or allow a bias" in the display of fare and inventory information, or in the placement of search results for airfare. On May 12, 2005 SideStep, Inc. and American Airlines signed an Access and Use Agreement on substantially similar terms. SideStep, Inc. has since been acquired by Kayak.

4. On June 23, 2008, American Airlines informed Kayak that it was no longer pleased with the display of search results that included prices for American Airlines flights sold directly on American's website (AA.com) as well as American Airlines flights sold through the online travel agencies Orbitz.com and Cheaptickets.com. American Airlines further demanded that Kayak no longer display fare and inventory

information on American Airlines' flights sold through Orbitz and Cheaptickets starting August 1, 2008.

5. On June 24, 2008, Kayak informed American Airlines that it would comply with this request and would discontinue receiving fare and inventory information from Orbitz and Cheaptickets starting August 1, 2008. However, Kayak also informed American Airlines that removing these travel vendors from its search results was inconsistent with Kayak's dedication to providing channel-neutral results. Accordingly, Kayak informed American Airlines that Kayak was terminating its agreements with American effective July 10, 2008 after which time Kayak would no longer refer its customers to American Airlines' website. On August 1, 2008, Kayak stopped displaying fare and inventory information related to American Airlines flights, instead showing only publicly available flight schedules in response to customer queries.

6. On or about August 4, 2008, American Airlines sent emails to travelers that had previously used the Kayak service to research airfares and then book air travel on American Airlines. The email erroneously stated that American Airlines had terminated its relationship with Kayak rather than disclosing the fact that Kayak had terminated the relationship because of American's demand for incomplete, and therefore biased, search results. American Airlines also directed consumers to a false statement that Kayak's former practice of displaying search results from Orbitz was forcing American to pay a "double tax, once to Kayak and once to Orbitz," when in fact no such double payment is made or required under the relevant agreements. Since these false statements by American Airlines, Kayak has received numerous complaints from its customers indicating that they would take their business elsewhere because of the

misunderstanding created by American's statements. Accordingly, Kayak has suffered damage to the valuable goodwill Kayak had built with these customers and damage to Kayak's potential business relationship with these customers.

General Denial

7. Kayak pleads a general denial pursuant to Rule 92 of the Texas Rules of Civil Procedure.

Counterclaim: Business Disparagement

8. Kayak repeats and re-alleges the preceding paragraphs as if fully set forth herein.

9. As shown above, American Airlines published false statements concerning Kayak's economic interests. American Airlines knew the statements were false when they were made and they were made with the intention of interfering in Kayak's relationships with its customers, and have interfered with Kayak's relationships with its customers causing Kayak to suffer direct pecuniary loss.

10. Pursuant to Texas law, including Section 41.003 of the Texas Civil Practice & Remedies Code, Kayak is entitled to, and hereby sues for, exemplary damages.

Counterclaim: Tortious Interference With Prospective Business Relations

11. Kayak repeats and re-alleges the preceding paragraphs as if fully set forth herein.

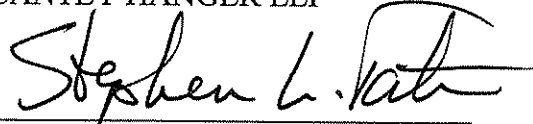
12. As shown above, American Airlines intentionally interfered with Kayak's former and prospective customers by sending false and misleading information to them thereby causing Kayak to suffer actual damage.

13. Pursuant to Texas law, including Section 41.003 of the Texas Civil Practice & Remedies Code, Kayak is entitled to, and hereby sues for, exemplary damages.

WHEREFORE, Kayak Corporation prays that the Court dismiss American Airlines' claims with prejudice, and grant judgment in favor of Kayak for actual damages within the jurisdictional limits of the Court, for exemplary damages, for costs of court, for pre-judgment and post-judgment interest at the maximum rates allowed by law, and for such other and further relief to which Kayak may be justly entitled.

Respectfully submitted,

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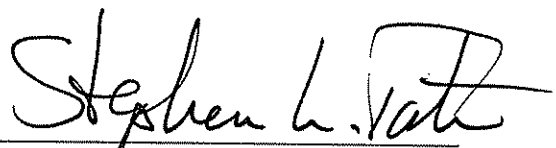
ATTORNEYS FOR DEFENDANT  
KAYAK CORPORATION

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of Defendant Kayak Corporation's Original Answer has been served on counsel of record for the plaintiff by certified mail, return receipt requested, on the 29<sup>th</sup> day of August 2008 addressed as follows:

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