

**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.

§
§
§
§
§
§
§
§
§
§

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.

11. Since filing this lawsuit, Southwest has implemented self-help security measures in an effort to stop Kiwi's activities, but Kiwi has continued to hack the Southwest Website, republish Southwest fares and flight schedules, and sell Southwest flights without permission in violation of federal law and the Terms & Conditions.

12. Southwest recently discovered that Kiwi is now (according to Kiwi) obtaining Southwest flight and fare data from third parties, including at least one Global Distribution System ("GDS") company and at least one ARC travel agency.⁶

II. THE PARTIES

13. Southwest Airlines is a Texas corporation with its principal place of business located at 2702 Love Field Drive, Dallas, Texas 75235.

14. Defendant Kiwi.com, Inc. is a Delaware corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. Kiwi.com, Inc. already has appeared in this lawsuit.

15. Defendant Kiwi.com, s.r.o. is a Czechoslovakian limited liability company identifying its address as Palachovo náměstí 4, 625 00 Brno, Czech Republic. Kiwi.com s.r.o. already has appeared in this lawsuit.

III. JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because Southwest asserts claims arising under 18 U.S.C. § 1030 and 15 U.S.C. §§ 1114, 1116, 1117, and 1125 of the Lanham Act. This Court has supplemental and pendent jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

⁶The investigation regarding this matter is ongoing, and Southwest has a pending motion to compel a full, complete, and current answer to Interrogatory No. 3 [Doc. 95].

17. In connection with its unauthorized republication of Southwest fares and flight schedules and its unauthorized sales of Southwest flights and services, Kiwi is accessing Southwest's computer systems located in Texas and in this District without authorization, bypassing Southwest's security systems intended to block automated traffic and bots from using the Southwest Website, and hacking the Southwest application program interface ("API")⁷ that is accessible only through the Southwest Website—all in violation of the Terms & Conditions for use of the Southwest Website. In its original Complaint, Southwest provided notice that Kiwi's scraping and hacking activities involve Southwest servers in this District. Southwest submitted sworn evidence of this fact in other pleadings.⁸ And Kiwi has acknowledged that, if true, such conduct justifies venue in this District. With knowledge of these facts, Kiwi has continued to scrape, hack, and use Southwest information via activities directed at servers located in Dallas.

18. This Court has jurisdiction over Kiwi and all of Southwest's claims pursuant to the Terms & Conditions for use of the Southwest Website, which provide as follows:

Forum Selection

These Terms and the relationship between you and Southwest shall be governed by the laws of the State of Texas without regard to any conflict of law provisions. You agree to the personal and exclusive jurisdiction of the courts located within Dallas, TX. You hereby consent to the exclusive jurisdiction and venue of the State and Federal courts in Dallas, Texas in all disputes. You agree and understand that you will not bring against the Southwest Parties any class action lawsuit related to your access to, dealings with, or use of the Service.⁹

⁷ API is an interface used to programmatically access an application through a set of routines, protocols, and other tools for building software applications. The purpose of using an API is to access an application without using the standard user interface.

⁸ See [D.I. 30] at 3.

⁹ Ex. A, Terms & Conditions at 3 (emphasis in original).

19. The forum selection clause applies to “all disputes,” which includes Southwest’s Lanham Act and unjust enrichment claims. Moreover, Southwest’s claims arise out of Kiwi’s “access to, deadlines with, or use” of Southwest’s website.

20. Under the Terms & Conditions, Kiwi also agreed that:

[A]ny transactions carried out through the Sites will be deemed to take place in the State of Texas, United States of America, regardless of the jurisdiction where [it] may be located or reside...

21. In addition to consenting to this Court’s jurisdiction by using the Southwest Website and purchasing tickets directly from Southwest (even after receiving multiple cease and desist notices), Kiwi has committed torts in this District, breached a contract in this District, violated Texas statutory law in this District, and systematically conducts business in this District. Kiwi has also purposefully availed itself of the forum by soliciting business from Texas residents and purposefully directing its actions towards Texas, including by offering and selling flights in Texas, soliciting business from Texas residents, and soliciting business from Southwest’s commercial and marketing leadership at its headquarters in Dallas, Texas.

22. For example, Kiwi’s website offers and sells Southwest flights to airports to ten (10) Texas cities, including: Dallas (DAL), Houston (HOU), Austin (AUS), San Antonio (SAT), El Paso (ELP), Midland/Odessa (MAF), Lubbock (LBB), Amarillo (AMA), Harlingen (HLG), and Corpus Christi (CRP) (collectively, “Texas Airports”).

23. Kiwi has purchased tickets directly from Southwest’s Website and then resold those flights to over 170,000 customers. In connection with the purchase of those Southwest flights, Kiwi interacts with Southwest computer systems located in Texas and in this District. In connection with the resale of those Southwest flights, Kiwi is selling the services of Southwest, a Texas company with its base of operations in this District. Kiwi has derived millions of dollars in

revenues and profits from such contacts with Texas and can reasonably anticipate being hailed into court in Texas to answer for its actions.

24. Kiwi has sold more than 19,000 Southwest tickets with an origin or destination at one of the Texas Airports.


25. Kiwi has sold more than 1,400 Southwest reservations (for more than 1,800 passengers) that include a billing zip code in Texas.

26. The injuries Kiwi inflicts on Southwest are felt in this District, and Kiwi knew that serious harmful effects from its conduct would occur here.

27. Kiwi's unlawful conduct causes customer confusion in this District.

28. When a Texas user visits Kiwi.com, Kiwi.com s.r.o. sends targeted promotional emails like the one below asking, "Do you often fly to and from Dallas? Simply enter the name of the city you most commonly fly from, and help us improve our service by sending you the best deals on flights from there straight to your inbox. Easy!" The email is sent by Kiwi.com s.r.o.¹⁰




¹⁰ Upon information and belief, this is done by collecting user email address and by using website "cookies" that identify and track the user's location.



Do you often fly to and from Dallas?

Simply enter the name of the city you most commonly fly from, and help us improve our service by sending you the best deals on flights from there straight to your inbox. Easy!

[Set Home airport](#)

   [Open email in browser](#) [Subscription center](#)

The prices include an estimate of all mandatory taxes and charges. Kiwi.com endeavours to ensure prices are up to date and accurate, however the accuracy of price information and/or seat availability is not guaranteed. Kiwi.com reserves the right to terminate the promotional campaign and invalidate the unused promotional code at any time, without prior notice or liability towards You. Promotional code value cannot be exchanged for cash alternative. If you don't want to receive these emails, you can unsubscribe by going [here](#). This email was sent by [Kiwi.com](#) s.r.o.

29. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the claims asserted in this action arose in this District and a substantial part of the activities, conduct and damages have occurred in Texas. During all relevant times, Kiwi repeatedly, knowingly and intentionally accessed without Southwest's authorization Southwest servers located in this District. Additionally, as quoted above, pursuant to the Terms & Conditions quoted above, Kiwi consented to exclusive jurisdiction of courts in Dallas, Texas for all disputes relating to the use of the Southwest Website.

30. Venue is proper under 28 U.S.C. § 1391(c)(3) as to Kiwi.com s.r.o. because it is a foreign entity not a resident of the United States that may be sued in any district.

31. The Court already has determined that it has jurisdiction over Kiwi and that venue is proper in this District [D.I. 16 and 89].

IV. FACTS GIVING RISE TO THIS ACTION

A. Southwest's Operation and Website

32. Since its first flight in June 1971, Southwest has provided affordable flights to business and leisure passengers for almost 50 years. Southwest became the nation's largest domestic air carrier in 2003 and, with its domestic-focused network, it continues to be 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.

33. In the highly competitive airline industry, Southwest has been successful in large measure because of Southwest's commitment to customer service and consumer loyalty, including its well-known promises of fares with "no hidden fees" and "no change fees" (though fare differences may apply).

34. Southwest owns and operates the Southwest Website. Southwest also maintains the exclusive online distribution rights to sell Southwest tickets to the general public through the Southwest Website and does not allow OTAs to sell Southwest flights without express written approval. Southwest has long prevented website operators, OTAs, and travel applications from selling its flights and the Terms & Conditions for the Southwest Website include a list of Restricted Activities that prohibit attempts to "page scrape" or using the Southwest Website "for any commercial purpose" without permission from Southwest.¹¹ Such restrictions are permitted under

¹¹ See Ex. A, Terms & Conditions at 2.

federal law.¹² Southwest's fares and flight schedules are proprietary. Although they are published openly on the internet, they are subject to specific use restrictions and may not be republished or used for commercial purposes without Southwest's express permission.

35. To protect the security of its website and ensure normal operations, Southwest makes its website and the proprietary contents available for consumers' use subject to the Terms & Conditions. An interactive link on each page of the Southwest Website, including the homepage, references the Terms & Conditions.

36. Because use of the Southwest Website constitutes acceptance of the Terms & Conditions, the Terms & Conditions constitutes a valid and enforceable contract between Southwest and those who access the website. Since 2018, Southwest has sent multiple cease and desist letters to Kiwi, pointing out and explaining Kiwi's violations of the Terms & Conditions, yet Kiwi has continued its unlawful conduct, including page-scraping flight data and other activities that violate the Terms & Conditions.

37. The Terms & Conditions for use of the Southwest Website specifically prohibit, among other things, the following user conduct:

- a. Use of the Southwest Website to "copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use the Service or Company Information to create a derivative work;"

¹² See 14 C.F.R. § 256.6 ("Nothing in this section requires an air carrier, foreign air carrier, or ticket agent to allow a system to access its internal computer reservation system or to permit 'screen scraping' or 'content scraping' of its Web site; nor does it require an air carrier or foreign air carrier to permit the marketing or sale of the carrier's services through any ticket agent or other carrier's system. 'Screen scraping' as used in this paragraph refers to a process whereby a company uses computer software techniques to extract information from other companies' Web sites without permission from the company operating the targeted Web site."). To the extent that any common law right to scrape "publicly available" data exists, this section preempts it.

- b. Use of the Southwest Website or Company Information “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- c. Engaging in any activity in connection with the Southwest Website or Company Information that is “fraudulent, unlawful, false or misleading;”
- d. Attempts to “harvest any information from the [Southwest Website];”
- e. Attempts to “infringe any intellectual property or other right of any third party;”
- f. Use of the Southwest Website “to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;” and
- g. “[U]se [of] any deep-link, page-scrape, robot, crawl, index, spider, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things to use, access, copy, acquire information, . . . search, generate searches, or monitor any portion of the [Southwest Website] or Company Information[.]”¹³

38. The Terms & Conditions also provide that, by accessing the Southwest Website, “you also agree you will not use the [Southwest Website] for or in connection with offering any third party product or service not authorized by Southwest.”¹⁴




B. Southwest’s Registered Trademarks




39. Southwest is the owner of, among other things, the federal trademark registrations listed below (hereinafter collectively referred to as the “Southwest Marks”):¹⁵

¹³ See Ex. A, Terms & Conditions at 2.

¹⁴ See *id.*

¹⁵ True and correct copies of the registrations certificates for the Southwest Marks are available free of charge from the USPTO’s Trademark Electronic Search System (TESS) database available at <https://www.uspto.gov/trademarks-application-process/search-trademark-database>.

Trademark	Date	Services	No.
SOUTHWEST AIRLINES	Registered: Dec. 8, 1992	(Int'l Class: 39) transportation services; namely, transportation of cargo and passengers by air	Reg. No.: 1,738,670
SOUTHWEST	Registered: Aug. 15, 2006	(Int'l Class: 39) Transportation of passengers and/or goods by air	Reg. No.: 3,129,737
	Registered September 8, 2015 Int'l Class: 35 First Use: September 8, 2014 Filed: October 1, 2014	(Int'l Class: 35) providing electronic on-line information services, namely, the provision of advertisements and business information in respect of travel, tourism and entertainment through a computer database; advertising services and promotion services by data communications for service providers in the travel industry; on-line direct electronic marketing services and advertising services for service providers in the travel industry; providing online information to others, namely, advertisements and solicitations	Reg. No.: 4,806,962
	Registered July 7, 2015 Int'l Class: 16 First Use: September 8, 2014 Filed: December 1, 2014	(Int'l Class: 16) printed matter, namely, publications, magazines, and books all featuring information about the airline and travel industry	Reg. No.: 4,768,717
	Registered April 14, 2015 Int'l Class: 39 First Use: September 8, 2014 Filed: September 8, 2014	(Int'l Class: 39) air transportation of passengers and freight; air transportation services featuring a frequent flyer bonus program; airline transportation services; delivery of goods by air; freight transportation by air; making reservations and bookings for transportation; making transportation bookings and reservations for others by means of a website; on-line transportation reservation and travel ticket reservation services; online transportation reservation services; providing a website featuring information in the field of air transportation; providing automated	Reg. No.: 4,720,322

Trademark	Date	Services	No.
		check-in and ticketing services for air travelers; transport by aircraft; transport by air; transport of passengers; transport of persons and goods; transportation of passengers and/or goods by air; travel agency services, namely, making reservations and bookings for transportation	
	Registered April 21, 2015 Int'l Class: 09 First Use: September 8, 2014 Filed: September 22, 2014	(Int'l Class: 09) computer application software for mobile phones, namely, software for delivery of personalized travel information; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; computer software for the delivery of personalized travel information that may be downloaded from a global computer network; downloadable mobile applications for providing personalized travel information namely flight check-in, flight status, and flight and car rental information and services; downloadable software in the nature of a mobile application for the delivery of personalized travel information	Reg. No.: 4,723,791
	Registered April 21, 2015 Int'l Class: 43 First Use: September 8, 2014 Filed: September 22, 2014	(Int'l Class: 43) making hotel reservations for others; providing a website featuring information in the field of hotels and temporary accommodations for travelers; providing personalized information about hotels and temporary accommodations for travel via the internet	Reg. No.: 4,723,789
	Registered January 26, 2016 Int'l Class: 41 First Use: September 8, 2014 Filed: May 22, 2015	(Int'l Class: 41) providing information on entertainment, sporting, and cultural events and venues, amusement parks, tourist attractions, and recreational activities; ticket reservation and booking services for entertainment, sporting, and cultural events and venues, amusement parks, tourist attractions, and recreational services	Reg. No.: 4,892,223

40. Southwest spends substantial time, money, and effort advertising and promoting its products and services using its trademarks throughout the United States. The Southwest Marks provide Southwest with the exclusive right to use the registered marks in connection with air transportation and other travel services, as well as the right to exclude third parties from unauthorized use of the marks. Through years of nationwide and continuous use and advertisement, Southwest has established enormous goodwill with respect to these marks, and they are Southwest's valuable intellectual property. The Southwest Marks have become famous, distinctive and well known, and the public accepts the marks as indicative that Southwest is the source of those services.

C. Kiwi's Wrongful, Unauthorized, and Misleading Conduct

41. Upon information and belief, both Kiwi.com s.r.o. and Kiwi.com, Inc. control and direct Kiwi.com. Kiwi operates a travel website that offers, among other things, airline flights and itineraries on many U.S.-based airlines. Kiwi.com s.r.o. has not disputed that it controls and directs Kiwi.com.

42. In connection with these services, Kiwi knowingly and intentionally targets the Southwest Website to harvest Southwest's flight and fare information for its own commercial benefit and without Southwest's authorization. Kiwi uses Southwest's information in a manner that is fraudulent, false or misleading, and that violates the Terms & Conditions of the Southwest Website.

43. On information and belief, Kiwi sold approximately 170,000 Southwest tickets between 2017 and the first quarter of 2021.

44. When reselling Southwest tickets, Kiwi acknowledges that purchases are subject to Southwest’s Terms & Conditions, stating: “All services provided by Southwest Airlines are subject to their Terms and Conditions. More information is available on their website.”

E-ticket

Kiwi.com booking number: 76677832
Reservation number (PNR): K8SGJ8

Flight information

Burbank - Hollywood Burbank BUR	2019 Oct 1 20:50 Local time
Oakland - Oakland International OAK	2019 Oct 1 22:00 Local time

Flight no: WN1440 Airline: Southwest Airlines Economy

Passengers

Mark Hursh PNR: K8SGJ8
⌚ Waiting for airline check-in to open on 1 Oct

2× Checked baggage	78 × 52 × 28 cm — 23 kg
1× Cabin baggage	60 × 40 × 25 cm — 7 kg
1× Personal item	47 × 34 × 21 cm — 5 kg

It is usually much cheaper to order checked baggage with us in advance than to pay for it at the airport.

Check-in

⌚ **Waiting for airline check-in to open on 1 Oct**
We have your details. We'll process your boarding passes and send them to you by email on or before 2 Oct.

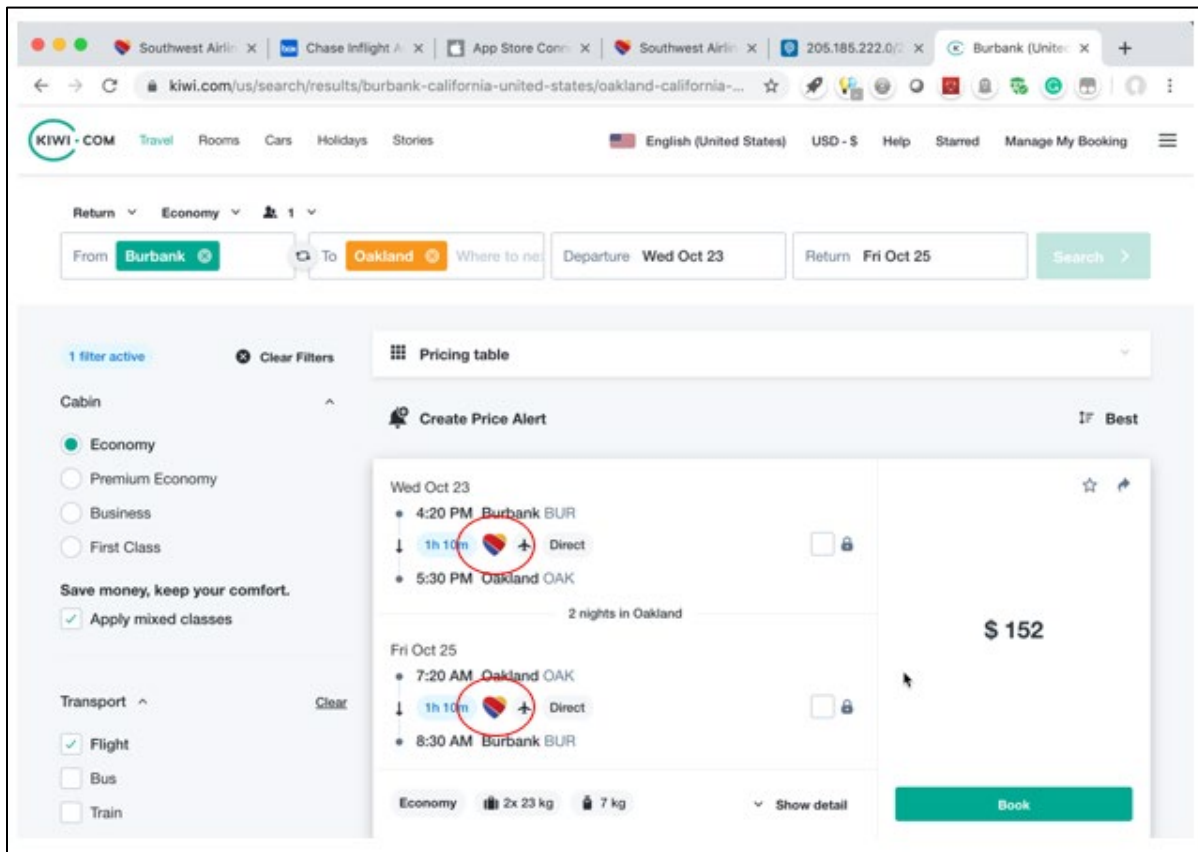
E-ticket notice All services provided by Southwest Airlines are subject to their Terms and Conditions. More information is available on their website.

45. Kiwi’s Terms and Conditions state that “a Selected Carrier’s terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking.”

Article 9. Conditions of Carriage

1. You acknowledge that a Selected Carrier's terms and conditions and conditions of carriage will apply to Your contractual relationship with the Selected Carrier and that You must make Yourself aware of such terms and conditions as well as conditions of carriage before the Service Agreement is concluded and You complete the Booking. By concluding the Service Agreement You hereby acknowledge that the Flight(s) included in Your Booking may not be part of the "frequent flyer programs" of the Selected Carrier(s). This article 9.1 also applies to the terms and conditions of the airlines, railway and other transportation companies which are offered to You based on (i) application of the [Kiwi.com Guarantee](#) or (ii) voluntary change of the Booking based on Your request.

46. After receiving complaints from consumers who booked Southwest flights through the Kiwi website, and upon visiting the Kiwi.com website, Southwest discovered Kiwi's infringing use of Southwest's famous "heart" trademark, as circled in the Kiwi website screenshot below:



47. Kiwi's use of the Southwest Marks to identify and sell flights on Southwest negatively impacts Southwest's reputation. For example, booking on Kiwi.com is more expensive than booking on the Southwest Website because Kiwi charges additional fees. Thus, Kiwi is not

merely scraping data and republishing it; Kiwi is improperly extracting data from the Southwest Website and trading on Southwest's reputation for having no hidden fees.

48. Southwest has received significant complaints and inquiries from customers who purchased Southwest flights from Kiwi. These complaints include that Kiwi is (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 even after Southwest refunded the credit card used by Kiwi to purchase the ticket; (vi) not providing customers with notices about schedule changes or delays; (vii) not allowing customers to change or cancel reservations; (viii) misrepresenting checked bag policies and baggage fees charged by Kiwi; and (ix) leading customers to mistakenly believe that Kiwi is Southwest's authorized agent and blaming Southwest for Kiwi's conduct.

49. The challenges and problems with customers not receiving refunds and not receiving timely communications increased during the COVID pandemic because many flights and reservations were cancelled and changed. Those circumstances (i.e., cancelled flights, delayed flights, or rescheduled flights) necessitate the timely communication of information to customers and issuance of refunds in many cases. Kiwi's unauthorized sales of Southwest flights interfere with Southwest's ability to issue timely communications and refunds to customers because Kiwi uses its own email addresses and credit cards (not the customer's) when booking the flights, thus preventing Southwest from directly communicating with customers and directly issuing refunds to

customers. In many cases, the customer blames Southwest for the issue, even though Kiwi is the direct cause of the problem.

D. Kiwi Inflates Fares and Charges Service Fees That Are Not Collected By Southwest

50. Kiwi does not identify the flight prices or additional charges in a transparent or straightforward manner. By way of example and comparison, the Southwest Website shows a total price of \$395.97 for a round-trip, non-stop flight from Dallas, Texas (DAL) to Savannah, Georgia (SAV) with an outbound flight on March 13, 2021 and a return flight on March 20, 2021 (the “Dallas-Savannah Flight”):

The screenshot displays the Southwest Airlines website interface for a round-trip flight. At the top, the Southwest logo is on the left, and the flight details 'MAR 13 - 20 DAL → SAV' and 'TOTAL \$395.97' are on the right. Below this is a 'Trip & Price Details' section with a progress indicator for 'Price', 'Payment', and 'Confirmation'. The main flight details are as follows:

Flight	Modify
<p>Sat 3/13 DAL → SAV 2 hr 25 min Nonstop Wanna Get Away®</p> <p>10:10 AM 1:35 PM Only 3 left!</p>	<p>Price per Passenger \$341.55</p> <p>Taxes and fees per Passenger \$54.42</p>
<p>Sat 3/20 SAV → DAL 2 hr 55 min Nonstop Wanna Get Away®</p> <p>1:20 PM 3:15 PM</p>	<p>Total per Passenger \$395.97</p> <p>Passenger(s) x1</p> <p>Flight total \$395.97</p>

Helpful Information:

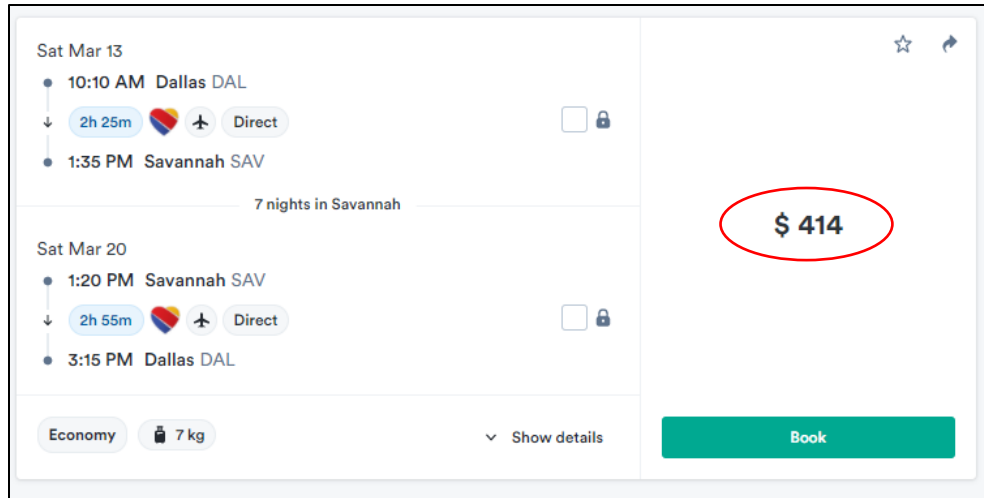
- Please read the [fare rules](#) associated with this purchase.
- When booking with Rapid Rewards® points, your points balance may not immediately update in your account.
- Face coverings required for everyone 2 and over.

No change fees.¹
Change your flight later without a fee.
¹Fare difference may apply.

BAG FEE *	\$0.00
SUBTOTAL	\$341.55
TAXES & FEES	\$54.42
TRIP TOTAL	\$395.97

[Show price breakdown](#)

51. But Kiwi inflates the price of the Dallas-Savannah Flight to \$414 by adding a “Service Fee” or “Other Fees” of about \$18 to the actual ticket price:



52. Kiwi also promises an “Automatic flight check-in,” which violates the Terms & Conditions on the Southwest Website because “online check-in providers may not use Southwest web pages to check-in customers online or attempt to obtain for them a boarding pass in any certain boarding group.”¹⁶ Moreover, on information and belief, Kiwi does not actually provide customers with an automatic flight check-in service, despite promising it.




53. Kiwi also misrepresents that Southwest fares purchased through Kiwi.com are nonrefundable or subject to change fees, which is not true because Southwest’s fare policies have “No Change Fees” (though fare differences may apply); and tickets are always refundable (i.e., Business Select or Anytime fares) or reusable as travel credit (i.e., Wanna Get Away fares). In the example below, Kiwi falsely represents that the fare for the Dallas-Savannah Flight (which Kiwi upcharges from \$395.97 to \$413.46) is nonrefundable (which is not true) and further misrepresents that (a) the “Saver Ticket” (for \$413.64) is not eligible for a refund; (b) rebooking would cost the price of a new ticket; and (c) there would be limited customer support. Each of those statements is false or misleading, as Kiwi upcharges the price of a Southwest flight by more than \$200 for

¹⁶ See Ex. A, Terms & Conditions at 2.

“services” and rebooking options even though Southwest has a “No Change Fees” policy (Southwest does not charge fees to change or cancel flights, though fare differences may apply).

Dallas → Savannah and back

Select your ticket fare
Pay now for peace of mind. Save later if you need to make a necessary change to your itinerary. [Learn more](#)

Saver Ticket	Standard Ticket	Flexi Ticket
		
\$ 413.64	\$ 550.26	\$ 641.34
× Basic Services	✓ Plus Services	✓ Premium Services
× No rebooking contribution	✓ Rebooking	✓ Rebooking
× No refund	× No refund	✓ 90% refund
Continue with Saver	Continue with Standard	Continue with Flexi

i Cancellation and rebooking are only available up to 48 hours before the first departure in your itinerary.

54. On the next page of the booking path, Kiwi again misrepresents Southwest’s ticket policies by indicating a customer would need to pay an additional \$24.55 for “Premium Services” to get email support or avoid fees for other services. In effect, Kiwi is seeking to further increase the price of a Southwest flight by an additional \$24.55 for “services” that are not otherwise collected by Southwest because it does not charge any fees for email support or customer service.

Upgrade your level of Kiwi.com services
 Receive faster support, shorter wait times, and reduced costs on extra services like seat selection or additional baggage. [Learn more](#)

Basic Services <i>Included</i>	Recommended Plus Services <i>\$ 12.27</i>	Premium Services <i>\$ 24.55</i>
✗ Limited support availability	✓ Extended support availability	✓ Extended support availability
✗ Low caller priority	✓ Medium caller priority	✓ High caller priority
✗ No email support	✓ Email support	✓ Email support
✗ 30 € processing fee for additional services	✗ 10 € processing fee for additional services	✓ No processing fee for additional services
Continue with Basic	Upgrade and continue	Upgrade and continue

55. Kiwi also proposes undesirable and inefficient routes and connections without adequate disclosure to customers of potential issues with such routes. For example, the below route proposes a one-hour flight from Burbank to Oakland with an almost eight-hour *bus ride* to return to Burbank.

The screenshot shows a flight search on kiwi.com for a round trip from Burbank, California to Oakland, California. The search parameters are: Return, Economy, 1 passenger, From Burbank, To Oakland, Departure Wed Oct 23, Return Fri Oct 25. The selected route is as follows:

- Wed Oct 23:** Burbank BUR to Oakland OAK, Direct flight, 1h 10m, departing at 4:20 PM and arriving at 5:30 PM.
- 2 nights in Oakland**
- Fri Oct 25:** Oakland West Oakland Station to Burbank Burbank, Direct bus ride, 7h 45m, departing at 5:50 PM and arriving at 1:35 AM.

The total price for this route is \$94. The search interface includes filters for Duration (Max travel time: any) and Stopover (2 - 25 hours).

56. These and other unlawful, deceptive, and harmful practices by Kiwi deliver inferior service, cause customers to incur hidden fees, and directly contradict Southwest's policies, all of which harms Southwest's reputation and customer goodwill.

E. Kiwi Refuses to Stop its Wrongful Conduct

57. Beginning in 2018, Southwest sent a series of cease-and-desist letters to Kiwi demanding that it stop selling Southwest flights and displaying its trademark logos. These letters also emphasized Kiwi's violations of Southwest's Terms & Conditions.

58. For example, in August 2018, Southwest sent a cease-and-desist notice to Kiwi that (a) provided actual knowledge of the Terms & Conditions; and (b) notified Kiwi that it was violating the Terms & Conditions through, among other things, its unauthorized web scraping activity and offering a third-party product or service not authorized or approved by Southwest.

59. However, Kiwi continued to violate the Terms & Conditions through the display of Southwest Marks, scraping fare data from the Southwest Website, and engaging in the unauthorized sale of Southwest flights.

60. On information and belief, on or about June 3, 2019, the U.S.-based investment firm General Atlantic made a strategic investment in Kiwi. A press release from Kiwi included a quote from Tanzeen Syed (a Managing Director at General Atlantic) who said: "In just six years, [Kiwi's CEO] Oliver and the Kiwi.com team have profitably built one of the most disruptive and transformative technology platforms in the large and fragmented online travel industry."

61. On August 28, 2019, Southwest sent yet another cease-and-desist notice to the Chief Legal Officer of Kiwi that again (a) provided additional notice of the Terms & Conditions; and (b) notified Kiwi that it was violating the Terms & Conditions through, among other things, its unauthorized web scraping activity and offering a third-party product or service not authorized

or approved by Southwest. Among other things, Southwest explained to the Chief Legal Officer of Kiwi that (a) Southwest provided prior written notice to Kiwi of its trademark infringement and violations of the Terms & Conditions; (b) Southwest never granted Kiwi permission to publish Southwest's fare data; and (c) Southwest has successfully pursued claims against other companies to cease similar unlawful conduct with respect to unauthorized use of the Southwest Marks and/or the Southwest Website. Southwest again demanded that Kiwi immediately cease and desist from (a) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (b) publishing Southwest fare information on the Kiwi.com website, through its mobile applications or elsewhere; and (c) use of Southwest Marks, including the famous "Heart" logo, in violation of U.S. trademark law.

62. On September 11, 2019, Kiwi's Senior Business Development Manager Slavomir Mucha sent an email to a Southwest attorney (at Southwest's headquarters in Dallas, Texas) and acknowledged receipt of the August 2019 cease-and-desist notice. Kiwi then proposed to Southwest's employees in Dallas that Kiwi would like to "discuss the options of a direct co-operation" and referenced prior business discussions with Southwest.

63. On October 5, 2019, Southwest responded and made clear that Southwest had "no interest in a partnership with Kiwi" and that Kiwi should immediately stop scraping data from Southwest.com because it violates the Terms & Conditions of use of the website and immediately stop using the Southwest Marks for commercial purposes because it violates Southwest's trademark rights. Despite multiple cease-and-desist notices, Kiwi continued its practice of unlawfully using Southwest's data and marks for its own commercial purposes without permission in violation of the Terms & Conditions of use of the Southwest Website.

64. On July 14, 2020, a Kiwi manager, Pedro Gutierrez Kardum, sent a LinkedIn request to a Southwest Vice President whose profile lists his location as Dallas, Texas.

65. On July 14, 2020, the Kiwi Manager, Pedro Gutierrez Kardum (whose title is Business Development Manager – Americas), sent an email to a Southwest Vice President and other Southwest leaders (at the company’s headquarters in Dallas, Texas) to “explore further cooperation” and attached a sales report showing Southwest ticket sales on Kiwi.com. The report showed that between 2019 and the first half of 2020, Kiwi had generated €13,960,021 (equivalent to more than \$17 million) in revenue from the improper and unauthorized sale of Southwest flights.

66. On July 28, 2020, Kiwi’s Pedro Gutierrez Kardum sent a calendar invitation to schedule a call with a Southwest Marketing employee (based in Dallas, Texas). On July 30, 2020, the Southwest Marketing employee spoke on the phone with Kiwi’s Pedro Gutierrez Kardum. During this July 30th call, on behalf of Kiwi, Kardum explained that he handles accounts for U.S. airlines and, in response, the Southwest Marketing employee: (a) explained Southwest’s business model and distribution philosophy for the Southwest Website; (b) explained Southwest’s prior history in sending cease and desist letters to Kiwi; (c) made clear that Southwest did not authorize scraping of the Southwest Website; and (d) requested that Kiwi remove Southwest’s content and brand logos from the Kiwi.com website. On behalf of Kiwi, Kardum indicated that he would raise these issues with Kiwi’s leadership; however, Kardum also said that it was unlikely that Kiwi’s leadership would comply with Southwest’s demands.

67. On December 11, 2020, Southwest sent a final cease-and-desist letter to Kiwi’s registered agent in Delaware, Kiwi’s registered agent in Florida, Kiwi’s Chief Legal Officer, Kiwi’s CEO, a Kiwi Board Member (a General Atlantic employee), and a General Counsel for General Atlantic to once again (a) provide additional notice of the Terms & Conditions; and

(b) notify Kiwi that it was violating the Terms & Conditions through, among other things, its unauthorized web scraping activity and offering a third party product or service not authorized or approved by Southwest. Southwest attached copies of its prior cease-and-desist notices, as well as a copy of the Terms & Conditions, and once again explained to Kiwi, through its executives and US-based registered agent, that: (a) Southwest has previously sent letters to Kiwi notifying the company of trademark infringement and violations of the Terms & Conditions; (b) Southwest has not granted Kiwi access or permission to publish Southwest's fare data; (c) Southwest has successfully pursued claims against other companies to cease similar unlawful conduct with respect to unauthorized use of the Southwest Marks and/or the Southwest Website. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435 (N.D. Tex. 2004). Southwest again demanded that Kiwi immediately cease and desist (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on the Kiwi.com website, through its mobile applications or elsewhere; and (3) using the Southwest Marks, including the "Heart" logo, in violation of U.S. trademark law.

68. For many months, between 2018 and 2020, several Southwest departments have dedicated company time and resources to investigate Kiwi's website and its unauthorized access of the Southwest Website. Even after this lawsuit was filed, Southwest's investigation related to Kiwi's unauthorized sale of Southwest flights has continued throughout 2021 and remains ongoing.

69. In late 2020, as Southwest tried to recover from the crippling effects of the COVID-19 pandemic, its leadership teams were flooded with complaints from its frontline employees (i.e., customer service and ground operations) about problems caused by Kiwi's unauthorized sales of Southwest flights. During the ensuing investigation, Southwest learned that Kiwi was cheating

customers on refunds, advertising disruptive “hidden city” flights that cause operational delays, and engaging in unfair and deceptive practices. Kiwi’s conduct violates the Southwest Website Terms & Conditions and federal law,¹⁷ and causes irreparable harm to Southwest’s business, reputation, and its brand.

70. The impact of Kiwi’s misconduct changed in late 2020, when Southwest leadership began receiving escalated reports from ground operations and customer service personnel about angry customers not receiving refunds and disruptive “hidden-city” flights. The reports in late 2020 had a common theme: they arose from bookings through Kiwi.com. Southwest’s ensuing investigation revealed that Kiwi was causing other problems like (i) fraudulent and deceptive advertisements; (ii) customer confusion; (iii) customer communication problems from Southwest not having customer contact information; (iv) flight delays and misrouted baggage due to “hidden city” flights where Kiwi misrepresents the travel itinerary when selling the ticket; and (v) strains on ground operations and customer service personnel.¹⁸

71. Kiwi’s activities are causing dilution of the quality of the famous Southwest Marks and other harm to Southwest, its business reputation, and goodwill for which Southwest has no adequate remedy at law.

72. Kiwi’s activities are likely to cause, and have caused, confusion. Kiwi’s conduct is misleading and deceiving to the public and is likely to lead (and has led) the public to wrongly

¹⁷ See 49 U.S.C. § 41712(a) (prohibiting any such “unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.”); 14 C.F.R. § 256.6 (allowing carriers to restrict sales of flights).

¹⁸ See [D.I. 19-1] at Ex. D, Obrenic Decl. ¶¶ 11-28 (App. 432-34); [D.I. 19-1] at Ex. D-2 to D-17, Recent Records of Problems with Kiwi Hidden City Fares (App. 449-93); [D.I. 33-3] at Ex. H, Shaw Decl. ¶¶ 3-18 (App. 578-583); [D.I. 33-5] at Ex. I, Hartsfield Decl. ¶¶ 2-6 (App. 645-46).

conclude that the goods and services offered by Kiwi originate with, are sponsored by, and/or are authorized by Southwest—all to the damage and harm to Southwest and the public.

F. Kiwi’s Promotion and Offering of Hidden City Flights Are Not Permitted by Southwest.

73. Southwest’s operational employees have reported that Southwest travelers that book through Kiwi.com are often traveling on “hidden city” fares which occurs when a passenger’s intended final destination is not the final arrival city on his or her itinerary, but rather an intermediate or connecting city. In its simplest form, a passenger purchases a ticket from City 1 to City 2 to City 3, but does not travel beyond City 2.

74. Kiwi’s website makes hidden city fares available on its website and also promotes a hidden city fare as one of its “Ultimate Travel Hacks.” This booking practice, however, is a violation of Southwest’s Contract of Carriage which details “Prohibited Booking Practices” within Section 2(a)(2) as prohibiting “[p]urchasing a Ticket without intending to fly all flights to gain lower fares (hidden cities).”¹⁹ By promoting prohibited forms of travel on Kiwi.com, Kiwi has induced breach of Southwest’s Terms & Conditions and/or Contract of Carriage.

75. The practice of hidden city flights is prohibited by most commercial airlines because of logistical, operational, and public safety concerns. The hidden city fares negatively impact Southwest’s operation because, for example, a flight crew or ground operations employee

¹⁹ Southwest provides notice of the Contract of Carriage throughout the purchase path, among other places on the Southwest Website, and also incorporates the Contract of Carriage as part of the Terms & Conditions that provide: “[i]n some instances both these Terms [& Conditions] and separate terms and conditions will apply, including . . . [being] subject to the terms & conditions contained in Southwest’s Contract of Carriage.” Kiwi’s website also contains terms and conditions explaining to Kiwi’s users in the “Service Agreement” (Article 2.1.2) that Kiwi’s services consist of “[b]rokerage of the Contract of Carriage between You [the Kiwi user] and the Selected Carrier.” Article 16 of Kiwi.com’s terms and conditions are labeled “Brokerage of the Contract of Carriage” and explains: “We [Kiwi] are responsible primarily for brokering the Contract of Carriage between You [Kiwi user] and a Selected Carrier.”

will attempt to locate a connecting passenger (or “through” passenger) for the final leg of the flight – yet that passenger has ended his or her trip in the connecting city. This practice negatively affects Southwest’s ability to estimate passenger headcounts which causes disruptions at the airport gate and also requires maintenance adjustments, such as variations in the amount of jet fuel needed for each flight. It also leads to flight delays and disruptions that can negatively impact the other passengers’ experience on the flight and, furthermore, causes disruption to Southwest’s flight schedule and harm to Southwest’s other customers.

76. Kiwi’s promotion of hidden city flights also causes irreparable harm to Southwest’s ability to obtain new customers. That is because when a passenger does not travel on the final leg of the trip, that passenger removes a seat that could have been sold to a prospective Southwest customer. That prospective Southwest customer may choose to travel on a different airline and, therefore, Southwest would also likely lose the sales revenue for ancillary services, such as EarlyBird Check-in, car rental deals, or hotel packages. Other disappointed customers may switch away from Southwest to another airline if Southwest’s flights are “full.”

G. Kiwi Continues to Hack API and Bypass Southwest’s Security Measures.

77. In October 2018, Southwest implemented a technology program to prevent and block certain automated bot traffic from accessing the Southwest Website (the “October 2018 Bot Block”), and one of the specific targets of this effort was to prevent and block Kiwi’s unauthorized traffic on the Southwest Website. This was successful for a while until Kiwi developed other hacks.

78. In March 2019, Southwest implemented a revised version of its technology program to prevent and block certain automated bot traffic on the Southwest Website and digital platforms (the “March 2019 Bot Block”), and one of the specific targets of this effort was to

prevent and block Kiwi's unauthorized traffic on the Southwest Website. This was successful for a while until Kiwi developed other hacks.

79. On January 17, 2020, Kiwi began using new methods to access the Southwest Website and digital platforms. Immediately after, on January 17, 2020, Southwest implemented a revised version of its technology program to prevent and block certain automated bot traffic on the Southwest Website and digital platforms (the "January 2020 Bot Block"), and one of the specific targets of this effort was to prevent and block Kiwi's unauthorized traffic on the Southwest Website and digital platforms. This was successful for a while until Kiwi developed other hacks.

80. Through the spring of 2020, Kiwi began using new methods to access the Southwest Website and digital platforms. On July 6, 2020, Southwest implemented a revised version of its technology program to prevent and block certain automated bot traffic on the Southwest Website and digital platforms (the "July 2020 Bot Block"), and one of the specific targets of this effort was to prevent and block Kiwi's unauthorized traffic on the Southwest Website and digital platforms. This was successful for a while until Kiwi developed other hacks.

81. In early February 2021, as Southwest's investigation continued and Southwest's technology department learned more about Kiwi's actions, Southwest implemented technical measures to identify and monitor Kiwi's automated access of the Southwest Website.

82. Before February 24, 2021, Southwest application logs and the automated bot protection product showed that Kiwi was using automated web-scraping script to access the "front end" of the Southwest Website and scrape data ("Front-End Scraping"). Kiwi's "bots" accessed the Southwest Website from the front end in the same way that an individual user does. The only difference was that instead of physically clicking a mouse through the searching and booking process (e.g., selecting the preferred flight and clicking purchase), the bots automated the process.

When the automated bot purchased a ticket, the bot sent a “request” to purchase the flight to Southwest’s HTML. The automated scripting still directly interacted with Southwest’s HTML. The automated request that the bot sent to the Southwest Website was the same as if an individual user had clicked “Purchase.”

83. On February 24, 2021, Southwest implemented a security measure that blocked Kiwi’s Front-End Scraping (the “February 2021 Bot Block”). This was successful for a few weeks until Kiwi developed other hacks.

84. Over the next few weeks, Southwest logs show that an individual user from Kiwi manually accessed and purchased tickets through the front end of the Southwest Website. Southwest determined the individual user(s) was from Kiwi because the transactions have specific Kiwi domain email addresses associated with them. Kiwi apparently used these transactions to study and reverse engineer hacks to the Southwest Website. When purchasing flights directly from the front end of Southwest.com, Kiwi’s web browser directly interacted with and sent requests to Southwest’s HTML as Kiwi proceeded through the booking process. Those transactions would have required Kiwi to manually click the “Purchase” button on the Southwest Website, and agreeing to the Terms & Conditions. During this time, Kiwi already was aware and on notice of the Terms & Conditions from the prior cease-and-desist notices and from the filing and service of this lawsuit.

85. Soon after the February 24th blocking measure, Kiwi began hacking Southwest’s API at <https://www.southwest.com/api/airbooking/v1/air-booking/page/air/booking/confirmation> with automated bots (referenced herein as “API Hacking”). After Kiwi determined how to bypass Southwest’s automated bot detection, it attacked Southwest’s API with automated scripts and continued to access, scrape, and republish Southwest data.

86. On April 5, 2021, Southwest implemented another measure to block Kiwi's API Hacking (the "April 5, 2021 Bot Block"). After implementing the April 5, 2021 Bot Block, Kiwi developed another hack to bypass Southwest's blocking technology.

87. On April 29, 2021, Southwest implemented another measure to block Kiwi's bot traffic and API Hacking (the "April 29, 2021 Bot Block").

88. Kiwi has claimed in discovery responses that, following the April 29, 2021 Bot Block, Kiwi began to access Southwest's Company Information, including fare and flight data, from a third-party GDS service, which Kiwi identified.

89. With each blocking measure Southwest implements, Kiwi continues to hack the Southwest Website by changing the way it architects its automated scripts to access, scrape, and republish data from the Southwest Website.

H. Kiwi Causes Third Parties to Breach Their Contractual Obligations to Southwest.

90. Southwest has written agreements with GDS companies, including the GDS that Kiwi identified as a source of Southwest's Company Information. Under those agreements, the GDS may not provide unauthorized OTAs (including Kiwi) with access, in any way, to Southwest's Company Information, including flight and fare data.

91. Upon investigation of Kiwi's unauthorized access of its Company Information, including flight and fare data, Southwest also identified an ARC agency that was listed on the ticket reservations. ARC travel agencies are also not authorized to share or distribute Southwest's Company Information, including its flight and fare data, to unauthorized agencies like Kiwi.

92. On information and belief, Kiwi knows that those agreements preclude Kiwi's access to Southwest's Company Information. By obtaining Southwest's Company Information in

this way, Kiwi is causing or inducing those third parties (including GDS companies and/or ARC agencies) to breach their contractual obligations to Southwest.

93. Kiwi's tortious interference is part of a scheme to market and sell Southwest flights at inflated prices and without authorization. This newly-discovered conduct continues to harm Southwest's customers, business, reputation, and its agreements with third parties.

V. CAUSES OF ACTION

A. COUNT ONE: Breach of Contract

94. Southwest repeats and realleges the allegations above as if fully set forth herein.

95. Use of the Southwest Website is governed by and subject to Southwest's Terms & Conditions.

96. At all relevant times, the main homepage for the Southwest Website and other web pages have provided a link to the Terms & Conditions and alert users that "Use of the Southwest websites and our Company Information constitutes acceptance of our Terms & Conditions." The Terms & Conditions constitutes a valid and enforceable agreement between Southwest and Kiwi.

97. Through direct correspondence as early as 2018 and continuing through December 2020, Southwest further provided Kiwi with further actual notice of the Terms & Conditions, including that Kiwi's use of Southwest fare and pricing information without Southwest's authorization violated the Terms & Conditions.

98. Further, for each purchase, Kiwi acknowledged and accepted the Southwest Website Terms & Conditions when purchasing the ticket.

99. Kiwi has regularly accessed the Southwest Website with knowledge of the Terms & Conditions and its prohibitions. Despite Kiwi's knowledge of the Terms & Conditions, Kiwi

continues to this day to access the Southwest Website to, among other things, copy, aggregate, display, distribute and/or make derivative use of the Southwest Website and its content.

100. Kiwi's actions breach the provisions of the Terms & Conditions by at least the following: (1) using the Southwest Website to copy, display, distribute, publish, re-post, reproduce, re-use, sell, transmit or use Southwest's Company Information to create a derivative work, namely the fare and pricing information on Kiwi.com; (2) using Southwest's Company Information on fare and pricing for its own commercial gain; (3) engaging in an activity in connection with Southwest's Company Information (among other things, charging change fees) that is fraudulent, unlawful, false or misleading; (4) harvesting information from the Southwest Website; and (5) using one or more automatic device(s), program(s), algorithm(s) or methodology(ies) to access, extract, and use information from the Southwest Website for, or in connection with, offering services through Kiwi.com.

101. Kiwi's continued breaches of the Terms & Conditions have damaged, and will continue to damage, Southwest.

B. COUNT TWO: Trademark Infringement under 15 U.S.C. § 1114

102. Southwest repeats and realleges the allegations above as if fully set forth herein.

103. The services for which Kiwi uses the Southwest Marks are identical and/or substantially similar to services offered by Southwest.

104. Kiwi's conduct—including its prominent use of Southwest's protected "Heart" mark in conjunction with promoting and re-selling Southwest's flights—has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Kiwi with Southwest, or as to the origin, sponsorship or approval of Kiwi's goods and services by Southwest.

105. The acts of Kiwi constitute infringement of one or more of the Southwest Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, as represented in U.S. Federal Registration Nos. 1,738,670; 3,129,737; 4,806,962; 4,768,717; 4,720,322; 4,723,791; 3,027,789 and 4,892,223.

106. Southwest has suffered and will continue to suffer irreparable harm as a result of Kiwi's infringement of the Southwest Marks.

107. Southwest is entitled to monetary damages for Kiwi's infringement.

108. Kiwi has acted with knowledge of Southwest's ownership of the Southwest Marks and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized by these marks. Kiwi has willfully infringed one or more of the Southwest Marks, and the intentional nature of Kiwi's actions makes this case exceptional under 15 U.S.C. § 1117(a).

109. Southwest has been, is now, and will be irreparably harmed by Kiwi's infringement and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Kiwi will continue to infringe the Southwest Marks.

C. COUNT THREE: False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125(a)

110. Southwest repeats and realleges the allegations above as if fully set forth herein.

111. Kiwi's conduct has and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Kiwi with Southwest, or as to the origin, sponsorship or approval of Kiwi's goods and services by Southwest. For example, consumers associate the "Heart" logo with Southwest, known for having "no change fees" (though fare differences may apply) and "no hidden fees;" yet customers purchasing Southwest flights through Kiwi are charged both.

112. The acts of Kiwi constitute false designation of origin which is likely to cause and have caused confusion in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

113. The intentional nature of Kiwi's actions entitles Southwest to recover profits, damages, costs, and attorney's fees under 15 U.S.C. § 1117(a).

114. Southwest has suffered and will continue to suffer irreparable harm as a result of such false designation of origin by Kiwi and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Kiwi will continue to misrepresent and mislead the public that its services are in some manner connected with, sponsored by, affiliated with, related to, or approved by Southwest.

D. COUNT FOUR: Dilution under 15 U.S.C. § 1125(c)

115. Southwest repeats and realleges the allegations above as if fully set forth herein.

116. Southwest is engaged in substantially exclusive use of the Southwest Marks.

117. The Southwest Marks are widely recognized by the consuming public of the United States to indicate Southwest as the source of services provided.

118. The Southwest Marks have achieved fame under the relevant provisions of Lanham Act.

119. Kiwi's infringing use of the Southwest Marks occurred after the Southwest Marks achieved such fame.

120. Kiwi has acted with knowledge of Southwest's ownership of the Southwest Marks and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized by these marks.

121. Kiwi's conduct has and is likely to dilute the value of one or more of the Southwest Marks. For example, consumers associate the "Heart" logo with Southwest, known for having "no

change fees” (though fare differences may apply) and “no hidden fees;” yet customers purchasing Southwest flights through Kiwi are charged both.

122. The acts of Kiwi constitute a dilution, including dilution by tarnishment, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

123. Kiwi’s intentional use of one or more of the Southwest Marks has caused the Southwest Marks to lose the distinctive quality associated with Southwest’s exclusive use of the Southwest Marks.

124. The acts of Kiwi have caused harm to the reputation of the Southwest Marks due to the deceptive, poor quality, and nature of the services and products provided by Kiwi.

125. The intentional nature of Kiwi’s actions entitles Southwest to recover profits, damages and costs, and attorney’s fees under 15 U.S.C. § 1117(a).

126. Southwest has suffered and will continue to suffer dilution of the Southwest Marks as a result of such actions by Kiwi and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Kiwi will continue to dilute the Southwest Marks.

E. COUNT FIVE: Computer Fraud and Abuse under 18 U.S.C. § 1030

127. Southwest repeats and realleges the allegations above as if fully set forth herein.

128. Southwest’s computers and servers are involved in interstate and foreign commerce and communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

129. Kiwi intentionally accessed Southwest’s protected computers or servers without authorization or in excess of authorization as defined by Southwest’s Terms & Conditions and thereby obtained information from Southwest’s protected computers or servers, including but not limited to Southwest’s fares and pricing, in violation of 18 U.S.C. § 1030(a)(2).

130. Kiwi knowingly and with an intent to defraud accessed Southwest's protected computers and servers without authorization or in excess of authorization, and by means of this access furthered the intended fraud and obtained valuable information from Southwest's computers and servers, including but not limited to Southwest's fares and pricing, to obtain something of value, in violation of 18 U.S.C. § 1030(a)(4).

131. Southwest has suffered damage and loss by reason of these violations, including, without limitation, harm to Southwest's content and programs, and expenses associated with being forced to investigate the unauthorized access and abuse of its computers and servers, with other losses and damage in an amount to be proven at trial, over \$5,000 aggregated over a one-year period.

132. In addition, Southwest has suffered and will continue to suffer irreparable harm and its remedy at law is not itself adequate to compensate it for injuries inflicted by Kiwi. Accordingly, Southwest is entitled to injunctive relief.

F. COUNT SIX: Texas Harmful Access by Computer Act

133. Southwest repeats and realleges the allegations above as if fully set forth herein.

134. Kiwi knowingly accessed Southwest's computers, computer network, and computer systems in violation of Southwest's Terms & Conditions.

135. Kiwi began hacking the Southwest API in early 2021.

136. Kiwi knowingly, and without Southwest's consent, accessed Southwest's computers, computer network, and computer systems in violation of Texas Penal Code § 33.02 and Texas Civil Practice & Remedies Code § 143.001.

137. Southwest, and its property, has been and will continue to be damaged as the result of Kiwi's violations.

138. Pursuant to Texas Civil Practice & Remedies Code § 143.001, Kiwi's knowing and intentional violation of Texas Penal Code § 33.02 makes Kiwi liable for its harmful access of Southwest's computers, computer network, or computer system.

139. Southwest is seeking relief for Kiwi's violations occurring within the statute of limitations.

140. Southwest has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Southwest is entitled to injunctive relief.

G. COUNT SEVEN: Unjust Enrichment Under Texas Common Law

141. Southwest repeats and realleges the allegations above as if fully set forth herein.

142. In the alternative, Kiwi has been unjustly enriched by taking undue advantage of Southwest's fare information. Kiwi has benefitted from the use of Southwest's proprietary information and makes a profit from offering Southwest flights through its website. Without authorization, Kiwi has taken undue advantage of Southwest's fare information for its own benefit in violation of the Lanham Act and federal and state computer fraud and access laws.

143. Southwest has been and continues to be injured by Kiwi's unlawful acts and is entitled to restitution and equitable damages under quasi-contract theories of recovery.

H. COUNT EIGHT: Tortious Interference With Contract

144. Southwest repeats and realleges the allegations above as if fully set forth herein.

145. Southwest has contracts with third parties, including the GDS company and ARC travel agency discussed herein, that allow those third parties to access Southwest flight and fare data for certain limited purposes but which prohibit those third parties from providing or allowing unauthorized agencies (such as Kiwi) to access Southwest's flight and fare data. Such contracts are subject to interference by Kiwi.

146. As detailed above, Kiwi's sale of hidden city fares induces violations of Southwest's Contract of Carriage with those passengers.

147. Kiwi is willfully, knowingly, and intentionally interfering with Southwest's contracts with those third parties, including GDS companies, ARC travel agencies, and possibly others (not yet disclosed by Kiwi), by obtaining Southwest flight and fare data from those third parties, thereby causing those third parties to breach their contractual obligations to Southwest and/or purposefully interfering with those third parties' ability to perform their contractual obligations and/or inducing those third parties to breach their contracts with Southwest.

148. Kiwi has carried out this tortious interference in furtherance of an unlawful scheme to market and sell Southwest flights at inflated prices without authorization.

149. Kiwi's conduct is unlawful, deceptive, misleading, and fraudulent as described more fully above.

150. Kiwi's conduct is harmful to Southwest's customers, business, and reputation, resulting in actual damages and losses proximately caused by Kiwi's conduct, as described more fully above.

151. Kiwi is liable to Southwest for damages and losses caused by its tortious interference.

152. Kiwi should be required to disgorge any profits derived from its tortious interference and unlawful scheme.

153. Kiwi should be required to pay Southwest punitive damages for its tortious interference.

VI. ATTORNEYS' FEES

154. Southwest repeats and realleges the allegations above as if fully set forth herein.

155. Southwest was required to retain the undersigned's services in the prosecution of this claim. Pursuant to at least Texas Civil Practice & Remedies Code §§ 38.001 and 143.002, Southwest seeks reasonable and necessary attorneys' fees.

VII. APPLICATION FOR INJUNCTIVE RELIEF

156. As set forth above, Kiwi's actions in violation of the Lanham Act and Texas law have caused, and are continuing to cause, substantial and irreparable damage to Southwest for which there is no adequate remedy at law. Kiwi has improperly used and will continue to improperly use the Southwest Marks unless this Court prevents it from doing so. Southwest will continue to lose control over its own reputation and goodwill, and the public and consumers likely will continue to be confused, misled, and deceived by the fact that Kiwi offers competing or related services under the Southwest Marks. Southwest has a substantial likelihood of success on the merits and is, therefore, entitled to an injunction preventing Kiwi's continued infringement, including an injunction against Kiwi's continued use of the Southwest Marks.

157. Southwest requests that Kiwi, all companies owned or controlled by any of them either directly or indirectly, their employees, representatives, agents, members, and others acting in concert with them, be preliminarily and permanently enjoined from: (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on any website, including Kiwi.com, through its mobile applications or elsewhere; (3) using the Southwest Marks, including the famous "Heart" logo, in violation of U.S. trademark law; and (4) accessing and using the Southwest Website and data in violation of Southwest's Terms & Conditions.

VIII. PRAYER FOR RELIEF

Southwest respectfully requests an order and/or judgment:

A. That the Defendants, their officers, members, managers, affiliates, agents, employees, servants, representatives, any entities owned or controlled by them, and all persons acting under or in concert with them, be preliminarily enjoined throughout the pendency of this lawsuit, and permanently enjoined thereafter, from: (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on the Kiwi.com website, through its mobile applications or elsewhere; (3) use of the Southwest Marks, including its famous "Heart" logo, in violation of U.S. trademark law; and (4) accessing and using the Southwest Website and data in violation of Southwest's Terms & Conditions;

B. That the Defendants be enjoined from using the Southwest Marks, or any other mark, word or name confusingly similar to or including those marks, in the ordinary course of business;

C. That the Defendants be required to account for and pay to Southwest all profits and benefits they derived as a result of the activities complained of herein;

D. That the Defendants be required to pay to Southwest actual, consequential, and compensatory damages sustained as a result of the activities complained of herein;

E. That the Defendants be required to pay increased damages due to their willful infringement;

F. That the Defendants be required to pay pre-judgment and post-judgment interest at the highest rates allowed by law;

G. That the Defendants be required to pay costs and attorneys' fees; and

H. For such other and further relief as this Court deems just and proper.

Dated: September 21, 2021

Respectfully submitted,

By: /s/ Michael C. Wilson

Michael C. Wilson

Texas State Bar No. 21704590

mwilson@munckwilson.com

S. Wallace Dunwoody

Texas Bar. No. 24040838

wdunwoody@munckwilson.com

Amanda K. Greenspon

Florida Bar No. 1014584

AGreenspon@munckwilson.com

Julie M. Christensen

Texas State Bar No. 24105601

jchristensen@munckwilson.com

MUNCK WILSON MANDALA, LLP

12770 Coit Road, Suite 600

Dallas, Texas 75251

Telephone: (972) 628-3600

**ATTORNEYS FOR PLAINTIFF
SOUTHWEST AIRLINES CO.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served to all counsel of record by ECF filing on September 21, 2021.

/s/ Michael C. Wilson

Michael C. Wilson

901622

EXHIBIT A

Terms & Conditions

Last modified: April 4, 2017

These Terms & Conditions ("Terms") set forth a legally binding agreement between you and Southwest Airlines Co. ("Southwest," "we," or "us"), and govern your use of and access to www.southwest.com, www.swabiz.com, and any other websites, mobile and other applications, or services that post a link to these Terms (each individually a "Site" and collectively, the "Sites") and the information, features, content, and services that we own, control, or make available through the Sites (collectively, with the Sites, the "Service") whether as a guest or a registered user.

By using the Service or by clicking accept or agree to these Terms when this option is made available to you, you accept these Terms and the Service's [Privacy Policy](#), and consent to the collection and use of your data in accordance with the [Privacy Policy](#). The Terms may be revised and updated by us from time to time without notice to you. All changes are effective immediately when we post them. Your continued use of the Sites is your acceptance of the revised and updated Terms. You can review the most current version of the Terms & Conditions agreement at any time at <http://www.southwest.com/html/about-southwest/terms-and-conditions/index.html>. If you do not agree to any of these Terms, please do not use or access our Service.

In some instances, both these Terms and separate terms and conditions will apply, including without limitation, transportation of passengers, baggage, and cargo by Southwest Airlines® and its affiliates is subject to the terms & conditions contained in Southwest's [Contract of Carriage](#) terms and conditions printed on or in a ticket jacket or an e-Ticket receipt, in any published schedule, or any other separate terms (collectively "Additional Terms"). By using the Service, purchasing a ticket, or accepting transportation, you agree to be bound by such Additional Terms. To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless they expressly state otherwise.

The Service is offered and available to individuals who are 13 years of age or older. By using the Service, you represent and warrant that you are 13 years of age or older. If you do not meet this requirement, you must not access or use the Service and should not send any information about yourself to us through the Service.

Ownership of Company Information

Information and materials concerning Southwest and its products and services, and similar items from our licensors and other third parties, including flight schedules, routes, fares, text, graphics, button icons, layout, databases, articles, posts, text, data, files, images, scripts, designs, instructions, illustrations, photographs, sounds, pictures, advertising copy, URLs, technology, software, interactive features, the "look and feel" of the Sites, audio and video clips, digital downloads, data compilations (including customer and Rapid Rewards® information), the compilation, assembly, and arrangement of the materials of the Sites, all copyrightable materials, trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Southwest and other forms of intellectual property, and information regarding the status of Southwest flights, etc. is referred to as "Company Information." All right, title, and interest in and to the Service and the Company Information is the property of Southwest or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Southwest owns all copyrights, trademarks, service marks, and trade names related to our Company Information. All Company Information is proprietary to Southwest Airlines.

Subject to your strict compliance with these Terms and the Additional Terms, Southwest grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download, display, view, use, play the Company Information on a personal computer, browser, laptop, tablet, mobile phone or other Internet-enabled device (each, a "Device") and/or print one copy of the Company Information as it is displayed to you, in each case for your personal, non-commercial use only.

All rights not expressly granted to you are reserved by Southwest and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. *Any unauthorized use of any Confidential Information or the Service for any purpose is prohibited.*

Accessing the Service

We reserve the right to withdraw or amend the Service, and any service or material we provide on the Service, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Service is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Service, or the entire Service, to you.

You are responsible for:

- Making all arrangements necessary for you to have access to the Service.
- Ensuring that all persons who access the Service through your internet connection are aware of these Terms and comply with them.
- Ensuring that using our Services on mobile devices does not distract you or prevent you from obeying traffic or safety laws.

To access the Service or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Service that all the information you provide on the Service is correct, current and complete. You agree that all information you provide to register with this Service or otherwise, including but not limited to through the use of any interactive features on the Service, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our [Privacy Policy](#).

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Service or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. Similarly, you are responsible for protecting your confirmation codes, e-ticket numbers, and other record locators from unauthorized users.

Southwest may immediately suspend or terminate the availability of the Service and Company Information, in whole or in part, to any individual, group, or everyone, for any reason, in Southwest's sole discretion, and without advance notice or liability. Upon suspension or termination of your access to the Service, or upon notice from Southwest, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination, will survive.

Southwest, and its service providers are not liable for information that is inaccurate due to technical defects in software used on the Sites or service providers websites, whether induced by their respective systems or by software provided by third parties.

Restrictions and Prohibited Activities

You agree that you will not:

- (i) copy, display, distribute, download, license, modify, publish, re-post, reproduce, reuse, sell, transmit, or use the Service or Company Information to create a derivative work
- (ii) use the Service or Company Information for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;
- (iii) use the Service or Company Information for any political purpose;
- (iv) engage in any activity in connection with the Service or Company Information that is libelous, slanderous, defamatory, fraudulent, unlawful, false or misleading, harmful, tortious, vulgar, invasive of another's privacy, sexually explicit, offensive, obscene, profane, violent, threatening, harassing, abusive, hateful, or otherwise inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
- (v) harvest any information from the Service;
- (vi) copy, derive, edit, translate, decompile, reverse engineer, modify, use, or reproduced any code or source relating to the Service including without limitation, any service or product Southwest offers.;
- (vii) modify, re-render, frame, mirror, truncate, add to, inject, filter or change the order of the information contained on any page of the Service, including, without limitation, by any way of reproducing any web pages or Company Information on any other website without our express written permission;
- (viii) interfere with the proper operation of or any security measure used by the Service;
- (ix) infringe any intellectual property or other right of any third party;
- (x) use the Company Information in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you;
- (xi) use a false email address or other identifying information, impersonate or misrepresent any person or entity, or your affiliation with any person or entity, or misrepresent, mislead, or omit as to the origin or source of any material
- (xii) use the Service or any Company Information to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;
- (xiii) cause to appear any pop-up, pop-under, exit windows, expanding buttons, banners advertisement, or anything else which minimizes, covers, or otherwise inhibits the full display of the Service;
- (xiv) use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information;
- (xv) use the Service in any way which depletes web infrastructural resources, slows the transferring or loading of any web page, or interferes with the normal operation of the Sites;
- (xvi) upload or transmit to the Service any device, software, program, or file that may damage the operation of any computer or the Service, including without limitation, viruses or corrupt files;
- (xvii) disguise the origin of information transmitted to, from, or through the Service;
- (xviii) circumvent any measures implemented by Southwest aimed at preventing violations of the Terms. You may not violate the restrictions in any robot exclusion header; or
- (xix) otherwise violate these Terms or any applicable Additional Terms.

You also agree you will not use the Service for or in connection with offering any third party product or service not authorized or approved by Southwest. For example, online check-in service providers may not use Southwest web pages to check-in customers online or attempt to obtain for them a boarding pass in any certain boarding group.

When you use the Service or Company Information for an authorized purpose, you must include all proprietary notices without changing, hiding or deleting them.

You may not engage in any conduct that is, or that Southwest deems to be, in violation of the Terms.

Your Privacy

The Service may allow you to submit content to us via the Service, or by means other than the Service (such as via our social media pages), including, but not limited to hotel reviews, ratings, photos, video, music, questions, suggestions, ideas, postings, feedback, biographic information, your appearance, audio tapes, digital files, images, performances, and comments ("Submissions"). All Submissions must be posted by someone 13 years of age or older. Terms related to your Submissions are available in our [User Content and Conduct Policy](#). You agree that your Submissions will comply with our [User Content and Conduct Policy](#).

License to Your Content

You grant Southwest and its affiliates, subsidiaries, agents, licensees, successors, and assigns a nonexclusive, unrestricted, unconditional, unlimited, worldwide, royalty-free, assignable, fully paid-up, perpetual, transferable, irrevocable and fully sublicensable right to (a) use, host, store, copy, record, reproduce, edit, enhance, improve, modify, adapt, translate, create derivative works of the Submissions, in whole or in part, alone or in any manner and matter or in combination with any other material, in any format or media, whether now existing or hereafter devised, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video, audio, and all formats of computer readable electronic, magnetic, digital, laser, or optical based media, and to advertise, market, and promote the Submissions, (b) publicly display, publicly perform, distribute (directly or indirectly), disclose, transmit, publish, or broadcast the Submissions throughout the world in any media, now known or hereafter devised, and with any technology or devices now known or hereafter developed; and (c) use the screen name, your name, voice, likeness, and biographic information, whether in original or modified form, that you submit in connection with a Submission. You also irrevocably consent to our use and association of your name in connection with your Submissions and derivatives thereof. You agree to waive any moral rights that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future intellectual property rights relating to your Submissions. If you submit feedback or suggestions about our Service, we may use your feedback or suggestions without obligation to you.

You further grant Southwest the right to pursue at law any person or entity that violates your or Southwest's rights in the Submissions by a breach of these Terms. You acknowledge and agree that Submissions are not confidential.

You are fully responsible for the content of your Submissions. We take no responsibility and assume no liability for any Submissions posted or submitted.

Intellectual Property Rights

Southwest respects the intellectual property of others, and expects those who use the Service to do the same. It is our policy, in appropriate circumstances and at our discretion, to disable and/or terminate the accounts of individuals who may infringe or repeatedly infringe the copyrights or other intellectual property rights of Southwest and/or others.

Southwest's policies with respect to claims by third parties that the content of the Service, including the content of any Submissions, infringes the copyrights owned by said third parties can be found in our [Copyright Complaint Policy](#).

Contacting Southwest Airlines

For information on how to contact Southwest Airlines visit our [Contact Us](#) page.

Third-Party Content and websites; Advertisements

The Service may contain or may interact with third party content that is not owned, controlled or operated by Southwest (collectively, "Third-Party Services"). We may also host our content on Third-Party Services. Southwest neither endorses nor controls such Third-Party Services, AND YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT RESPONSIBLE OR LIABLE FOR THE INFORMATION, CONTENT, PRODUCTS, OR SERVICES ON OR AVAILABLE FROM SUCH THIRD-PARTY SERVICES, OR FOR THE RESULTS TO BE OBTAINED FROM USING THEM. If you choose to access any such Third Party Services, you do so at your own risk. If you navigate away from the Service by clicking on an unaffiliated website link, you do so at your own risk and you should be aware that these Terms no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Service or relating to any applications you use or install from another website.

Dealings with Third Parties

Any interactions, transactions, and other dealings that you have with any third parties found on or through the Service are solely between you and the third party. YOU HEREBY AGREE TO INDEMNIFY SOUTHWEST AGAINST ALL CLAIMS, INJURY AND/OR DAMAGES INCLUDING ATTORNEYS' FEES THAT ARISE OUT OF YOUR USE OF ANY THIRD-PARTY SERVICE, INCLUDING FROM ANY MATERIAL THAT YOU POST ON ANY FORUM OR SOCIAL NETWORKING WEBSITE IN CONNECTION WITH US AND/OR ANY OTHER CLAIM RELATED TO YOUR USE OF SOCIAL MEDIA.

Wireless Features and Communications

The Service may offer features that are available to you via your wireless Device including the ability to access the Service's features, upload content to the Service, and receive messages from the Service (including email notifications) (collectively, "Wireless Features"). By using the Service, you agree that Southwest may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Service. You agree that as to the Wireless Features for which you are registered for, we may send communications via such features or apps to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Service for Wireless Features, then you agree to notify Southwest of any changes to your wireless contact information (including phone number) and update your accounts on the Service to reflect the changes. If the Service includes push notifications or other mobile communication capability, you hereby approve our delivery of electronic communications directly to your mobile Device. These notifications, including badge, alert or pop-up messages, may be delivered to your Device even when it is running in the background. You may have the ability, and it is your responsibility, to control the notifications you do, or do not, receive via your Device through your Device settings. Standard message, data and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. Contact your carrier with questions regarding these issues.

Location-Based Features

If you have enabled GPS, geo-location or other location-based features on any Southwest mobile app(s) or feature(s), you acknowledge that your Device location will be tracked and may be shared with others consistent with the [Privacy Policy](#). Some mobile app(s) or feature(s) allow for you to disable location-based features or manage preferences related to them. You can also uninstall any Southwest mobile app(s). The location-based services offered in connection with our mobile app(s) or feature(s) are for individual use only and should not be used or relied on as an emergency locator system, used while driving or operating vehicles, or used in connection with any hazardous environments requiring fail-safe performance, or any other situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or severe physical or property damage. Location-based/geo-location services are used at your own risk and location data may not be accurate.

Forum Selection

These Terms and the relationship between you and Southwest shall be governed by the laws of the State of Texas without regard to any conflict of law provisions. You agree to the personal and exclusive jurisdiction of the courts located within Dallas, TX. You hereby consent to the exclusive jurisdiction and venue of the State and Federal courts in Dallas, Texas in all disputes. You agree and understand that you will not bring against the Southwest Parties any class action lawsuit related to your access to, dealings with, or use of the Service.

Disclaimer of Representations and Warranties

THE SERVICE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS. NEITHER SOUTHWEST OR ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "SOUTHWEST PARTIES") MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE INFORMATION, CONTENT OR OTHER SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL. BY ACCESSING OR USING THE SERVICES YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

SOUTHWEST HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Limitations of Our Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE SOUTHWEST PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN CONNECTION WITH (A) THE SERVICE, (B) THESE TERMS, (C) YOUR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE, OR (D) A THIRD PARTY'S UNAUTHORIZED ACCESS TO YOUR INFORMATION, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR SOUTHWEST HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE SOUTHWEST PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR YOUR USE OF THE SERVICES EXCEED THE GREATER OF (A) THE AMOUNTS, IF ANY, PAID BY YOU TO SOUTHWEST FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR (B) FIFTY UNITED STATES DOLLARS (\$50 00). THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Waiver of Injunctive or Other Equitable Relief

YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY SITE, WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY SOUTHWEST OR A LICENSOR OF SOUTHWEST.

Limited Time to Bring Your Claim

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Service must be filed within one (1) year after such claim or cause of action arose or be forever banned.

Business uses of our Service

IF YOU ARE USING THE SERVICE ON BEHALF OF A BUSINESS, THAT BUSINESS ACCEPTS THESE TERMS. THE BUSINESS WILL HOLD HARMLESS AND INDEMNIFY THE SOUTHWEST PARTIES FROM ANY CLAIM, SUIT OR ACTION ARISING FROM OR RELATED TO THE USE OF THE SERVICE OR VIOLATION OF THESE TERMS, INCLUDING ANY LIABILITY OR EXPENSE ARISING FROM CLAIMS, LOSSES, DAMAGES, SUITS, JUDGMENTS, LITIGATION COSTS AND ATTORNEYS' FEES.

Purchases & Forms of Payment

Purchases through the Services may be made via the forms of payment on our Purchasing and [Refunds](#) page or any applicable Additional Terms.

You agree that (i) any transactions carried out through the Sites will be deemed to take place in the State of Texas, United States of America, regardless of the jurisdiction where you may be located or reside, and (ii) any payment in connection with such transactions will only be accepted in US dollars. You further agree and acknowledge that any advertising, promotional or marketing information that

may be contained in any communications that you may receive as a result of your use of the Sites is only intended to have effect and will only be applicable in the United States of America.

Additional Information

For additional information and to learn more about Southwest Airlines, please visit our [Customer Service Commitment](#) or [Contract of Carriage](#) pages on southwest.com.

Patents

Some technologies, components, or progresses of the Service may be covered by Southwest Airlines Co. patents pending. In addition, some components or processes referenced in the Sites may be subject to one or more U.S. Patent Numbers 7,394,900; 7,707,056; 7,734,493; 7,860,740; 7,848,944; 8,041,036; 8,050,936; 8,452,607; 8,504,402; 8,700,438; 8,788,303; D597,752; D615,779; D618,000; D618,473 along with all corresponding foreign counterparts.

Consent or Approval

No Southwest consent or approval may be deemed to have been granted by Southwest without being in writing and signed by an officer of Southwest.

Indemnity

You agree to defend, indemnify and hold harmless the Southwest Parties from and against any and all claims, liabilities, damages, losses, costs and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your use of the Service; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property or privacy right; or (vi) any misrepresentation made by you. Southwest reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with Southwest's defense of any claim. You will not in any event settle any claim without the prior written consent of Southwest.

Severability; Interpretation; Assignment

If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. Southwest may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Southwest.

Investigations; Cooperation with Law Enforcement

Southwest reserves the right to investigate and prosecute any suspected breaches of these Terms or the Service. Southwest may disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

Complete Agreement; No Waiver

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Southwest in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

Need help?

Contact Us

[Customer Service](#) [FAQ](#)

Subscribe

Click 'N Save

Save big on travel each week. [Sign up](#)

Connect with us



[Discussion Forum and Stories](#)



[Mobile App](#)

About Southwest

- [What's New](#)
- [Press Room](#)
- [Investor Relations](#)
- [Southwest Citizenship](#)
- [Southwest.fm](#)
- [Southwest® The Magazine](#)
- [Supplier Information](#)
- [Careers](#)

Flying Southwest


- [Why Fly Southwest?](#)
- [Rapid Rewards®](#)
- [International Travel](#)
- [Airport Information](#)
- [737 Max Resource Page](#)
- [Popular Routes](#)
- [Tarmac Delay Plan](#)
- [Contract of Carriage](#)
- [Flight Schedules](#)

Southwest Products

- [Southwest Fares](#)
- [EarlyBird Check-in®](#)
- [Business Select®](#)
- [Upgraded Boarding](#)
- [Southwest® gift card](#)
- [Hotels](#)
- [Southwest Vacations](#)
- [Southwest Airlines® Experiences](#)
- [WiFi & Inflight Entertainment](#)
- [Southwest Business](#)
- [Groups](#)
- [Charter Services](#)
- [Southwest® The Store](#)
- [Rapid Rewards® Credit Card](#)

Customer Service

- [FAQ](#)
- [Sitemap](#)
- [Customer Commitments](#)
- [Baggage Policies](#)
- [Special Assistance](#)
- [Customers of Size](#)
- [Traveling with Infants](#)
- [Traveling with Pets](#)
- [Purchasing & Refunds](#)
- [Lost and Found](#)
- [Inflight Beverage Receipts](#)

 Indicates external site which may or may not meet accessibility guidelines

© 2020 Southwest Airlines Co. All Rights Reserved. Use of the Southwest websites and our Company Information constitutes acceptance of our [Terms and Conditions](#), [Privacy Policy](#) [Do Not Sell My Personal Information](#)

EXHIBIT B

From: [James Sheppard](mailto:James.Sheppard)
To: david.liskutin@gmail.com
Cc: info@kiwi.com; pr@kiwi.com
Subject: Third Cease and Desist (Southwest Airlines)
Date: Wednesday, August 28, 2019 10:08:00 PM
Attachments: [image003.png](#)
[image002.jpg](#)
[image004.png](#)

David,

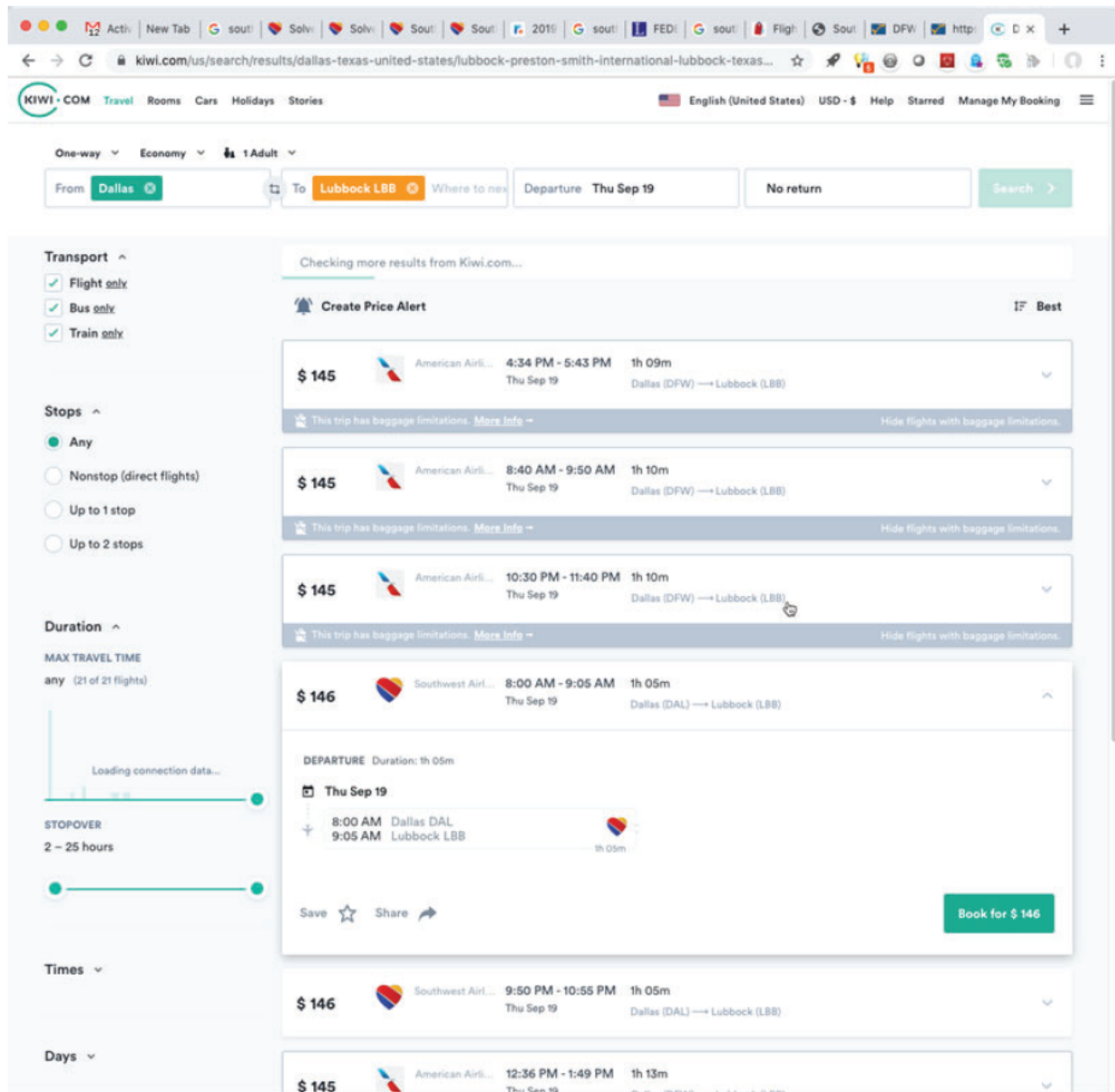
I am a Senior Attorney in the General Counsel Department at Southwest Airlines. I understand that you are the Chief Legal Officer of Kiwi.com. We have previously sent cease and desist letters to your company (see below). We continue to see that your company, Kiwi.com, that is advertising and selling Southwest's fares on its website. By selling Southwest fares (with our trademarked logos) on your Kiwi.com website, this gives rise to (1) trademark infringement claims and (2) a violation of the terms and conditions of Southwest's website (the "Southwest Terms").

In addition, by posting Southwest fare and price information, Kiwi.com has also violated the Southwest Terms. Because Southwest has not granted Kiwi.com with access or permission to publish its flight or fare data, there are numerous violations of the Southwest Terms that include: (1) using the Southwest Website for or in connection with offering any third-party product or service; and/or (2) using automated tools or robots to obtain fare or pricing information from the Southwest Website.

Southwest has successfully forced other companies, whether foreign or domestic, to cease similar unlawful conduct with respect to unauthorized use of the Southwest Registrations and/or the Southwest Website. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004).

Southwest repeats its prior demand that Kiwi.com immediately cease and desist from (1) extracting Southwest's flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on the Kiwi.com website, through its mobile applications or elsewhere; and (3) use of Southwest Registrations, including our famous "Heart" logo, in violation of U.S. copyright law.

Within seven (7) days of receipt of this e-mail, please confirm by written correspondence that you will immediately cease and desist, and will otherwise fully comply with the demands made herein. Please let me know if you have any questions and kindly direct any future communications regarding this matter to my attention.



From: James Sheppard <James.Sheppard@wnco.com>
Sent: Monday, September 17, 2018 10:52 PM
To: info@kiwi.com
Cc: pr@kiwi.com
Subject: Second Cease and Desist (Southwest Airlines)

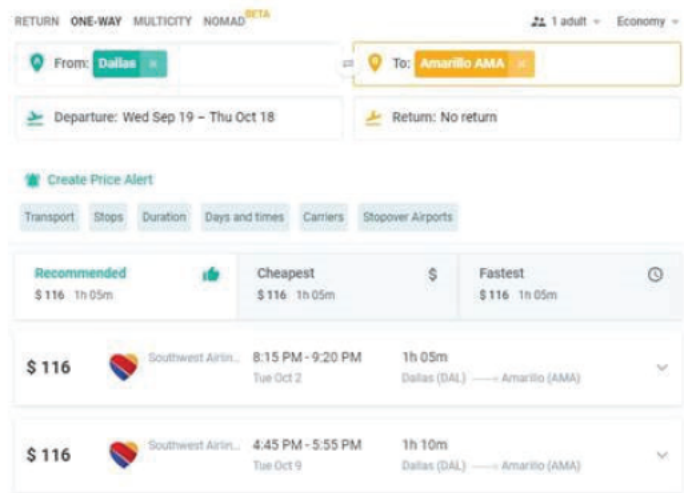
To Whom It May Concern:

I am a Senior Attorney in the General Counsel Department at Southwest Airlines Co. ("Southwest"). This is our second cease and desist notice to your company, Kiwi.com, that is advertising and selling Southwest's fares on its website. By selling Southwest fares (with our trademarked logos) on your Kiwi.com website, this gives rise to (1) trademark infringement claims and (2) a violation of the terms and conditions of Southwest's website (the "Southwest Terms")

This is our second cease and desist letter requesting that Kiwi.com (or related websites, such as Skypickers.com) stop the use of our trademark images and display of our fares in violation of the Southwest Terms.

As you know, Southwest is the owner of numerous federal trademark registrations, including our famous "Heart" logo, each of which cover either transportation services by air or travel agency services by computer in connection with air

transportation services (the “Southwest Registrations”). The Southwest Registrations, including our famous “Heart” logo, provide Southwest with the exclusive right to use the exclusive marks, along with the right to exclude third parties – such as Kiwi.com – from unauthorized use of the marks. Here, as shown below, the Kiwi.com website is using Southwest’s name, trademarks, and copyrighted “Heart” logo on its website:



It is clear, then, that Kiwi.com’s unauthorized use of our famous “Heart” logo is a willful infringement of the Southwest Registrations and violation of U.S. copyright laws. Because Kiwi.com has used our famous “Heart” logo in violation of Southwest’s intellectual property rights, this letter demands that Kiwi.com (and any related companies or contractors) immediately cease and desist from all further unauthorized use of the Southwest Registrations

In addition, by posting Southwest fare and price information, Kiwi.com has also violated the Southwest Terms. Because Southwest has not granted Kiwi.com with access or permission to publish its flight or fare data, there are numerous violations of the Southwest Terms that include: (1) using the Southwest Website for or in connection with offering any third-party product or service; and/or (2) using automated tools or robots to obtain fare or pricing information from the Southwest Website.

Southwest has successfully forced other companies, whether foreign or domestic, to cease similar unlawful conduct with respect to unauthorized use of the Southwest Registrations and/or the Southwest Website. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004).

Southwest repeats its prior demand that Kiwi.com immediately cease and desist from (1) extracting Southwest’s flight and fare information from the Southwest Website and its proprietary servers or websites; (2) publishing Southwest fare information on the Kiwi.com website, through its mobile applications or elsewhere; and (3) use of Southwest Registrations, including our famous “Heart” logo, in violation of U.S. copyright law.

Within seven (7) days of receipt of this e-mail, please confirm by written correspondence that you will immediately cease and desist, and will otherwise fully comply with the demands made herein. Please let me know if you have any questions and kindly direct any future communications regarding this matter to my attention.

James Sheppard
Senior Attorney – General Counsel Department
 2702 Love Field Drive, HDQ-4GC
 Dallas, Texas 75235-1611
 (214) 792-5354
James.Sheppard@wnco.com



EXHIBIT C

Southwest Airlines Co.
James Sheppard
Legal Department – Senior Attorney
2702 Love Field Drive
Dallas, TX 75235
James.Sheppard@wnco.com



December 11, 2020

VIA CMRR (7020-1290-0001-8229-4045)

Kiwi.com, Inc.
c/o its Registered Agent
Northwest St Registered Agent Service, Inc.
8 The Green, Suite B
Dover, Delaware 19901

Re: Cease & Desist Letter Regarding Kiwi.com’s Trademark Infringement Unauthorized Website Scraping of Southwest Airlines’s Website

To Whom it May Concern:

This is a letter demanding that Kiwi.com, Inc. (“Kiwi.com”) immediately cease and desist from its unauthorized web scraping of Southwest.com, numerous violations of the Terms and Conditions of Southwest.com (“Southwest Terms”), and its trademark infringement of Southwest’s Heart logo. As you may know, Southwest’s Legal Department previously sent a series of cease and desist letters to Kiwi.com regarding this unauthorized activity, yet Kiwi.com has failed to comply with our demands. We understand that General Atlantic (or its affiliate entity) recently invested in Kiwi.com and want to provide notice to that group, as well, to encourage compliance and before Southwest takes further legal action.

There Is No Dispute Kiwi.com Has Improperly Accessed Southwest.com in Order to Sell More than 140,000 Southwest Flights in the Past Two Years

As explained in our prior cease and desist letters, Southwest prohibits websites like Kiwi.com from selling its fares or displaying its trademark logos. There is no dispute that Kiwi.com is violating the Southwest Terms by scraping Southwest.com (“Southwest Website”) and selling tickets because, earlier this year, a Kiwi.com account manager sent a “Monthly Report”¹ to Southwest showing that Kiwi.com sold more than 109,000 Southwest flights in 2019 and over 38,000 flights in the first half of 2020.

The Kiwi.com website also shows that it is improperly displaying Southwest’s fares and our trademark logos in order to induce these sales.

¹ This monthly report is attached as **Exhibit A**.

Southwest has an unique distribution model in the United States where it maintains the exclusive distribution rights to sell Southwest flights to the general public through the Southwest.com website. Put differently, Southwest has never authorized any third-party website (or online travel agencies, such as Kiwi.com) to display or sell its fares.

The Southwest Terms Expressly Prohibit Kiwi.com’s Improper Scraping of the Southwest Website and Related Sale of Southwest Flights

As we explained in our prior letters to Kiwi.com, the Southwest Terms explain that by accessing Southwest.com, users agree to be legally bound by and act in accordance with the Southwest Terms.² Because Southwest is the exclusive online distribution channel for its airline flights to the general public, the Southwest Terms expressly prohibit the following list of “Restricted Activities” on our site:

- “[Y]ou will not use the [Southwest Website] for or in connection with offering any third party product or service not authorized or approved by Southwest;”
- Southwest prohibits the use of the Southwest Website “for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;”
- Users shall not “harvest any information from the [Southwest Website].”
- Southwest does not permit scraping of the Southwest Website and specifically explains in the Southwest Terms that it prohibits the “use [of]

² A full copy of the Southwest Terms are attached as **Exhibit B**.

any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information;”

Kiwi.com cannot claim ignorance of the Southwest Terms, the fact that Southwest does not allow scraping of the Southwest Website, or that Kiwi.com has no authorization to access the Southwest Website. This is because our prior letters demanded that Kiwi.com cease and desist such scraping activities and provided copies of the Southwest Terms, as well.³ More recently in July 2020, a Kiwi.com manager (whose title is “Business Development Manager – Americas”) contacted Southwest business leadership to “explore further cooperation” and attached a sales report showing Southwest ticket sales on Kiwi.com. In response, Southwest (yet again) explained to Kiwi.com in a telephone call that it prohibited scraping of the Southwest Website and also did not approve use of its registered trademarks.


In sum, because Southwest has never granted Kiwi.com with access or permission to publish its flight or fare data, there are numerous violations of the Southwest Terms that include: (1) using the Southwest Website for or in connection with offering any third-party product or service; and/or (2) using automated tools or robots to obtain fare or pricing information from the Southwest Website. Further, in addition to Kiwi.com’s breach of the Southwest Terms, its continued unauthorized access of the Southwest Website also gives rise to claims for violations of computer access statutes under federal law, 18 U.S.C. § 1030, and Texas state law, Tex. Pen. Code § 33.02. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435 (N.D. Tex. 2004).

Kiwi.com is also Knowingly Committing Trademark Infringement by its Continued Display of Southwest’s Famous “Heart” Logo.

Despite repeated requests, Kiwi.com has refused to cease its infringing and harmful misuse of Southwest’s registered trademarks. As explained before, Southwest is the owner of number federal registered trademark registrations that include, by way of example, some of the following:

Trademark	Date	Services	No.
SOUTHWEST AIRLINES	Registered: Dec. 8, 1992	(Int’l Class: 39)	Reg. No.: 1,738,670

³ *See, e.g.*, (1) August 2018 letter from Southwest Legal to Kiwi; (2) September 2018 letter from Southwest Legal to Kiwi; and (3) August 2019 letter from Southwest Legal to Kiwi.

Trademark	Date	Services	No.
		transportation services; namely, transportation of cargo and passengers by air	
SOUTHWEST	Registered: Aug. 15, 2006	(Int'l Class: 39) Transportation of passengers and/or goods by air	Reg. No.: 3,129,737
	Registered September 8, 2015 Int'l Class: 35 First Use: September 8, 2014 Filed: October 1, 2014	(Int'l Class: 35) providing electronic on-line information services, namely, the provision of advertisements and business information in respect of travel, tourism and entertainment through a computer database; advertising services and promotion services by data communications for service providers in the travel industry; on-line direct electronic marketing services and advertising services for service providers in the travel industry; providing online information to others, namely, advertisements and solicitations	Reg. No.: 4,806,962

Along with the registered trademark for the “Heart” logo mentioned above, Southwest has additional registered trademarks for its “Heart” logo in the context of printed matters, making reservations and booking air transportation, software for delivery of travel information, providing information about air travel via the internet, and ticket reservation and booking services (collectively with the chart above, the “Southwest Marks”).⁴ The Southwest Marks provide Southwest with the exclusive right to use the registered marks in connection with air transportation and other travel services, as well as the right to exclude third parties from unauthorized use of the marks.

As shown in the Kiwi.com screen shot shown above on page 2, along with examples in our prior letters, Kiwi’s display of the “Heart” logo is an infringing use of Southwest’s famous “Heart” trademark, as well as the “Southwest Airlines” mark. It is clear, then, that Kiwi.com’s unauthorized use of our famous “Heart” logo is a willful infringement of the Southwest

⁴ This list includes U.S. Federal Registration Nos. 4,768,717; 4,720,322; 4,723,791; 4,723,789; 4,892,223.

Registrations and violation of trademark laws. Because Kiwi.com has used our famous “Heart” logo in violation of Southwest’s intellectual property rights, this letter further demands that Kiwi.com (and any related companies or contractors) immediately cease and desist from all further unauthorized use of the Southwest Marks.

Kiwi Can Confirm its Compliance or Face Further Legal Action

If Kiwi.com continues its non-compliance with Southwest’s demands in this letter, it is important to explain that Southwest has a long history of successful litigation in Texas federal court that ended websites’ similar unlawful conduct with respect to violations of the Southwest Terms, unauthorized access of the Southwest Website, and infringement of the Southwest Marks. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435 (N.D. Tex. 2004); *Southwest Airlines Co. v. QL2 Software Inc.*, Case No. 3:05-CV-1558 (N.D. Tex.); *Southwest Airlines Co. v. BoardFirst, L.L.C.*, Case No. 3:06-CV-0891, 2007 WL 4823761 (N.D. Tex. Sept. 2007); *Southwest Airlines Co. v. Checkinsooner.com, LLC*, Case No. 3:10-CV-01512 (N.D. Tex.); *Southwest Airlines Co. v. Infare Solutions A/S*, Case No. 3:10-CV-01674 (N.D. Tex.); *Southwest Airlines Co. v. SW Software Development, LLC*, Case No. 3:12-CV-00591 (N.D. Tex.); and *Southwest Airlines v. Roundpipe LLC, et al.*, 375 F. Supp. 3d 687 (N.D. Tex. 2019).⁵ The venue for each of these lawsuits, of course, was a federal court in Dallas, Texas due to the forum selection prescribed in the Southwest Terms. There are also sufficient facts here to support jurisdiction over Kiwi.com because, as Kiwi.com is no doubt aware given a recent lawsuit filed against it, a federal judge ruled in a similar lawsuit that there was jurisdiction over a co-defendant website. *See easyGroup Ltd. v. Skyscanner, Inc., et al.*, Case No. 20-20062, 2020 WL 5500695 (S.D. Fla. Sept. 11, 2020).

Please confirm on or before **Tuesday, December 22, 2020** that Kiwi.com – including any third parties of affiliated websites – has ceased the unauthorized activity described in this letter and our prior letters. Should Kiwi.com fail to provide such confirmation, Southwest will be forced to take further legal action.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



James Sheppard

⁵ In its series of federal lawsuits in Texas, Southwest raised a number of additional claims that are not referenced in this particular letter – which is not intended to be an exhaustive list of potential causes of action against Kiwi.

cc: Kiwi.com, Inc.

c/o its Registered Agent
Northwest St Registered Agent Service, LLC
7901 4th St. N, Suite 300
St. Petersburg, Florida 33702
(via **CMRR 7020-1290-0001-8229-4014**)

General Atlantic LLC
c/o Legal Department
55 East 52nd Street
New York, NY 10055
(via **CMRR 7020-1290-0001-8229-4038** & via email drosenstein@generalatlantic.com)

Oliver Dlouhy (via email: oliver.dlouhy@kiwi.com)
David Liskutin (via email: david.liskutin@kiwi.com & david.liskutin@gmail.com)
Jessie Cai (via email: jcai@generalatlantic.com)

Ryan Green (Southwest – Chief Marketing Officer)
Mark Shaw (Southwest – Chief Legal Officer)

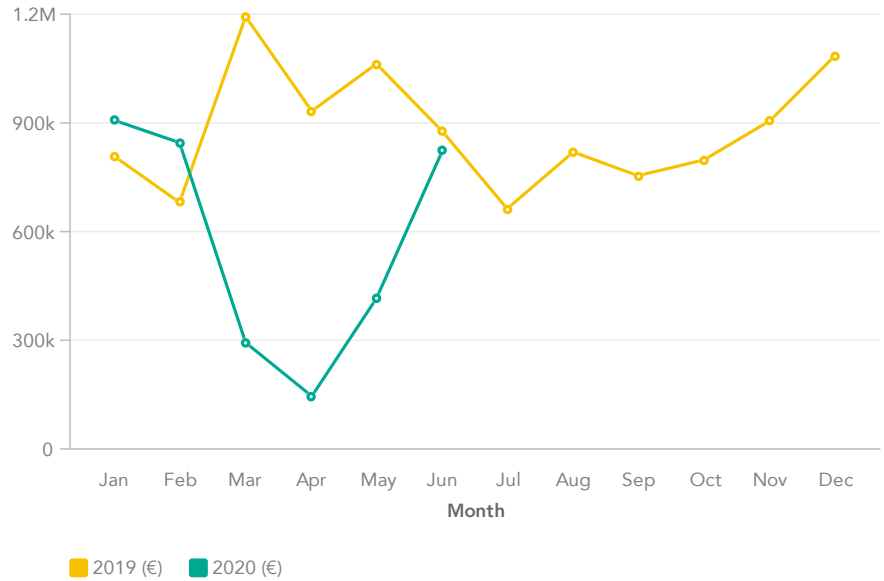
Exhibit A

KIWI.COM | MONTHLY REPORT

AIRLINE: WN ACCOUNT MANAGER: All BOOKING CHANNEL NAME: All PARTNER: All MARKET: All

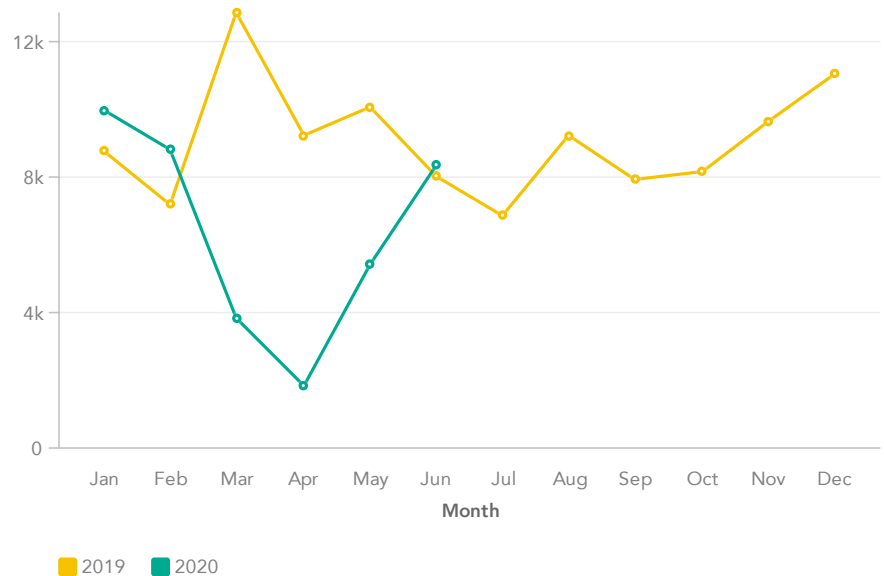
Revenue development

Month	2019 (€)	2020 (€)	MoM	YoY
Jan	804,827	906,044	-16.23 %	12.58 %
Feb	680,171	842,007	-7.07 %	23.79 %
Mar	1,190,258	290,596	-65.49 %	-75.59 %
Apr	928,964	142,024	-51.13 %	-84.71 %
May	1,058,779	413,752	191.32 %	-60.92 %
Jun	875,111	822,255	98.73 %	-6.04 %
Jul	658,733			
Aug	816,764			
Sep	750,182			
Oct	793,996			
Nov	903,960			
Dec	1,081,598			
Sum	10,543,342	3,416,679		



Seat sales development

Month	2019	2020	MoM	YoY
Jan	8,785	9,963	-9.98 %	13.41 %
Feb	7,205	8,825	-11.42 %	22.48 %
Mar	12,870	3,817	-56.75 %	-70.34 %
Apr	9,214	1,823	-52.24 %	-80.21 %
May	10,064	5,421	197.37 %	-46.13 %
Jun	8,035	8,365	54.31 %	4.11 %
Jul	6,874			
Aug	9,214			
Sep	7,941			
Oct	8,171			
Nov	9,641			
Dec	11,068			
Sum	109,082	38,214		





TOP 10 segments by revenue

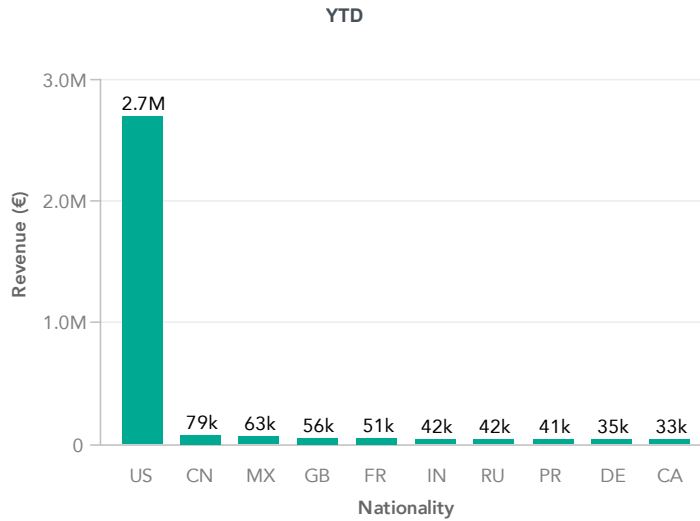
YTD			Last Month		
Segment	Revenue (€)	Seats	Segment	Revenue (€)	Seats
LAX - LAS	26,442	460	ATL - LAX	11,598	59
LAS - LAX	26,321	411	LGA - ATL	10,686	117
LAX - DEN	22,552	288	ATL - LGA	7,816	98
LGA - ATL	22,516	276	DEN - LAX	7,781	72
ATL - LAX	22,071	152	LAX - DEN	7,420	67
LAS - SFO	21,464	260	DEN - LGA	6,561	53
ATL - LGA	21,191	281	LAX - ATL	6,324	43
LGA - DEN	17,959	163	LGA - DEN	6,176	58
SFO - LAS	17,869	242	MCO - SJU	5,975	40
DEN - LAX	17,265	203	LGA - MDW	5,784	67

TOP 10 segments by seats

YTD			Last Month		
Segment	Revenue (€)	Seats	Segment	Revenue (€)	Seats
LAX - LAS	26,442	460	LGA - ATL	10,686	117
LAS - LAX	26,321	411	ATL - LGA	7,816	98
HNL - OGG	14,779	357	LAX - LAS	5,393	81
OGG - HNL	12,012	295	DEN - LAX	7,781	72
LAX - DEN	22,552	288	LAS - LAX	4,904	71
ATL - LGA	21,191	281	LAX - DEN	7,420	67
LGA - ATL	22,516	276	LGA - MDW	5,784	67
LAS - SFO	21,464	260	ATL - LAX	11,598	59
HNL - LIH	10,220	249	LGA - DEN	6,176	58
HNL - KOA	10,343	245	CLT - BWI	3,757	57

TOP 10 passengers nationalities

YTD		
Nationality	Revenue (€)	Seats
US	2,541,447	28,118
CN	77,135	792
MX	59,899	690
GB	54,973	584
FR	50,459	568
IN	41,335	485
RU	40,474	413
PR	38,870	401
DE	34,505	470
CA	33,086	525



Last Month		
Nationality	Revenue (€)	Seats
US	736,557	7,492
RU	7,121	65
PR	6,558	58
MX	6,328	69
CN	5,884	60
QA	4,357	50
IN	4,202	41
GB	2,203	21
HT	2,119	23
UA	2,108	17

The contents of this document (including any attachments) is a confidential information (the "Information") which is and shall remain a property of the company Kiwi.com s.r.o. with registered seat at Palachovo náměstí 797/4, Brno, Czech Republic, Company ID No.: 29352886 (the „Company“) and is provided for the exclusive use of the subjects to whom it is addressed.

If you are not the intended recipient of this document, any disclosure, copying, distribution or use of its contents is strictly prohibited, and you should delete it (including any attachments) from your system or destroy it.

While the information contained herein is believed to be accurate, the Company does not give any representation or warranty, express or implied as to the accuracy, or completeness of this Information and no responsibility or liability whatsoever is accepted for the accuracy or sufficiency thereof or for any errors, omissions or misstatements negligent or otherwise relating there to.

Company nor any of their respective directors, partners, employees or advisers nor any other person, shall be liable for any direct, indirect or consequential loss or damage suffered by any person as a result of relying on any statement in or omission from this Information and any such liability is expressly disclaimed.

Each recipient agrees that neither it nor its agents, representatives, directors or employees will copy, reproduce or distribute to others this Information, in whole or in part, at any time without the prior written consent of the Company and that it will keep confidential all information contained herein that is not already in the public domain.

Exhibit B

Terms & Conditions

Last modified: April 4, 2017

These Terms & Conditions ("Terms") set forth a legally binding agreement between you and Southwest Airlines Co. ("Southwest," "we," or "us"), and govern your use of and access to www.southwest.com, www.swabiz.com, and any other websites, mobile and other applications, or services that post a link to these Terms (each individually a "Site" and collectively, the "Sites") and the information, features, content, and services that we own, control, or make available through the Sites (collectively, with the Sites, the "Service") whether as a guest or a registered user.

By using the Service or by clicking accept or agree to these Terms when this option is made available to you, you accept these Terms and the Service's [Privacy Policy](#), and consent to the collection and use of your data in accordance with the [Privacy Policy](#). The Terms may be revised and updated by us from time to time without notice to you. All changes are effective immediately when we post them. Your continued use of the Sites is your acceptance of the revised and updated Terms. You can review the most current version of the Terms & Conditions agreement at any time at <http://www.southwest.com/html/about-southwest/terms-and-conditions/index.html>. If you do not agree to any of these Terms, please do not use or access our Service.

In some instances, both these Terms and separate terms and conditions will apply, including without limitation, transportation of passengers, baggage, and cargo by Southwest Airlines® and its affiliates is subject to the terms & conditions contained in Southwest's [Contract of Carriage](#), terms and conditions printed on or in a ticket jacket or an e-Ticket receipt, in any published schedule, or any other separate terms (collectively "Additional Terms"). By using the Service, purchasing a ticket, or accepting transportation, you agree to be bound by such Additional Terms. To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless they expressly state otherwise.

The Service is offered and available to individuals who are 13 years of age or older. By using the Service, you represent and warrant that you are 13 years of age or older. If you do not meet this requirement, you must not access or use the Service and should not send any information about yourself to us through the Service.

Ownership of Company Information

Information and materials concerning Southwest and its products and services, and similar items from our licensors and other third parties, including flight schedules, routes, fares, text, graphics, button icons, layout, databases, articles, posts, text, data, files, images, scripts, designs, instructions, illustrations, photographs, sounds, pictures, advertising copy, URLs, technology, software, interactive features, the "look and feel" of the Sites, audio and video clips, digital downloads, data compilations (including customer and Rapid Rewards® information), the compilation, assembly, and arrangement of the materials of the Sites, all copyrightable materials, trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Southwest and other forms of intellectual property, and information regarding the status of Southwest flights, etc. is referred to as "Company Information." All right, title, and interest in and to the Service and the Company Information is the property of Southwest or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Southwest owns all copyrights, trademarks, service marks, and trade names related to our Company Information. All Company Information is proprietary to Southwest Airlines.

Subject to your strict compliance with these Terms and the Additional Terms, Southwest grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download, display, view, use, play the Company Information on a personal computer, browser, laptop, tablet, mobile phone or other Internet-enabled device (each, a "Device") and/or print one copy of the Company Information as it is displayed to you, in each case for your personal, non-commercial use only.

All rights not expressly granted to you are reserved by Southwest and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. *Any unauthorized use of any Confidential Information or the Service for any purpose is prohibited.*

Accessing the Service

We reserve the right to withdraw or amend the Service, and any service or material we provide on the Service, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Service is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Service, or the entire Service, to you.

You are responsible for:

- Making all arrangements necessary for you to have access to the Service.
- Ensuring that all persons who access the Service through your internet connection are aware of these Terms and comply with them.
- Ensuring that using our Services on mobile devices does not distract you or prevent you from obeying traffic or safety laws.

To access the Service or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Service that all the information you provide on the Service is correct, current and complete. You agree that all information you provide to register with this Service or otherwise, including but not limited to through the use of any interactive features on the Service, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our [Privacy Policy](#).

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Service or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. Similarly, you are responsible for protecting your confirmation codes, e-ticket numbers, and other record locators from unauthorized users.

Southwest may immediately suspend or terminate the availability of the Service and Company Information, in whole or in part, to any individual, group, or everyone, for any reason, in Southwest's sole discretion, and without advance notice or liability. Upon suspension or termination of your access to the Service, or upon notice from Southwest, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination, will survive.

Southwest, and its service providers are not liable for information that is inaccurate due to technical defects in software used on the Sites or service providers websites, whether induced by their respective systems or by software provided by third parties.

Restrictions and Prohibited Activities

You agree that you will not:

- (i) copy, display, distribute, download, license, modify, publish, re-post, reproduce, reuse, sell, transmit, or use the Service or Company Information to create a derivative work
- (ii) use the Service or Company Information for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;
- (iii) use the Service or Company Information for any political purpose;
- (iv) engage in any activity in connection with the Service or Company Information that is libelous, slanderous, defamatory, fraudulent, unlawful, false or misleading, harmful, tortious, vulgar, invasive of another's privacy, sexually explicit, offensive, obscene, profane, violent, threatening, harassing, abusive, hateful, or otherwise inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
- (v) harvest any information from the Service;
- (vi) copy, derive, edit, translate, decompile, reverse engineer, modify, use, or reproduced any code or source relating to the Service including without limitation, any service or product Southwest offers.;
- (vii) modify, re-render, frame, mirror, truncate, add to, inject, filter or change the order of the information contained on any page of the Service, including, without limitation, by any way of reproducing any web pages or Company Information on any other website without our express written permission;
- (viii) interfere with the proper operation of or any security measure used by the Service;
- (ix) infringe any intellectual property or other right of any third party;
- (x) use the Company Information in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you;
- (xi) use a false email address or other identifying information, impersonate or misrepresent any person or entity, or your affiliation with any person or entity, or misrepresent, mislead, or omit as to the origin or source of any material
- (xii) use the Service or any Company Information to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;
- (xiii) cause to appear any pop-up, pop-under, exit windows, expanding buttons, banners advertisement, or anything else which minimizes, covers, or otherwise inhibits the full display of the Service;
- (xiv) use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information;
- (xv) use the Service in any way which depletes web infrastructural resources, slows the transferring or loading of any web page, or interferes with the normal operation of the Sites;
- (xvi) upload or transmit to the Service any device, software, program, or file that may damage the operation of any computer or the Service, including without limitation, viruses or corrupt files;
- (xvii) disguise the origin of information transmitted to, from, or through the Service;
- (xviii) circumvent any measures implemented by Southwest aimed at preventing violations of the Terms. You may not violate the restrictions in any robot exclusion header; or
- (xix) otherwise violate these Terms or any applicable Additional Terms.

You also agree you will not use the Service for or in connection with offering any third party product or service not authorized or approved by Southwest. For example, online check-in service providers may not use Southwest web pages to check-in customers online or attempt to obtain for them a boarding pass in any certain boarding group.

When you use the Service or Company Information for an authorized purpose, you must include all proprietary notices without changing, hiding or deleting them.

You may not engage in any conduct that is, or that Southwest deems to be, in violation of the Terms.

Your Privacy

The Service may allow you to submit content to us via the Service, or by means other than the Service (such as via our social media pages), including, but not limited to hotel reviews, ratings, photos, video, music, questions, suggestions, ideas, postings, feedback, biographic information, your appearance, audio tapes, digital files, images, performances, and comments ("Submissions"). All Submissions must be posted by someone 13 years of age or older. Terms related to your Submissions are available in our [User Content and Conduct Policy](#). You agree that your Submissions will comply with our [User Content and Conduct Policy](#).

License to Your Content

You grant Southwest and its affiliates, subsidiaries, agents, licensees, successors, and assigns a nonexclusive, unrestricted, unconditional, unlimited, worldwide, royalty-free, assignable, fully paid-up, perpetual, transferable, irrevocable and fully sublicensable right to (a) use, host, store, copy, record, reproduce, edit, enhance, improve, modify, adapt, translate, create derivative works of the Submissions, in whole or in part, alone or in any manner and matter or in combination with any other material, in any format or media, whether now existing or hereafter devised, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video, audio, and all formats of computer readable electronic, magnetic, digital, laser, or optical based media, and to advertise, market, and promote the Submissions, (b) publicly display, publicly perform, distribute (directly or indirectly), disclose, transmit, publish, or broadcast the Submissions throughout the world in any media, now known or hereafter devised, and with any technology or devices now known or hereafter developed; and (c) use the screen name, your name, voice, likeness, and biographic information, whether in original or modified form, that you submit in connection with a Submission. You also irrevocably consent to our use and association of your name in connection with your Submissions and derivatives thereof. You agree to waive any moral rights that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future intellectual property rights relating to your Submissions. If you submit feedback or suggestions about our Service, we may use your feedback or suggestions without obligation to you.

You further grant Southwest the right to pursue at law any person or entity that violates your or Southwest's rights in the Submissions by a breach of these Terms. You acknowledge and agree that Submissions are not confidential.

You are fully responsible for the content of your Submissions. We take no responsibility and assume no liability for any Submissions posted or submitted.

Intellectual Property Rights

Southwest respects the intellectual property of others, and expects those who use the Service to do the same. It is our policy, in appropriate circumstances and at our discretion, to disable and/or terminate the accounts of individuals who may infringe or repeatedly infringe the copyrights or other intellectual property rights of Southwest and/or others.

Southwest's policies with respect to claims by third parties that the content of the Service, including the content of any Submissions, infringes the copyrights owned by said third parties can be found in our [Copyright Complaint Policy](#).

Contacting Southwest Airlines

For information on how to contact Southwest Airlines visit our [Contact Us](#) page.

Third-Party Content and websites; Advertisements

The Service may contain or may interact with third party content that is not owned, controlled or operated by Southwest (collectively, "Third-Party Services"). We may also host our content on Third-Party Services. Southwest neither endorses nor controls such Third-Party Services, AND YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT RESPONSIBLE OR LIABLE FOR THE INFORMATION, CONTENT, PRODUCTS, OR SERVICES ON OR AVAILABLE FROM SUCH THIRD-PARTY SERVICES, OR FOR THE RESULTS TO BE OBTAINED FROM USING THEM. If you choose to access any such Third Party Services, you do so at your own risk. If you navigate away from the Service by clicking on an unaffiliated website link, you do so at your own risk and you should be aware that these Terms no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Service or relating to any applications you use or install from another website.

Dealings with Third Parties

Any interactions, transactions, and other dealings that you have with any third parties found on or through the Service are solely between you and the third party. YOU HEREBY AGREE TO INDEMNIFY SOUTHWEST AGAINST ALL CLAIMS, INJURY AND/OR DAMAGES INCLUDING ATTORNEYS' FEES THAT ARISE OUT OF YOUR USE OF ANY THIRD-PARTY SERVICE, INCLUDING FROM ANY MATERIAL THAT YOU POST ON ANY FORUM OR SOCIAL NETWORKING WEBSITE IN CONNECTION WITH US AND/OR ANY OTHER CLAIM RELATED TO YOUR USE OF SOCIAL MEDIA.

Wireless Features and Communications

The Service may offer features that are available to you via your wireless Device including the ability to access the Service's features, upload content to the Service, and receive messages from the Service (including email notifications) (collectively, "Wireless Features"). By using the Service, you agree that Southwest may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Service. You agree that as to the Wireless Features for which you are registered for, we may send communications via such features or apps to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Service for Wireless Features, then you agree to notify Southwest of any changes to your wireless contact information (including phone number) and update your accounts on the Service to reflect the changes. If the Service includes push notifications or other mobile communication capability, you hereby approve our delivery of electronic communications directly to your mobile Device. These notifications, including badge, alert or pop-up messages, may be delivered to your Device even when it is running in the background. You may have the ability, and it is your responsibility, to control the notifications you do, or do not, receive via your Device through your Device settings. Standard message, data and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. Contact your carrier with questions regarding these issues.

Location-Based Features

If you have enabled GPS, geo-location or other location-based features on any Southwest mobile app(s) or feature(s), you acknowledge that your Device location will be tracked and may be shared with others consistent with the [Privacy Policy](#). Some mobile app(s) or feature(s) allow for you to disable location-based features or manage preferences related to them. You can also uninstall any Southwest mobile app(s). The location-based services offered in connection with our mobile app(s) or feature(s) are for individual use only and should not be used or relied on as an emergency locator system, used while driving or operating vehicles, or used in connection with any hazardous environments requiring fail-safe performance, or any other situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or severe physical or property damage. Location-based/geo-location services are used at your own risk and location data may not be accurate.

Forum Selection

These Terms and the relationship between you and Southwest shall be governed by the laws of the State of Texas without regard to any conflict of law provisions. You agree to the personal and exclusive jurisdiction of the courts located within Dallas, TX. You hereby consent to the exclusive jurisdiction and venue of the State and Federal courts in Dallas, Texas in all disputes. You agree and understand that you will not bring against the Southwest Parties any class action lawsuit related to your access to, dealings with, or use of the Service.

Disclaimer of Representations and Warranties

THE SERVICE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS. NEITHER SOUTHWEST OR ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "SOUTHWEST PARTIES") MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE INFORMATION, CONTENT OR OTHER SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL. BY ACCESSING OR USING THE SERVICES YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

SOUTHWEST HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Limitations of Our Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE SOUTHWEST PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN CONNECTION WITH (A) THE SERVICE, (B) THESE TERMS, (C) YOUR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE, OR (D) A THIRD PARTY'S UNAUTHORIZED ACCESS TO YOUR INFORMATION, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR SOUTHWEST HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE SOUTHWEST PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR YOUR USE OF THE SERVICES EXCEED THE GREATER OF (A) THE AMOUNTS, IF ANY, PAID BY YOU TO SOUTHWEST FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR (B) FIFTY UNITED STATES DOLLARS (\$50.00). THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Waiver of Injunctive or Other Equitable Relief

YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY SITE, WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY SOUTHWEST OR A LICENSOR OF SOUTHWEST.

Limited Time to Bring Your Claim

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Business uses of our Service

IF YOU ARE USING THE SERVICE ON BEHALF OF A BUSINESS, THAT BUSINESS ACCEPTS THESE TERMS. THE BUSINESS WILL HOLD HARMLESS AND INDEMNIFY THE SOUTHWEST PARTIES FROM ANY CLAIM, SUIT OR ACTION ARISING FROM OR RELATED TO THE USE OF THE SERVICE OR VIOLATION OF THESE TERMS, INCLUDING ANY LIABILITY OR EXPENSE ARISING FROM CLAIMS, LOSSES, DAMAGES, SUITS, JUDGMENTS, LITIGATION COSTS AND ATTORNEYS' FEES.

Purchases & Forms of Payment

Purchases through the Services may be made via the forms of payment on our Purchasing and [Refunds](#) page or any applicable Additional Terms.

You agree that (i) any transactions carried out through the Sites will be deemed to take place in the State of Texas, United States of America, regardless of the jurisdiction where you may be located or reside, and (ii) any payment in connection with such transactions will only be accepted in US dollars. You further agree and acknowledge that any advertising, promotional or marketing information that

may be contained in any communications that you may receive as a result of your use of the Sites is only intended to have effect and will only be applicable in the United States of America.

Additional Information

For additional information and to learn more about Southwest Airlines, please visit our [Customer Service Commitment](#) or [Contract of Carriage](#) pages on southwest.com.

Patents

Some technologies, components, or progresses of the Service may be covered by Southwest Airlines Co. patents pending. In addition, some components or processes referenced in the Sites may be subject to one or more U.S. Patent Numbers 7,394,900; 7,707,056; 7,734,493; 7,860,740; 7,848,944; 8,041,036; 8,050,936; 8,452,607; 8,504,402; 8,700,438; 8,788,303; D597,752; D615,779; D618,000; D618,473 along with all corresponding foreign counterparts.

Consent or Approval

No Southwest consent or approval may be deemed to have been granted by Southwest without being in writing and signed by an officer of Southwest.

Indemnity

You agree to defend, indemnify and hold harmless the Southwest Parties from and against any and all claims, liabilities, damages, losses, costs and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your use of the Service; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property or privacy right; or (vi) any misrepresentation made by you. Southwest reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with Southwest's defense of any claim. You will not in any event settle any claim without the prior written consent of Southwest.

Severability; Interpretation; Assignment

If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. Southwest may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Southwest.

Investigations; Cooperation with Law Enforcement

Southwest reserves the right to investigate and prosecute any suspected breaches of these Terms or the Service. Southwest may disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

Complete Agreement; No Waiver

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Southwest in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

Need help?

Contact Us

[Customer Service](#) [FAQ](#)

Subscribe

Click 'N Save

Save big on travel each week. [Sign up](#)

Connect with us



[Discussion Forum and Stories](#)



[Mobile App](#)

About Southwest

- [What's New](#)
- [Press Room](#)
- [Investor Relations](#)
- [Southwest Citizenship](#)
- [Southwest.fm](#)
- [Southwest® The Magazine](#)
- [Supplier Information](#)
- [Careers](#)

Flying Southwest


- [Why Fly Southwest?](#)
- [Rapid Rewards®](#)
- [International Travel](#)
- [Airport Information](#)
- [737 Max Resource Page](#)
- [Popular Routes](#)
- [Tarmac Delay Plan](#)
- [Contract of Carriage](#)
- [Flight Schedules](#)

Southwest Products

- [Southwest Fares](#)
- [EarlyBird Check-in®](#)
- [Business Select®](#)
- [Upgraded Boarding](#)
- [Southwest® gift card](#)
- [Hotels](#)
- [Southwest Vacations](#)
- [Southwest Airlines® Experiences](#)
- [WiFi & Inflight Entertainment](#)
- [Southwest Business](#)
- [Groups](#)
- [Charter Services](#)
- [Southwest® The Store](#)
- [Rapid Rewards® Credit Card](#)

Customer Service

- [FAQ](#)
- [Sitemap](#)
- [Customer Commitments](#)
- [Baggage Policies](#)
- [Special Assistance](#)
- [Customers of Size](#)
- [Traveling with Infants](#)
- [Traveling with Pets](#)
- [Purchasing & Refunds](#)
- [Lost and Found](#)
- [Inflight Beverage Receipts](#)

 Indicates external site which may or may not meet accessibility guidelines

© 2020 Southwest Airlines Co. All Rights Reserved. Use of the Southwest websites and our Company Information constitutes acceptance of our [Terms and Conditions](#), [Privacy Policy](#) [Do Not Sell My Personal Information](#)

EXHIBIT D

From: [Slavomír Mucha](#)
To: [James Sheppard](#)
Subject: EXTERNAL - WN<>Kiwi.com issues/co-operation
Date: Wednesday, September 11, 2019 11:00:51 AM

Caution: *Sender is from outside SWA. Take caution before opening links/attachments or replying with sensitive data. If suspicious, forward to 'suspicious@wnco.com'.*

Dear James,

I've been just passed the Cease & Desist letter from your side.

I would like to rather discuss the options of a direct co-operation. We've been in discussion with your people before, started the discussion where they were excited about the benefits we bring. But then suddenly the discussions stop.

I believe the with our Virtual Interlining technology we are bringing additional passengers thus we can both prosper from the direct partnership.

Can we have a call about this?

Brgds
Slavo



Kiwi.com

**Slavomír Mucha / Senior Business Development
Manager**

Mail: slavomir.mucha@kiwi.com

Tel: +420 725 439 828

Skype: slavomir.mucha

Address: Palachovo náměstí 4, Brno, 625 00, CZ

EXHIBIT E

From: [Pedro Martin Gutierrez Kardum](#)
To: [Dave Doty](#); [David Harvey](#); [Eric Hall](#); [Phil Gouel](#); [Rob Brown](#)
Subject: EXTERNAL - New Kiwi.com Account Manager for WN
Date: Tuesday, July 14, 2020 8:24:02 AM
Attachments: [Monthly report \(70\).pdf](#)

Caution: *Sender is from outside SWA. Take caution before opening links/attachments or replying with sensitive data. If suspicious, forward to 'suspicious@wnco.com'.*

Dear all,

My name is Pedro Gutierrez and I'll be the responsible person from Kiwi.com to communicate with WN from the commercial side since my colleague Slavo Mucha will be now focusing on a different project in Kiwi.com.

I am attaching you the sales report for WN sales in Kiwi.com for the years 2019 and 2020.

As you can see, we indeed have a V-shaped curve for 2020, meaning that we can see our sales level for WN already as pre-COVID, as a matter fact we sold even more seats in the last month than in Jun19. I think this could be particularly interesting for you since I'd say every airline needs now an extra hand on generating more PAX demand.

In case you'd like to explore any kind of further cooperation with us, I'll be around.

Kind regards / Saludos,



Kiwi.com

Pedro Gutiérrez Kardum / Travel Content Acquisition Business Development Manager - Americas

E-Mail: pedro.gutierrez@kiwi.com

Tel: +420 724 388 673

Skype: pedro.gutierrez@kiwi.com

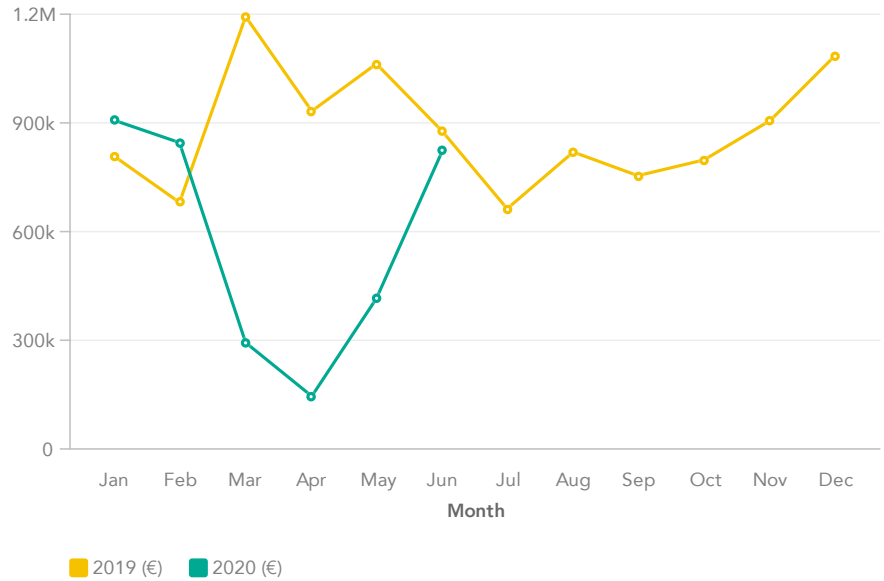
Address: [Palachovo náměstí 4, Brno, 625 00, CZ](#)

KIWI.COM | MONTHLY REPORT

AIRLINE: WN ACCOUNT MANAGER: All BOOKING CHANNEL NAME: All PARTNER: All MARKET: All

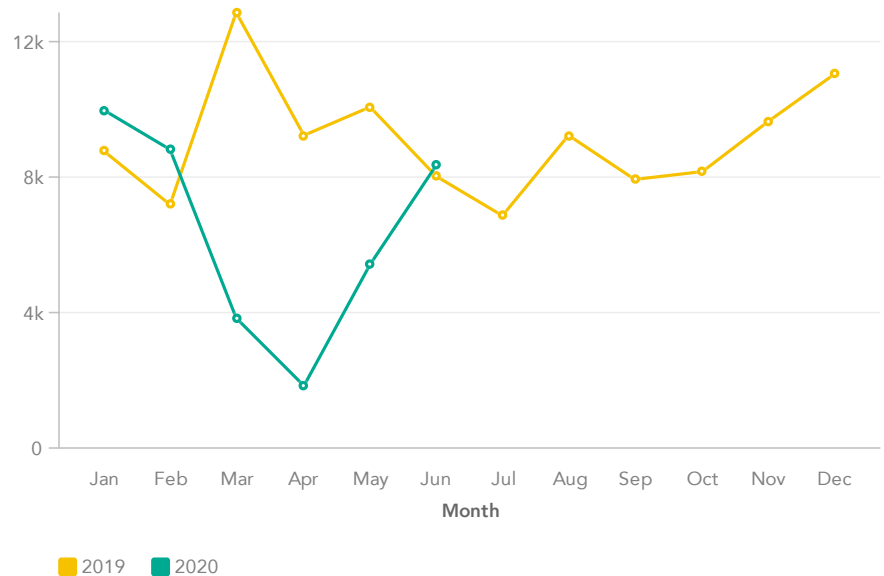
Revenue development

Month	2019 (€)	2020 (€)	MoM	YoY
Jan	804,827	906,044	-16.23 %	12.58 %
Feb	680,171	842,007	-7.07 %	23.79 %
Mar	1,190,258	290,596	-65.49 %	-75.59 %
Apr	928,964	142,024	-51.13 %	-84.71 %
May	1,058,779	413,752	191.32 %	-60.92 %
Jun	875,111	822,255	98.73 %	-6.04 %
Jul	658,733			
Aug	816,764			
Sep	750,182			
Oct	793,996			
Nov	903,960			
Dec	1,081,598			
Sum	10,543,342	3,416,679		



Seat sales development

Month	2019	2020	MoM	YoY
Jan	8,785	9,963	-9.98 %	13.41 %
Feb	7,205	8,825	-11.42 %	22.48 %
Mar	12,870	3,817	-56.75 %	-70.34 %
Apr	9,214	1,823	-52.24 %	-80.21 %
May	10,064	5,421	197.37 %	-46.13 %
Jun	8,035	8,365	54.31 %	4.11 %
Jul	6,874			
Aug	9,214			
Sep	7,941			
Oct	8,171			
Nov	9,641			
Dec	11,068			
Sum	109,082	38,214		





TOP 10 segments by revenue

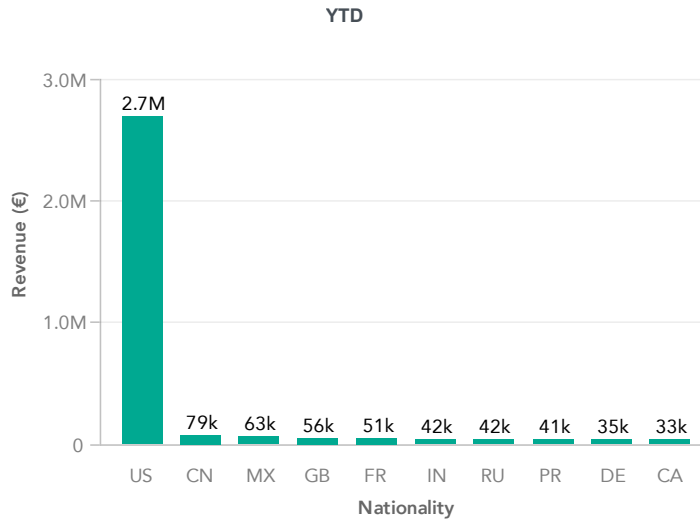
YTD			Last Month		
Segment	Revenue (€)	Seats	Segment	Revenue (€)	Seats
LAX - LAS	26,442	460	ATL - LAX	11,598	59
LAS - LAX	26,321	411	LGA - ATL	10,686	117
LAX - DEN	22,552	288	ATL - LGA	7,816	98
LGA - ATL	22,516	276	DEN - LAX	7,781	72
ATL - LAX	22,071	152	LAX - DEN	7,420	67
LAS - SFO	21,464	260	DEN - LGA	6,561	53
ATL - LGA	21,191	281	LAX - ATL	6,324	43
LGA - DEN	17,959	163	LGA - DEN	6,176	58
SFO - LAS	17,869	242	MCO - SJU	5,975	40
DEN - LAX	17,265	203	LGA - MDW	5,784	67

TOP 10 segments by seats

YTD			Last Month		
Segment	Revenue (€)	Seats	Segment	Revenue (€)	Seats
LAX - LAS	26,442	460	LGA - ATL	10,686	117
LAS - LAX	26,321	411	ATL - LGA	7,816	98
HNL - OGG	14,779	357	LAX - LAS	5,393	81
OGG - HNL	12,012	295	DEN - LAX	7,781	72
LAX - DEN	22,552	288	LAS - LAX	4,904	71
ATL - LGA	21,191	281	LAX - DEN	7,420	67
LGA - ATL	22,516	276	LGA - MDW	5,784	67
LAS - SFO	21,464	260	ATL - LAX	11,598	59
HNL - LIH	10,220	249	LGA - DEN	6,176	58
HNL - KOA	10,343	245	CLT - BWI	3,757	57

TOP 10 passengers nationalities

YTD		
Nationality	Revenue (€)	Seats
US	2,541,447	28,118
CN	77,135	792
MX	59,899	690
GB	54,973	584
FR	50,459	568
IN	41,335	485
RU	40,474	413
PR	38,870	401
DE	34,505	470
CA	33,086	525



Last Month		
Nationality	Revenue (€)	Seats
US	736,557	7,492
RU	7,121	65
PR	6,558	58
MX	6,328	69
CN	5,884	60
QA	4,357	50
IN	4,202	41
GB	2,203	21
HT	2,119	23
UA	2,108	17

The contents of this document (including any attachments) is a confidential information (the "Information") which is and shall remain a property of the company Kiwi.com s.r.o. with registered seat at Palachovo náměstí 797/4, Brno, Czech Republic, Company ID No.: 29352886 (the „Company“) and is provided for the exclusive use of the subjects to whom it is addressed.

If you are not the intended recipient of this document, any disclosure, copying, distribution or use of its contents is strictly prohibited, and you should delete it (including any attachments) from your system or destroy it.

While the information contained herein is believed to be accurate, the Company does not give any representation or warranty, express or implied as to the accuracy, or completeness of this Information and no responsibility or liability whatsoever is accepted for the accuracy or sufficiency thereof or for any errors, omissions or misstatements negligent or otherwise relating there to.

Company nor any of their respective directors, partners, employees or advisers nor any other person, shall be liable for any direct, indirect or consequential loss or damage suffered by any person as a result of relying on any statement in or omission from this Information and any such liability is expressly disclaimed.

Each recipient agrees that neither it nor its agents, representatives, directors or employees will copy, reproduce or distribute to others this Information, in whole or in part, at any time without the prior written consent of the Company and that it will keep confidential all information contained herein that is not already in the public domain.