

Attorney
James Sheppard

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November 22, 2017

Via E-Mail ([REDACTED].com)

Round Pipe LLC
c/o its registered agent
Wasatch-IP, P.C.
2825 E. Cottonwood Parkway, Suite 500
Salt Lake City, UT 84121

Re: Cease and Desist Letter Regarding Southwest Monkey's Violations of Southwest Airlines' Terms & Conditions and Trademark Infringement

Dear Charles:

As you know, I am a Litigation Attorney in the General Counsel Department at Southwest Airlines Co. ("Southwest Airlines" or "the Company"). I understand that you are counsel to Round Pipe LLC and the individuals that developed the website "Southwest Monkey" (the "Website"). Despite a series of correspondence over the past week, Southwest is surprised and disappointed that your clients are not willing to completely shut down the Website. It is not clear to Southwest why your clients are refusing to comply with our demand given the obvious legal risks here.

As we have discussed thoroughly, your clients recently developed the Website targeted toward Southwest Customers that violated multiple provisions in our Terms & Conditions. *See Exhibit A.* We sent multiple cease and desist letters to your clients – but they refused to comply. *See Exhibit B.* Rather, your clients posted a series of messages in online forums that expressly signaled their unwillingness to comply the Terms and Conditions. Once we spoke about this issue, it became clear that your clients' continued use of the Website – even after our cease and desist letters – gave rise to breach of contract claim against them. *See, e.g., Southwest Airlines Co. v. BoardFirst, L.L.C.*, Case No. 3:06-cv-0891, 2007 WL 4823761 (N.D. Tex. Sept. 12, 2007); *Southwest Airlines Co. v. Infare Solutions, et al.*, Case No. 3:10-cv-01674 (N.D. Tex.); *Cairo, Inc. v. Crossmedia Servs., Inc.*, No. 04-04825, 2005 WL 756610 (N.D. Cal. Apr. 1, 2005); *Ticketmaster Corp. v. Tickets.com, Inc.*, No. CV 997654, 2003 WL 21406289 (C.D. Cal. Mar. 7, 2003). As explained in our initial cease and desist letter on November 10, 2017, the Website violates the Terms and Conditions by, among other things, using the Southwest website in connection with an unauthorized third-party product and/or using automated technology to monitor any portion of the Southwest website. And as the plaintiff in a contract claim, Texas law permits Southwest to recover its attorneys' fees. *See Tex. Civ. Prac. & Rem. Code § 38.001.*

This contract action (and liability for attorney's fees) should be enough to convince your clients to completely shut down the Website. But, apparently, they have chosen to maintain a

revised form of the Website which raises additional issues. In prior litigation, Southwest has also pursued claims for violation of Texas Penal Code § 33.02, trespass, civil conspiracy, and unjust enrichment. Our initial demand also explained that the Website may be a violation of the Computer Fraud and Abuse Act in 18 U.S.C. § 1030 (“CFAA”). Here, the Website intentionally accessed Southwest information without authorization and may give rise to a statutory claim against your clients as well. Those claims are beyond the scope of this letter, however, because we fully expect your clients to comply with our continued demands.

I also need to explain how the Website gives rise to a trademark infringement claim. As it relates to infringement claims, you should know that Southwest Airlines is the owner of numerous federal trademark registrations, including: SOUTHWEST AIRLINES (U.S. Reg. No. 1,738,670), SOUTHWEST.COM (U.S. Reg. No. 2,623,807), SOUTHWEST (U.S. Reg. No. 3,129,737), and Miscellaneous Design (U.S. Reg. No. 3,297,309), each of which cover either transportation services by air or travel agency services by computer in connection with such air transportation services (collectively, the “Registrations”). These Registrations provide Southwest Airlines with the exclusive right to use the registered marks, as well as the right to exclude third parties from unauthorized use of the marks. Through years of substantial use and advertisement, Southwest Airlines has established enormous goodwill with respect to these marks, and they are Southwest Airlines’ valuable intellectual property.

More specifically, Southwest owns U.S. Reg. No. 3,129,737 for the mark SOUTHWEST in connection with transportation services by air. Upon the registration of the SOUTHWEST trademark in August 2006, Southwest Airlines obtained nationwide exclusive rights to use the mark SOUTHWEST in connection with those services. *See* 15 U.S.C. § 1057(c) (“[T]he filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person. . . .”); *John R. Thompson Co. v. Holloway*, 366 F.2d 108, 115 (5th Cir. 1966) (“By eliminating the defense of good faith and lack of knowledge on the part of a junior user, [Lanham Act, 15 U.S.C.] sections 1072 and 1115 afford a registrant nationwide protection for its registered marks, regardless of the geographic area in which the registrant actually uses his mark.”). Accordingly, once Southwest Airlines’ mark registered on August 15, 2006, Southwest Airlines obtained nationwide exclusive rights in the SOUTHWEST mark for transportation services by air and related or complementary goods and services. This is important because the Website – called Southwest Monkey and featuring a modified photo of a Southwest plane – attempts to market travel-related services in connection with this SOUTHWEST mark. *See, e.g., Pan American World Airways, Inc. v. Clipper Van Lines, Inc.*, 98 F. Supp. 524 (E.D.N.Y. 1951). Accordingly, Southwest hereby demands that your clients shut down the Website in its entirety.

We trust that you – and your clients – understand the seriousness of this matter. With that, as mentioned in my initial letter to your clients, Southwest takes this issue very seriously and will pursue formal legal action related to violations of its Terms & Conditions and unauthorized use of its trademark(s) unless your clients confirm in writing each of the following:

1. **Their written agreement to comply with Southwest's Terms & Conditions;**
2. **Their agreement to cease operation of the Website and removal of all related information from the internet;**
3. **Their agreement to notify travel-related websites (*i.e.* Travel with Grant blog or Travel Zork) that the Website will be removed from the internet for violation of Southwest's Terms and Conditions;**
4. **Their agreement to cease using Southwest Airlines' trademarks in connection with the Website or any related commercial ventures; and**
5. **Their confirmation that any existing materials containing any of Southwest Airlines' trademarks have been deleted or destroyed; and**

We respectfully request that you provide Southwest with written confirmation related to the issues referenced above on or before **Monday, November 27, 2017.**

Sincerely,



James Sheppard

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.*

Assessing 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 be 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

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Exhibit B

James Sheppard

From: James Sheppard
Sent: Wednesday, November 15, 2017 4:41 PM
To: 'info@swmonkey.com'
Subject: RE: Cease & Desist - Southwest Airlines Legal Notice

To Whom It May Concern:

We are surprised and disappointed that you continue to maintain the Southwest Monkey website in violation our terms and conditions. Rather, based upon our research, it appears that you have continued to update and revise the website – rather than take it down.

This is a second request that you comply with our cease and desist demand (below). We take this issue very seriously and will pursue litigation against you and your company if you fail to comply. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004); *Southwest Airlines Co. v. Infare Solutions, et al.*, Case No. 3:10-cv-01674 (N.D. Tex.); *Southwest Airlines Co. v. LUVCheckin.org, et al.*, Case No. 3:07-cv-1883 (N.D. Tex.); *Southwest Airlines Co. v. SW Software Development, LLC*, Case No. 3:12-cv-00591 (N.D. Tex). These are just a sample of the federal lawsuits filed by Southwest in Texas to protect against violations of its terms and conditions, among other issues. Given the legal precedent in our favor (and your website’s obvious violation), we trust that you will quickly comply with our demands – unless you wish to litigate this issue in a Texas federal court.

Regards,

James Sheppard

From: James Sheppard
Sent: Friday, November 10, 2017 3:53 PM
To: 'info@swmonkey.com'
Subject: Cease & Desist - Southwest Airlines Legal Notice

To Whom It May Concern:

I am an Attorney in the General Counsel Department at Southwest Airlines Co. (“Southwest”). It has come to our attention that you developed a website or application called “Southwest Monkey” that automates searches on Southwest.com. As you may know, the use of Southwest’s services and websites is governed by the [Terms and Conditions](#), which specifically prohibits the following activity:

- “[Y]ou will not use the Service [i.e. www.southwest.com] for or in connection with offering any third party product or service not authorized or approved by Southwest.”
- “You will not . . . 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.”

To put it simply, you should stop. To put it in more legal terms, Southwest demands that you immediately cease and desist from (1) extracting or scraping Southwest's flight and fare information from its proprietary servers and websites; and (2) publishing this information on the Southwest Monkey website, through related web applications, or elsewhere.

There are at least three reasons why you should comply with this cease and desist letter.. First, as mentioned above, the Terms and Conditions specifically prohibit activities like fare-scraping or spider programs. Second, Southwest has successfully litigated against fare-scraping companies in cases like *Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004). Third, fare-scraping websites or programs like Southwest Monkey also violate federal laws such as the Computer Fraud and Abuse Act in 18 U.S.C. § 1030.

We hope you appreciate that Southwest may pursue formal legal action to recover damages for and to stop the unauthorized use of its website. We would request that you immediately cease and desist from using Southwest's website in violation of the Terms and Conditions.

There should also be no delay in your compliance with our demands in this letter. We would expect it done immediately – but no later than **Wednesday, November 15, 2017**.

James Sheppard
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2702 Love Field Drive, HDQ-4GC
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