

**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

**UNOPPOSED MOTION FOR ENTRY OF
FINAL JUDGMENT AND PERMANENT INJUNCTION**

Plaintiff Southwest Airlines Co. (“Southwest”) hereby moves for entry of final judgment and a permanent injunction, as follows:

Southwest and Defendants Kiwi.com, Inc. and Kiwi.com s.r.o. (collectively, “Kiwi.com”) have signed a settlement agreement. Pursuant to the parties’ agreement, Kiwi.com agreed that it is not opposed to entry of a permanent injunction containing the same restrictions as the temporary injunction entered on the Court’s Memorandum Opinion and Order dated September 30, 2021 (ECF No. 105).

There is good cause for entry of a permanent injunction. For example, in its motion for preliminary injunction (ECF No. 18) and related filings (ECF Nos. 19, 33, 41, 75), the Court found that Southwest showed, among other things:

(1) Southwest’s Terms & Conditions are a valid and enforceable contract, that Kiwi.com accepted those Terms & Conditions when it used the Southwest Website with knowledge of the Terms & Conditions, and that Kiwi.com breached the Terms & Conditions when it harvested and

scraped data from the Southwest Website, published Southwest's flight and fare schedules on Kiwi.com, used the Southwest Website for Kiwi.com's own commercial purposes, and brokered and sold Southwest flights without permission;

(2) Kiwi.com's violations of Southwest's Terms & Conditions have caused Southwest to suffer irreparable harm, including lost traffic on its website, operational disruptions, and reputational damage; and

(3) the public interest is served by upholding the rule of law and contract rights.

Further, entry of a permanent injunction will resolve the case and conserve judicial resources. This motion is unopposed.

Accordingly, Southwest hereby requests that the Court enter a final judgment and permanent injunction prohibiting Kiwi.com, Inc. and Kiwi.com s.r.o., as well as 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, from: (1) harvesting, extracting or scraping information from the Southwest Website, www.southwest.com, or its proprietary servers, including Southwest's flight and fare information; (2) publishing Southwest flight or fare information on the kiwi.com website, through its mobile applications or elsewhere; (3) otherwise accessing and using Southwest's Website and data for any commercial purpose; (4) selling Southwest flights; and (5) committing any other acts in violation of Southwest's Terms & Conditions.

For these reasons, Southwest requests that the Court grant this motion and enter the proposed final judgment and permanent injunction.

Respectfully submitted,

/s/ Michael C. Wilson

Michael C. Wilson

Texas State Bar No. 21704590

mwilson@munckwilson.com

S. Wallace Dunwoody, IV

Texas State Bar No. 24040838

wdunwoody@munckwilson.com

Amanda K. Greenspoon

Florida Bar No. 1014584

agreenspon@munckwilson.com

Julie M. Christensen

Texas State Bar No. 24105601

jchristensen@munckwilson.com

MUNCK WILSON MANDALA, LLP

600 Banner Place Tower

12770 Coit Road

Dallas, Texas 75251

(972) 628-3600

(972) 628-3616 fax

**COUNSEL FOR PLAINTIFF
SOUTHWEST AIRLINES CO.**

CERTIFICATE OF SERVICE

On December 23, 2021, a true and accurate copy of the foregoing document was served on all counsel of record via the Court's CM/ECF system.

/s/ Michael C. Wilson

Michael C. Wilson

909548

**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

[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiff Southwest Airlines Co. (“Southwest”) filed suit against Defendants Kiwi.com, Inc. and Kiwi.com s.r.o. (collectively, “Kiwi.com”) asserting that, among other claims, Kiwi.com was violating the Terms & Conditions for use of Southwest’s website, www.southwest.com, and related computer systems. Southwest seeks injunctive relief prohibiting Kiwi.com from engaging in certain conduct, including scraping and harvesting information from Southwest’s website, republishing Southwest’s flight and fare schedules on Kiwi.com, and brokering and selling Southwest flights without permission.

On September 30, 2021, the Court entered a Memorandum Opinion and Order (ECF No. 105) (“September 30 Injunction Order”) granting Southwest’s motion for a preliminary injunction. The September 30 Injunction Order prohibited “Kiwi.com, Inc. and Kiwi.com s.r.o., as well as 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, ... from: (1) harvesting, extracting or scraping information from the Southwest Website, www.southwest.com, or its proprietary servers, including Southwest’s flight and fare information;

(2) publishing Southwest flight or fare information on the kiwi.com website, through its mobile applications or elsewhere; (3) otherwise accessing and using Southwest's Website and data for any commercial purpose; (4) selling Southwest flights; and (5) committing any other acts in violation of Southwest's Terms & Conditions."

As discussed in the September 30 Injunction Order:

(1) Southwest's Terms & Conditions are a valid and enforceable contract, and Kiwi.com accepted those Terms & Conditions when it used the Southwest Website with knowledge of the Terms & Conditions;

(2) Kiwi.com breached the Terms & Conditions when it, among other things, harvested and scraped data from the Southwest Website, published Southwest's flight and fare schedules on Kiwi.com, used the Southwest Website for Kiwi.com's own commercial purposes, and brokered and sold Southwest flights without permission;

(3) Kiwi.com's violations of the Terms & Conditions have caused Southwest to suffer irreparable harm, including lost traffic on its website, customer service burdens, operational disruptions, and reputational damage; and

(4) After considering the balance of harms, the threatened injury to Southwest if the injunction was denied outweighed the harm to Kiwi.com because, among other things, Kiwi.com's unauthorized sales of Southwest flights poses a significant disruption to its customer operations, and the public interest would be served if an injunction is granted because there is an expectation that parties to contracts will honor their contractual obligations.

The Court's findings in the September 30 Injunction Order are hereby adopted by reference. Further, Kiwi.com does not oppose entry of a permanent injunction. Accordingly, the Court finds that there is good cause for entry of a permanent injunction.

Accordingly, Southwest's motion for entry of a permanent injunction is GRANTED.

IT IS HEREBY ORDERED that Kiwi.com, Inc. and Kiwi.com s.r.o., as well as their officers, agents, servants, employees, and attorneys and all other persons acting who are in active concert or participation with them, are permanently prohibited, restrained, and enjoined permanently from: (1) harvesting, extracting, or scraping information from the Southwest website, www.southwest.com, or its proprietary servers, including Southwest's flight and fare information; (2) publishing Southwest flight or fare information on the kiwi.com website, through its mobile applications or elsewhere; (3) otherwise accessing and using Southwest's website and data for any commercial purpose; (4) selling Southwest flights; and (5) committing any other acts in violation of Southwest's Terms & Conditions.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the parties and this matter for purposes of enforcing the parties' settlement agreement and this permanent injunction.

IT IS FURTHER ORDERED that all costs of court, attorneys' fees, and other costs incurred herein are taxed to the party incurring same.

All relief not expressly granted is denied. This is a final judgment.

SO ORDERED.

Signed _____, 202__

ADA BROWN
UNITED STATES DISTRICT JUDGE

909548