

COPY

CAUSE NO. 067-194022-02

AMERICAN AIRLINES, INC.	§	IN THE DISTRICT COURT
	§	
vs.	§	67 TH DISTRICT COURT
	§	
FARECHASE, INC.	§	TARRANT COUNTY, TEXAS

TEMPORARY INJUNCTION

On February 12, 2003 CAME TO BE HEARD Plaintiff American Airlines, Inc.'s ("American") Application for Temporary Injunction against Defendant Farechase, Inc. ("Farechase") contained in American's First Amended Original Petition duly verified by American's authorized representative, Scott L. Hyden, and came American, Farechase and Intervenor, Sabre, Inc. ("Sabre") each by and through their authorized representatives and attorneys of record, and each party announced ready, and the Court having considered the pleadings of the parties, the evidence adduced, and the argument of counsel, and it clearly appearing that American has produced evidence of and demonstrated a probable right of recovery against Farechase, and that it has no adequate remedy at law, and that it will suffer immediate and irreparable injury, loss and damage if this temporary injunction is not entered before trial on the merits may be considered, for the following reasons:

1. Farechase developed, markets and licenses to commercial users, such as and including Sabre, other large travel global distribution systems, and travel agents, "Web Automation" software that enables the users to obtain access to American's computer system and AA.com website ("AA.com"). The Farechase software obtains and copies American flight schedules, seat availability and fare

content from AA.com including American's "webfares" which are lower priced fares available on a restricted basis and not generally available for commercial distribution purposes. In addition, Farechase employees regularly access and interact with AA.com in order to further its commercial purposes including monitoring AA.com and update and quality-check the Farechase software. All such access of AA.com by Farechase and its software is unauthorized and without the consent of American.

2. Farechase's actions are intentional and without American's consent.
3. Farechase is in violation of American's terms and conditions of use of the AA.com website as posted on AA.com (the "User Agreement"). Farechase, its licensees and end users access, obtain, copy and use information from AA.com for commercial purposes, contrary to the User Agreement, thus frustrating American's objectives and efforts in developing and maintaining AA.com
4. Farechase's unauthorized access to AA.com may be a violation of Section 33.02 of the Texas Penal Code.
5. Farechase's actions are unauthorized and without American's consent. American repeatedly has notified Farechase that it must cease and desist the unauthorized accessing and scraping of AA.com, as well as the distribution of its software with the data retriever that is designed specifically to access and scrape AA.com; Farechase refuses to cease such activity and continues to distribute its software, with AA.com data retriever, to its licensees so that unauthorized access and copying of AA.com data continues this day. Farechase intentionally and without authorization from American continues to interfere with American's possessory interest in its own computer system. Farechase's conduct intermeddles with and interferes with American's personal property. Such conduct constitutes a trespass.
6. Farechase's conduct interferes with American's computer network and system and results in a use and loss of its computer system capacity, a loss or diminution of customer goodwill and the opportunities for gaining and increasing customer goodwill, increased expense, and the inability to plan for the need for increased capacity; such actions adversely affect and harm American and the condition, quality and value of American's property.

7. Farechase and its licensees have announced plans to distribute the Web Automation software to many more users. Such "rollout" will significantly increase the amount of accessing of and copying from AA.com, imminently threatens to adversely impact and harm the performance of AA.com and to place additional burdens on American's website infrastructure. Additionally, if an injunction is not entered, competitors of Farechase and their licensees will be encouraged to access and obtain information from AA.com without American's consent, thereby compounding and increasing the threat and risk of harm to American.
8. Farechase's continued and unauthorized use of its software to access and copy information from AA.com substantially interferes with American's efforts to reduce the cost of distribution of its airline tickets. Such continued and unauthorized use has harmed and will further harm American's goodwill and efforts to maintain and possibly reacquire customer loyalty.
9. Farechase's conduct has forced American to attempt self help. American time and resources have been dedicated to creating and implementing technological barriers in an attempt to block unauthorized users of Farechase software from accessing the AA.com computer system. Such actions by American to block have been circumvented by Farechase's intentional inclusion in its software of a "masking" feature by which the software disguises its identity so that American is unable to determine who is gaining access without authorization thereby preventing American from blocking all unauthorized access by the Farechase software.
10. American has no adequate remedy at law. Its damages are not susceptible of determination with sufficient and reasonable certainty inasmuch as (i) it is impossible or extremely difficult to (A) determine the number of potential users of AA.com that American is seeking to encourage by the limited availability of its webfares who will not have the incentive to use AA.com if they can obtain the webfares from travel agents generally which will be the case if this injunction is not entered, (B) estimate the harm that will result from the frustration to or demise of American's current efforts to redirect sales of tickets to lower cost distribution channels, (C) calculate in money damages the injury and damage resulting from the loss of goodwill and loss of AA.com customers, or (D) calculate the money damages which will result from the unlawful use of American's property by Farechase and the present and unknown number of future users of the Farechase software if this temporary injunction is not entered, and from the probable scraping of American's website by an unknown number of competitors of Farechase and

their licensees who will be encouraged to begin doing so if this injunction is not entered; (ii) it is impossible or extremely difficult to determine the number of travel agents who are potential users of American's EveryFare program through which American is seeking to reduce its distribution costs who will not have the incentive to join into the EveryFare program if they can obtain American's webfares using Farechase software which will be the case if this injunction is not entered, or to calculate in money damages the injury and damage resulting from the loss of such commercial opportunity; (iii) Farechase has evidenced that it has limited cash resources of its own and therefore is unlikely to be able to respond in money damages, even if damages were able to be determined with reasonable certainty; and (iv) it would be impractical, cost and court inefficient and economically unfeasible if American were required to sue individually the ultimate users of the Farechase software, its competitors and their licensees, if this injunction is not entered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that

Defendant Farechase, Inc., its officers, agents, servants, employees, attorneys

and all persons in active concert or participation with them are hereby

immediately and temporarily restrained and enjoined, *pendente lite*, from:

- (i) accessing, using or scraping AA.com without the written consent of American;
- (ii) accessing, using or scraping AA.com for any commercial purpose, including for the purpose of updating Farechase software, without the written consent of American;
- (iii) accessing, using or scraping AA.com by use of any automated device or means, including electronic devices or means commonly known in the industry as robots or spiders, without the written consent of American; and
- (iv) licensing or otherwise providing to any person or entity any software, including updates to existing software, which is capable of accessing AA.com, without the written consent of American.

The Clerk of this Court is hereby ordered to issue a temporary injunction enjoining the Defendant Farechase, Inc., as set out above; provided however, that prior to the issuance thereof, American shall file with the Clerk of this Court a bond or cash deposit in lieu of bond, in the amount of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00), conditioned according to law which bond shall be executed by American and a corporate surety or two or more individual sureties.

IT IS FURTHER ORDERED that any monies placed with the Clerk of this Court shall be placed in an interest bearing account.

IT IS FURTHER ORDERED that this case is SPECIALLY set for trial on the merits on July 7, 2003 at 9:00 AM in the courtroom of the 67th District Court.

This Temporary Injunction is binding on Farechase, Inc., its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of this Temporary Injunction whether by personal service, telephone, letter, facsimile transmission or otherwise.

ENTERED this 8th day of March, 2003 at 7:15 o'clock A.M.



Donald J. Cosby
Presiding Judge