

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Petitioner,

v.

AMERICAN AIRLINES, INC.,

Respondent.

Supplemental to  
Civil Action No. 92-2854

Judge

**PETITION OF THE UNITED STATES  
FOR AN ORDER TO SHOW CAUSE WHY RESPONDENT  
AMERICAN AIRLINES, INC. SHOULD NOT BE FOUND IN CIVIL CONTEMPT**

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, respectfully petitions for an Order to Show Cause why respondent American Airlines, Inc., should not be found in civil contempt of the Final Judgment entered by the Court in United States v. Airline Tariff Publishing Company, et. al, (August 10, 1994) (Civ Act. No. 92-2854) (the "Final Judgment"). In support of this petition to show cause, the United States represents as follows:

**I. JURISDICTION OF THE COURT**

1. This petition alleges violations of the Final Judgment by Respondent. This Court has jurisdiction under its inherent power to enforce compliance with its orders and Section IX(D) of the Final Judgment.

2. Section IX(D) of the Final Judgment provides:

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance,

and to punish violations of its provisions.

## II. THE RESPONDENT

3. Respondent American Airlines, Inc. (“American”) is a Delaware corporation with its principal place of business in Fort Worth, Texas.

## III. PROCEDURAL BACKGROUND

4. On December 21, 1992, the United States filed a civil antitrust Complaint against Airline Tariff Publishing Co. (“ATPCO”), American and seven other major domestic airlines. Most domestic airline fares are disseminated through ATPCO, a company jointly owned by American and a number of other airlines. The Complaint alleged that the defendant airlines used fare filings disseminated by ATPCO to reach agreements “to increase fares, eliminate discounted fares, and set fare restrictions,” in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. On March 17, 1994, the United States, ATPCO, American and the remaining defendant airlines filed with the Court a Stipulation consenting to entry of a proposed Final Judgment. After reviewing the proposed Final Judgment pursuant to the Antitrust Procedures and Penalties Act (the “Tunney Act”), the Court concluded the Judgment was in the public interest within the meaning of the Tunney Act, and it became final with respect to American and the other remaining defendants on August 10, 1994. A copy of the Final Judgment is appended to this Petition as Exhibit 1.

## IV. CONDUCT PROHIBITED BY THE FINAL JUDGMENT

6. Section IV(A)(2) of the Final Judgment provides: “Each of the defendant airlines is enjoined and restrained from . . . disseminating any first ticket dates, last ticket dates, or any other information concerning the defendant’s planned or contemplated fares or changes to fares.”

7. Section IV(A)(3) of the Final Judgment provides: “Each of the defendant airlines is enjoined and restrained from . . . making visible its own tags or any other similar designating mechanism to any other airline.”

8. Section IV(A)(4) of the Final Judgment provides: “Each of the defendant airlines is enjoined and restrained from . . . making visible or disseminating to any other airline any fare that is intended solely to communicate a defendant’s planned or contemplated fares or changes to fares.”

#### V. ACTS IN VIOLATION OF THE FINAL JUDGMENT

9. On one occasion, American disseminated published fares that increased advance purchase requirements by four days, with a future first travel date that was unrelated to seasonal travel, a special event, or the introduction of service. When disseminated, the first travel date had little or no relevance for consumers and substantially reduced American’s risk of losing passengers to other airlines. The dissemination of fares using a future first travel date in this manner violated Section IV(A)(2) of the Final Judgment.

10. When other airlines did not match American’s fares, American filed low fares in hub markets of those airlines, fares sometimes referred to in the industry as cross market initiatives. Certain of these cross market initiatives were disseminated with footnotes containing travel dates that had little or no meaning to consumers and were identical to travel dates associated with American’s fares with increased advance purchase requirements. This use of footnotes containing travel dates violated Sections IV(A)(2) and IV(A)(3) of the Final Judgment.

11. American disseminated published fares with the same fare rules and the same inventory availability as previously disseminated more expensive fares, but did not cancel the more

expensive fares. Because American did not cancel the more expensive fares, they became duplicative of the newly-disseminated lower fares. This creation of duplicative fares violated Sections IV(A)(2) and IV(A)(4) of the Final Judgment.

PRAYER

WHEREFORE, for the foregoing reasons, the United States respectfully requests that this Court enter an Order directing Respondent American to appear before this Court at a time and place to be fixed in said Order, to show cause why they should not be adjudged in civil contempt of this Court and prays for the following relief:

- (1) that Respondent American be found in civil contempt for the violations of the Final Judgment described above;
- (2) that Respondent American be ordered to pay an amount deemed appropriate by this Court for contempt of this Court's Final Judgment;
- (3) that Respondent be enjoined from improper uses of travel dates to prevent recurrence of American's present violations;
- (4) that the United States be awarded costs and attorney fees incurred in investigating American's conduct and filing this petition to show cause; and
- (5) that the United States have any and all other relief as the Court may deem justified

by Respondent American's actions.

Dated: August 6, 2004

Respectfully submitted,

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"/s/"  
R. HEWITT PATE (D.C. Bar #473598)  
Assistant Attorney General

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"/s/"  
J. RICHARD DOIDGE

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JESSICA K. DELBAUM

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J. ROBERT KRAMER II  
Director of Operations and Civil Enforcement

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**Certificate of Service**

I hereby certify that a copy of the foregoing Petition of the United States For an Order to Show Cause Why Respondent American Airlines, Inc. Should Not Be Found in Civil Contempt was served by hand delivery on the individual listed below on this 6<sup>th</sup> day of August, 2004:

Scott E. Flick

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Counsel for Respondent, American Airlines, Inc.

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/s'/

Jessica K. Delbaum