

13 CV 2412

JS 44C/SDNY  
REV. 7/2012

## CIVIL COVER SHEET

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

APR 11 2013

## PLAINTIFFS

Fareportal, Inc.  
WK Travel, Inc.

## DEFENDANTS

LBF Travel, Inc.  
Globester LLC

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

McBreen & Kopko  
500 N. Broadway, Suite 129  
Jericho, NY 11753

## ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

15 U.S.C. §§ 1114 and 1125(a). This is an action arising under the Lanham Act for trademark infringement and unfair competition.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## TORTS

## ACTIONS UNDER STATUTES

## CONTRACT

- [ ] 110 INSURANCE  
[ ] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE INSTRUMENT  
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
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[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)  
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[ ] 160 STOCKHOLDERS SUITS  
[ ] 190 OTHER CONTRACT  
[ ] 195 CONTRACT PRODUCT LIABILITY  
[ ] 196 FRANCHISE

## REAL PROPERTY

- [ ] 210 LAND  
[ ] 220 CONDEMNATION  
[ ] 230 FORECLOSURE  
[ ] 240 RENT LEASE & EJECTMENT  
[ ] 245 TORTS TO LAND  
[ ] 250 TORT PRODUCT LIABILITY  
[ ] 290 ALL OTHER REAL PROPERTY

## PERSONAL INJURY

- [ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT LIABILITY  
[ ] 320 ASSAULT, LIBEL & SLANDER  
[ ] 330 FEDERAL EMPLOYERS' LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY  
[ ] 360 OTHER PERSONAL INJURY

## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

- [ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING/ ACCOMMODATIONS  
[ ] 444 WELFARE  
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
[ ] 446 AMERICANS WITH DISABILITIES - OTHER  
[ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)

## PERSONAL INJURY

- [ ] 362 PERSONAL INJURY - MED MALPRACTICE  
[ ] 365 PERSONAL INJURY PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

## PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING  
[ ] 380 OTHER PERSONAL PROPERTY DAMAGE  
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## PRISONER PETITIONS

- [ ] 510 MOTIONS TO VACATE SENTENCE 20 USC 2255  
[ ] 530 HABEAS CORPUS  
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[ ] 540 MANDAMUS & OTHER

## PRISONER CIVIL RIGHTS

- [ ] 550 CIVIL RIGHTS  
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## FORFEITURE/PENALTY

- [ ] 610 AGRICULTURE  
[ ] 620 OTHER FOOD & DRUG  
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- [ ] 710 FAIR LABOR STANDARDS ACT  
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[ ] 895 FREEDOM OF INFORMATION ACT  
[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE  
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] 1 [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 [ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Fareportal, Inc. - 213 West 35th Street, Suite 1201, New York, NY 10001, County of New York  
WK Travel, Inc. - 213 West 35th Street, Suite 1201, New York, NY 10001, County of New York

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

LBF Travel, Inc. - 4545 Murphy Canyon Road, Suite 210 San Diego, CA 92123, County of San Diego  
Globester LLC - 990 Alice Lane, #8, Menlo Park, California 94025, County of San Mateo

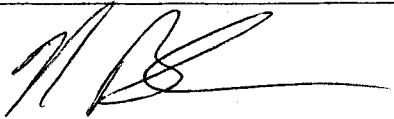
DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN  
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 4/10/13

RECEIPT #



ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

☒ YES (DATE ADMITTED Mo. 02 Yr. 2002)

Attorney Bar Code # NB9530

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_

**GORENSTEIN**  
Magistrate Judge

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

**JUDGE SWEET**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

FAREPORTAL, INC.  
WK TRAVEL, INC.

Plaintiffs,

v.

LBF TRAVEL, INC.  
GLOBESTER LLC

Defendants.

COMPLAINT

Civil Action No.: \_\_\_\_\_

TRIAL BY JURY DEMANDED

13 CV 2412

13 DEC 11 PM 11:09  
S.D. OF N.Y.

**COMPLAINT**

Fareportal, Inc. ("Fareportal") and WK Travel, Inc. ("WK Travel") (collectively, "Plaintiffs"), by their counsel, McBreen & Kopko, bring this Complaint against LBF Travel, Inc. ("LBF Travel") and Globester LLC ("Globester") (collectively, "Defendants") alleging the following:

**Nature of Action**

1. This is an action to recover for Defendants' willful acts of (a) trademark infringement, unfair competition, and false designation of origin under 15 U.S.C. §§ 1051 *et seq.* (the Lanham Act); (b) trademark infringement and unfair competition in violation of New York State common law; (c) trademark dilution and injury to business reputation under New York General Business Law ("NY GBL") § 360-l; (e) trade name infringement under NY GBL § 133; (f) unfair and deceptive trade practices under NY GBL § 349; (g) false advertising under NY

GBL § 350; (h) unfair business practice under New York State common law; and (i) unjust enrichment under New York State common law.

2. Plaintiffs are affiliated companies that own and operate leading global online travel companies. Their family of brands use cutting edge technology and premium customer support to provide leisure and business travelers with one stop shopping to meet all their travel needs.

3. Upon information and belief, Defendants are affiliated companies under common ownership and/or control that operate competing online travel websites. Defendants have attempted to develop their consumer base by infringing on Plaintiffs' trademarks and trade name, and otherwise engaging in unfair competition in violation of federal and New York law, to the significant injury of Plaintiffs and the New York consumer public.

4. Defendants, with full knowledge of Plaintiffs' existence and their rights in (a) the federally-registered CHEAPOAIR and CHEAPOSTAY trademarks and (b) their CHEAPOAIR.COM, WWW.CHEAPOAIR.COM, ONETRAVEL and WWW.ONETRAVEL.COM service marks, for which federal registration is pending and to which New York common law protection attaches, Defendants have made infringing use of marks and brands that are identical, or nearly so, to Plaintiffs' federally-registered trademarks and common law service marks, which are likely to cause consumer confusion and dilute and tarnish Plaintiffs' trademarks and service marks.

5. Despite Plaintiffs' rights and over Plaintiffs' objections, Defendants have (a) purchased Plaintiffs' trademarks and service marks as search engine keywords to generate advertisements for Defendants' services; (b) advertised their competing online travel services by displaying Plaintiffs' trademarks and service marks in Defendants' advertisements and display

URLs; (c) created www.cheapOcompare.com, a confusingly similar domain name to www.cheapOair.com designed to build off of and divert traffic from Plaintiff Fareportal's CheapOair famous website; (e) heightened the likelihood of consumer confusion regarding the connection between Defendants' services and Plaintiffs' services by mimicking the distinctive, nonfunctional design elements of Plaintiffs' websites; and (f) engaged in false advertising and other consumer protection violations.

### **Cease and Desist Letter**

6. Prior to initiating this action, Plaintiffs attempted to resolve the matter out of court by sending a cease and desist letter to the Defendants.

7. The cease and desist letter included, among other things, the allegations set forth in this Complaint.

8. The cease and desist letter was sent to the Defendants via Federal Express overnight delivery on March 15, 2013.

9. The cease and desist letter was delivered to both Defendants on March 18, 2013.

10. Neither Defendant responded to the cease and desist letter.

### **The Parties**

11. Plaintiff Fareportal is a New York corporation with a place of business at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001.

12. Plaintiff WK Travel is a Nevada corporation with a place of business at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001.

13. Defendant LBF Travel is a Delaware corporation that, upon information and belief, has a place of business at 4545 Murphy Canyon Road, Suite 210 San Diego, CA 92123. At all times pertinent hereto, LBF Travel has directed ongoing and substantial commercial

activities toward the State of New York and in the Southern District of New York, including without limitation, the County of New York.

14. Defendant Globester is a California limited liability company that, upon information and belief, has a place of business at 990 Alice Lane, #8, Menlo Park, California 94025. At all times pertinent hereto, Globester has directed ongoing and substantial commercial activities toward the State of New York and in the Southern District of New York, including, without limitation, the County of New York.

### **Jurisdiction and Venue**

15. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 (actions arising under 15 U.S.C., Chapter 22 – Trademarks), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity of citizenship), 28 U.S.C. §1338 (a) (acts of Congress relating to trademarks), and 28 U.S.C. §1367 (supplemental jurisdiction).

16. This Court has personal jurisdiction over Defendants because the injury of trademark infringement, unfair competition, unfair business practices, and the related offenses, has been and will be felt in New York where Plaintiffs are located and because Defendants promote their respective services to consumers in New York through their own highly interactive websites and each Defendant's extensive internet advertising campaign that reaches millions of consumers in New York.

17. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) and (c), because a substantial part of the events giving rise to the claim occurred in this District and because Defendants were subject to personal jurisdiction in this District at the time the action was commenced.

## Operative Facts

### I. Plaintiffs' Business and Trademark Holdings

18. Plaintiffs are affiliated companies with common ownership and/or management.
19. Fareportal owns a broad portfolio of travel brands, including CheapOair and CheapOstay, and operates websites under those brands from the Uniform Resource Locator ("URL") <http://www.cheapOair.com> and <http://www.cheapOstay.com>, respectively.
20. Since at least 2005, Fareportal has used CHEAPOAIR and operated the website located at the URL <http://www.cheapOair.com>. Since 2009, Fareportal has been the owner of federal registration number 3576166 for CHEAPOAIR. CheapOair is a leading online source of discounted leisure and business travel products. In fact, as of the date of this Complaint, [www.cheapOair.com](http://www.cheapOair.com) is the third largest online travel agency in the United States. Through the CheapOair website, Fareportal provides travel information to consumers and allows consumers to book plane tickets, hotel accommodations, rental cars, and vacations.
21. Since at least 2008, Fareportal has used CHEAPOSTAY and operated the related website. Since 2009, Fareportal has been the owner of federal registration number 3672700 for CHEAPOSTAY. CheapOstay is a leading online source for negotiated hotel rates. Through the CheapOstay website, Fareportal offers customers thousands of negotiated hotel rates.
22. Plaintiff Fareportal's federally-registered trademarks include the following (the "Registered Marks"):

<u>MARK</u>	<u>REG. NO.</u>	<u>REGISTR. DATE</u>	<u>SERVICES</u>
CHEAPOAIR	3576166	02/17/09	Travel agency services Travel information services Travel lodging information and booking services

CheapOstay

3672700

08/25/09

Hotel booking services

CHEAPOAIR.COM THE ONLY WAY  
TO GO!!

3580258

12/09/08

Travel agency services  
Travel information services

**cheapOair.com**  
*the only way to go*

3553213

03/14/08

Travel agency services  
Travel information services

23. Since at least 1998, WK Travel and its predecessor entities have used the ONETRAVEL mark and operated the website located at the URL <http://www.onetravel.com>. On May 8, 2012, WK Travel filed an application, serial number 85620094, to register ONETRAVEL with the United States Patent and Trademark Office ("USPTO"). The application is pending. OneTravel is a leading online source of discounted airfare, airline tickets, and vacation packages. Through the OneTravel website, WK Travel provides travel information to consumers and allows consumers to book plane tickets, hotel accommodations, rental cars, and vacations.

24. Together, Plaintiffs own an extensive family of well-known marks for the CheapOair and OneTravel brands that are protected under New York common law and for which they have applications pending for federal registration before the USPTO (the "Common Law Marks").

<u>MARK</u>	<u>SERIAL NO.</u>	<u>FILING DATE</u>	<u>SERVICES</u>
CHEAPOAIR.COM	85566395	03/12/12	Travel agency services Travel information services Travel lodging information and booking services



WWW.CHEAPOAIR.COM

85564451

03/08/12

Travel agency services  
Travel information services  
Travel lodging information  
and booking services

ONETRAVEL

85620094

05/08/12

Travel agency services  
Travel information services  
Travel lodging information  
and booking services

25. Plaintiffs have used the Registered Marks and Common Law Marks (collectively the "Protected Marks") in connection with, inter alia, providing travel, lodging, and booking services, continuously since the dates listed above and far prior to the acts of Defendants complained of herein.

26. As a result of extensive use and promotion by Plaintiffs of the Protected Marks, Plaintiffs own the valuable goodwill that is symbolized by them. The Protected Marks have come to be associated in the minds of consumers throughout the country with Plaintiffs' services, and the use of the Protected Marks and key parts thereof substantially increases the marketability of travel, reservation, and booking services rendered by Plaintiffs through their CheapOair.com, CheapOstay.com, and OneTravel.com websites.

## **II. Defendants' Business Operations**

27. Upon information and belief, Defendants are affiliated companies with common ownership and management.

28. Upon information and belief, Defendant LBF Travel owns and operates Smartfares.com and Travelation.com, brands that offer both consumer-facing and travel trade services.

29. Smartfares and Travelation are web-based businesses, operating from the URLs <http://www.smartfares.com> and <http://www.travelation.com>, respectively. These sites are purveyors of discount travel products, including airline tickets and hotel room bookings. As such, Smartfares.com and Travelation.com are direct competitors of CheapOair.com, CheapOstay.com, and OneTravel.com, offering similar travel products through similar means to the business- and leisure-traveling public.

30. Upon information and belief, Defendant Globester owns and operates Globester.com, a website that offers both consumer-facing and travel trade services.

31. Globester.com is a web-based business, operating from the URL <http://www.globester.com>. This site is a purveyor of discount travel products, including airline tickets and hotel room bookings. As such, Globester.com is a direct competitor of CheapOair.com, CheapOstay.com, and OneTravel.com, offering similar travel products through similar means to the business- and leisure-traveling public.

32. Upon information and belief, Defendant Globester also owns and operates CheapOcompare.com, a website that offers both consumer-facing and travel trade services.

33. CheapOcompare.com is a web-based business, operating from the URL <http://www.cheapOcompare.com>. CheapOcompare offers comparisons of travel deals for consumers. As such, CheapOcompare is a competitor of CheapOair, CheapOstay, and OneTravel, offering similar travel products through similar means to the business- and leisure-traveling public.

34. Defendants have used Plaintiffs' Protected Marks to increase the marketability of Defendants' own travel, reservation, and booking services through the purchase of Plaintiffs' Protected Marks as advertising keywords (as explained below) along with use of the Protected

Marks in Defendants' advertisements, Display URLs, title and source code of its websites, and subdomain names, in order to wrongfully suggest to the consumer public that their services are affiliated with, sponsored by, authorized by, or provided by Plaintiffs for the purpose of misleading consumers into purchasing Defendants' services rather than Plaintiffs' services.

### **III. Facts Common to All Claims for Relief**

#### **A. Background on Federal and Common Law Trademark Infringement in Online Advertising**

35. Keyword advertising refers to any online advertising associated with specific words or phrases. Through keyword advertising, an advertiser's advertisements will appear in sponsored search results when an online user searches a specific keyword. For example, if an internet user searches an internet search engine such as Bing.com for the word "flights," the search engine will generally display the advertisements of advertisers that have purchased or made a monetary "bid" on the keyword "flights" in a prominent position at the top and/or side of the webpage that shows the results of the search. Generally, the search engine will award the first sponsored result to the advertiser that has placed the highest bid on the keyword – meaning, the advertiser that has agreed to pay to the search engine operator the highest amount each time an independent internet user takes a particular action (such as searching a term or clicking on a link in the advertisement). Google AdWords, Yahoo! Search Marketing, and Microsoft (Bing) AdCenter are currently the most popular keyword advertising programs in the United States.

36. At least as early as January 2013, Defendant LBF Travel began a concerted and systematic effort to use the Protected Marks and key parts thereof in its internet keyword advertising campaigns for the Smartfares and Travelation brands. Without the consent or authorization of Plaintiffs, LBF Travel began purchasing some or all of the Protected Marks as well as key parts thereof as advertising keywords on the Google.com, Yahoo.com, Bing.com,

and Dogpile.com search engines. As a result of LBF Travel's keyword purchases, when a user inputs certain Protected Marks – such as CHEAPOAIR and ONETRAVEL – as well as key parts thereof into these search engines, advertisements for LBF Travel's competing travel services websites, Smartfares.com and Travelation.com, appear prominently as sponsored search results.

37. At least as early as January 2013, Defendant Globester began a concerted and systematic effort to use the Protected Marks as well as key parts thereof in its internet keyword advertising campaigns for the Globester and CheapOcompare brands. Without the consent or authorization of Plaintiffs, Globester began purchasing some or all of the Protected Marks as well as key parts thereof as advertising keywords on the Google.com, Yahoo.com, Bing.com, and Dogpile.com search engines. As a result of Globester's keyword purchases, when a user inputs certain Protected Marks – such as CHEAPOAIR and ONETRAVEL – as well as key parts thereof, into these search engines, advertisements for Globester's competing travel services website, Globester.com, and related travel services website, CheapOcompare.com, appear prominently as sponsored search results.

## **B. Acts of Federal and Common Law Trademark Infringement**

### **1. Trademark Infringement in Keyword Advertising by Defendant LBF Travel (Smartfares.com and Travelation.com) and Defendant Globester (Globester.com)**

38. Defendants LBF Travel and Globester go far beyond simply purchasing Plaintiffs' Protected Marks as keywords; they also use the Protected Marks and key parts thereof (a) within the headlines, Display URLs, and text of keyword search results advertisements, (b) in the title and source code of their websites, and/or (c) in infringing subdomain names, all to misleadingly identify LBF Travel's and Globester's own services.

39. These unauthorized uses of the Protected Marks are clearly intended to cause consumer confusion about the source of LBF Travel's and Globester's services and/or the relationship or affiliation between these Defendants and Plaintiffs.

40. These unauthorized uses of the Protected Marks are prohibited by federal trademark and unfair competition law and New York State trademark and unfair competition law and common law.

41. As of the date of this Complaint, Defendants LBF Travel and Globester continue to use the Protected Marks and key parts thereof in their respective online advertisements, as detailed below.

42. Beginning in at least January 2013, LBF Travel included the CHEAPOAIR mark within its keyword advertisements.

43. For example, on January 31, 2013, LBF Travel included the CHEAPOAIR mark as part of a spurious Display URL. When a Dogpile user searched the mark "CHEAPOAIR," the following keyword advertisement appeared:

Cheap Flights Ticket - Valentine Sale-2013 | smartfares.com

[www.smartfares.com/Cheapoair](http://www.smartfares.com/Cheapoair)

Sponsored: Ads by Google

Buy & Save Upto 70%+\$15 At Flights.

44. Note, however, that the Display URL "smartfares.com/Cheapoair" does not actually exist. Users clicking on the advertisement above were simply redirected to the main Smartfares.com website, the apparent owner of the subdomain Smartfares.com/Cheapoair.

45. On another occasion, when a Google user searched the Pending Mark WWW.CHEAPOAIR.COM, which is protected by common law trademark, the following

keyword advertisement for Defendant LBF Travel's Travelation.com appeared with a slight variation on the federally-registered CheapOair trademark appearing in the Display URL:

Cheap Air Flights Online  
www.travelation.com/Cheapo-Air-Flight  
Save Up To 70% + \$15 off On Flight.  
Book Now & Save Big On Travelation®

46. Note, however, that the domain name "www.travelation.com/cheapo-air-flight" does not actually exist. Users clicking on the advertisement above were simply redirected to the Travelation.com website.

47. Similarly, Defendant Globester includes the ONETRAVEL Common Law Mark in keyword advertisements for the Globester brand. Globester also flagrantly incorporates the ONETRAVEL mark into an infringing domain as part of keyword advertisements and in the page title and Display URL therein.

48. For example, when a Google user searched the mark "ONETRAVEL," a keyword advertisement appeared similar to the one displayed below (which is an actual Globester sponsored Google.com keyword advertisement for OneTravel):

**One Travel Flights-70%Off**  
www.globester.com/Onetravel - 46 seller reviews

Save 70% on Airline Tickets. Book Today & Get \$15 Extra Off.

Valentine's Day Deals - Flights Under \$99 - Last Minute Deals - Military Flights

49. Note, however, that the domain name "globester.com/Onetravel" does not actually exist. Users clicking on the advertisement above were simply redirected to the main Globester.com website.

50. The LBF Travel and Globester keyword advertisements and uses of the Protected Marks and key parts thereof detailed above are not advertisements for Plaintiffs' services and were made without Plaintiffs' permission. These actions threaten to impair the distinctiveness of

the Protected Marks and to tarnish them by association with Defendant LBF Travel's and Defendant Globester's services, thereby diluting Plaintiffs' Protected Marks.

**2. False Designation under Federal and New York State Trademark and Unfair Competition Law: Acts of Trademark Infringement and Confusingly Similar Website Packaging and Design by Defendant Globester (CheapOcompare.com)**

51. In addition to Defendants' use in their advertisements of Plaintiffs' Protected Marks, Defendant Globester uses and does business under the brand CheapOcompare and in connection therewith has launched the CheapOcompare website, which is confusingly similar to Plaintiff Fareportal's federally-registered CheapOair trademark and website. Globester's confusingly similar mark and domain name creates initial interest confusion as well as confusion as to the source of the web-based travel services being offered.

52. Further, Defendant Globester has intentionally imitated nonfunctional design elements unique to Plaintiff's CheapOair website in Globester's CheapOcompare website in order to create initial interest confusion and to wrongfully suggest that its services are affiliated with, sponsored by, authorized by, or provided by Plaintiff, which constitutes false designation of origin under federal and New York law.

**a. Trademark Infringement: Confusingly Similar Mark and Domain Name**

53. Upon information and belief, Defendant Globester, with full knowledge of the existence and success of Plaintiff Fareportal's CheapOair trademark and website domain, launched a competing travel website with this name solely to create initial interest confusion and other likely confusion as to the source, affiliation, or sponsorship of the internet travel services.

54. Defendant Globester's CheapOcompare mark and domain name is similar in sound and appearance to Fareportal's senior CheapOair federally-registered trademark and domain name.

55. This confusingly similar mark and domain name creates initial interest confusion as well as confusion as to the source of the web-based travel services being offered.

56. Not only are Fareportal's CheapOair trademark and Globester's CheapOcompare mark confusingly similar in sound, they are confusingly similar in appearance. Fareportal's CheapOair federally-registered trademark and Defendant Globester's CheapOcompare mark, which are presented side by side below, both feature large, blue block print letters; orange detailing; a prominent symbol in place of the "O" within the design that separates the "cheap" from the "air" and "compare" respectively with the use. Taken in their totality, these features create a confusingly similar design.



57. The confusingly similar design of CheapOcompare, as illustrated above, serves to increase consumer confusion as to the source of the web-based travel services being offered, creating a false impression that CheapOcompare is affiliated with, sponsored by, authorized by, or provided by CheapOair.

58. It is significant that the Defendant Globester has not even applied to register CheapOcompare as a federal trademark. Indeed, Plaintiffs contend that Defendant Globester could not successfully register CheapOcompare because of Plaintiff Fareportal's registered trademark CheapOair. An office action by the USPTO would be inevitable based on the CheapOair trademark.



**b. Elements Heightening the Likelihood of Confusion: Confusingly Similar Nonfunctional Design Elements: Imitation of Plaintiff Fareportal's Website and Promotional Language (cheapOair.com) by Defendant Globester (cheapOcompare.com)**

59. In addition to developing the confusingly similar mark and domain name CheapOcompare, Defendant Globester has copied nonfunctional design elements of the packaging for Plaintiff Fareportal's CheapOair website, including the layout of the website and the promotional language. By mimicking Fareportal's nonfunctional design elements for its CheapOair website, Globester heightens the likelihood that consumers will be confused as to the affiliation, sponsorship, or source of the services with those sponsored by, authorized by, affiliated with, or provided by Fareportal.

60. The homepage for CheapOair.com features the search engine in the upper left hand corner; the search engine includes four search tabs for flights, hotels, cars, and vacations; promotional deals just to the right of the search engine; and the promotional language "Find Cheap Tickets – Save Big!" above the search engine.

61. Attached hereto as "Exhibit A" is a screenshot of CheapOair.com's homepage as of March 15, 2013.

62. The homepage for CheapOcompare.com also features the search engine in the upper left hand corner; the search engine includes four search tabs for flights, hotels, cars, and cruise; promotional deals just to the right of the search engine; and the promotional language "Find Cheapest Flight Deals for Airline Tickets" above the search engine.

63. Attached hereto as "Exhibit B" is a screenshot of CheapOcompare.com's homepage as of March 15, 2013.

**3. Elements Heightening the Likelihood of Confusion: Confusingly Similar Website Packaging and Design by Defendant LBF Travel (Smartfares.com and Travelation.com) and Defendant Globester (Globester.com)**

64. Not only have Defendants LBF Travel and Globester violated federal and New York trademark and unfair competition law by using Plaintiffs' Protected Marks in their advertisements, they have also intentionally heightened the likelihood of confusion among consumers as to the affiliation, sponsorship, or source of the services provided by imitating nonfunctional design elements unique to Plaintiffs' websites. This intentional imitation furthers the wrongfully impression – initially created by Defendants' trademark infringement – that Defendants' services are affiliated with, sponsored by, authorized by, or provided by Plaintiffs.

65. For web-based travel companies, the nonfunctional design and layout of the website serves the same purpose as the nonfunctional design and layout of the packaging of a physical product, such as toothpaste.

66. Plaintiffs have established distinctive, nonfunctional design elements for their websites, which consumers have come to associate with Plaintiffs' services.

67. Defendants LBF Travel and Globester have adopted the distinctive nonfunctional design elements of Plaintiffs' websites for Defendants' competing web-based travel websites in bad faith, with full knowledge of the existence and success of Plaintiffs' websites, in order to heighten consumer confusion as to the source of the internet travel services.

68. Defendant LBF Travel's and Globester's conscious imitation and subjective intent to imitate and create consumer confusion is evidenced by the cumulative lack of differentiation between the nonfunctional design elements of their competing websites and Plaintiffs' websites.

69. Indeed, [www.similarsitesearch.com](http://www.similarsitesearch.com) shows that each of Defendants' websites is more than ninety percent (90%) similar to Plaintiffs' websites.

**a. Imitation of Plaintiff WK Travel's homepage (OneTravel.com) by Defendant LBF Travel (Smartfares.com) and Defendant Globester (Globester.com)**

70. Plaintiff WK Travel invested significant time and resources in developing the distinctive homepage for its OneTravel.com website. Without permission from or compensation to WK Travel, Defendants LBF Travel and Globester blatantly imitated the distinctive OneTravel.com homepage design.

71. The homepage for Plaintiff WK Travel's OneTravel.com features the search engine in the upper left hand corner; promotional deals just to the right of that; three columns listing cheap flights below the search engine; and "Promo Codes" juxtaposed beside the cheap flights columns.

72. Attached hereto as "Exhibit C" is a screenshot of OneTravel.com's homepage as of March 15, 2013.

73. The layout of the homepage for Defendant LBF Travel's Smartfares.com is substantially similar to the homepage for Onetravel.com.

74. The homepage for Smartfares.com also features the search engine in the upper left hand corner; promotional deals just to the right of that; three columns listing cheap flights below the search engine; and "Promo Codes" juxtaposed beside the cheap flights columns.

75. Attached hereto as "Exhibit D" is a screenshot of Smartfares.com's homepage as of March 15, 2013.

76. The layout of the homepage for Defendant Globester's Globester.com website is also substantially similar to the homepage for OneTravel.com.

77. The homepage for Globester.com also features the search engine in the upper left hand corner; promotional deals just to the right of that; two columns listing cheap flights below the search engine; and "Promo Codes" juxtaposed beside the cheap flights columns.

78. Attached hereto as "Exhibit E" is a screenshot of Globester.com's homepage as of March 15, 2013.

**b. Imitation of Plaintiffs' Marketing and Disclaimer Language by Defendant LBF Travel (Smartfares.com and Travelation.com) Defendant Globester (Globester.com)**

79. Plaintiffs invested significant time and resources in developing their marketing system and promotional and disclaimer language, which Defendants LBF Travel and Globester blatantly copied in their Smartfares.com, Travelation.com, and Globester.com websites, without permission from or compensation to Plaintiffs.

80. Defendants LBF Travel and Globester blatantly copied Plaintiffs' marketing system in Defendants' Smartfares.com, Travelation.com, and Globester.com websites.

81. Similarly, both Smartfares.com and Travelation.com use the 5 star rating system employed by CheapOair.com and OneTravel.com.

82. In addition, the promotional language for the hotels section of Defendant LBF Travel's Smartfares and Travelation websites was clearly taken from the language that Plaintiffs' used until recently on their CheapOair and OneTravel websites.

83. Although Plaintiffs have since updated their sites, Smartfares.com and Travelation.com both advertise over 400,000 hotel deals, followed by a percentage off rate, and an advertised coupon code. Up until recently, this was the model that CheapOair.com and OneTravel.com used.

84. Even the disclaimer language on Travelation.com is substantially similar to language that CheapOair.com used until recently.

**c. Imitation of Plaintiff Fareportal's Car Rental Section (CheapOair.com) by Defendant LBF Travel (Smartfares.com)**

85. Plaintiff Fareportal invested significant time and resources in developing the distinctive car rental webpage for its CheapOair.com website. Without permission from or compensation to Fareportal, Defendant LBF Travel blatantly imitated the distinctive CheapOair.com car rental webpage design.

86. CheapOair.com's car rental webpage features the search engine in the upper left hand corner; a promotional deal just to the right of that with a picture of a person holding a pair of car keys and a written promise of car rentals starting at a low amount per day; below the search engine is a list of reasons why consumers should rent with CheapOair.com, entitled "Why Rent a Car with CheapOair.com?"

87. Attached hereto as "Exhibit F" is a screenshot of CheapOair.com's car rental webpage as of March 15, 2013.

88. The car rental webpage for Smartfares.com is substantially similar to the car rental webpage for CheapOair.com.

89. The car rental webpage for Smartfares.com also features the search engine in the upper left hand corner; a promotional deal just to the right of that with a picture of a person holding a pair of car keys and a written promise of car rentals starting at a low amount per day; below the search engine is a list of reasons why consumers should rent with Smartfares, entitled "Why book with us?"

90. Attached hereto as "Exhibit G" is a screenshot of Smartfares.com's car rental webpage as of March 15, 2013.

**d. Imitation of Plaintiff WK Travel's Search Screen (OneTravel.com) by Defendant LBF Travel (Travelation.com)**

91. Plaintiff WK Travel invested significant time and resources in developing the distinctive "search screen" for its OneTravel.com website. A search screen is the screen that appears after a user has selected his or her travel dates and locations for the website to search, while the website performs the search function. Without permission from or compensation to WK Travel, Defendant LBF Travel blatantly imitated the distinctive OneTravel.com search screen design.

92. OneTravel.com's search screen features a bar with moving stripes, the Protected Mark in the upper left hand corner of the screen, and a message indicating that the website is searching for the best deals for the user's selected criteria.

93. Attached hereto as "Exhibit H" is a screenshot of OneTravel.com's search screen as of March 15, 2013.

94. Travelation.com has adopted a search screen that is substantially similar to the one developed and used by OneTravel.com.

95. Attached hereto as "Exhibit I" is a screenshot of Travelation.com's search screen as of March 15, 2013.

**IV. Violations of Consumer Protection Statutes**

96. As described above, Defendants LBF Travel and Globester have engaged in numerous acts that violate federal and New York trademark and unfair competition laws, including purchasing Plaintiffs' Protected Marks as advertising keywords and using the Protected Marks in online advertisements, display URLs, and subdomain names, conscious imitation of nonfunctional design elements of Plaintiffs' websites, and Defendant Globester's

formation of CheapOcompare.com, all of which have unjustly enriched Defendants at significant damage to Plaintiffs as well as the consumer public in New York.

97. Defendants have not only profited from their wrongful acts, they have injured the New York consumer public both by intentionally creating confusion as to the source of their services and the existence of an affiliation with Plaintiffs and by advertising nonexistent deals and misleading prices.

98. By using Plaintiffs' Protected Marks in Defendants' keyword advertisements and subdomain names and by intentionally taking on the look and feel of Plaintiffs' websites, Defendants have or could have caused New York consumers to believe that they were purchasing services through Plaintiffs or a company associated with Plaintiffs.

99. Plaintiffs' have an excellent reputation in the web-based travel industry and, as such, consumers choose to use Plaintiffs' services, knowing they will receive the exceptional services that Plaintiffs' customers have come to expect.

100. By causing consumers to believe they were purchasing Plaintiffs' services and/or creating a situation in which consumers could reasonably believe they were purchasing Plaintiffs' services, Defendants deceived the New York consumer public and caused or could have caused New York consumers to purchase Defendants' services under false pretenses.

101. Defendant LBF Travel has caused further harm to the New York consumer public by advertising discounts through the use of so-called "Promo Codes" (a promotional phrase and technique unlawfully copied from Plaintiffs) that do not actually generate any savings.

102. For example, on February 13, 2013, Smartfares.com advertised to consumers in New York that they could save \$10 off fares for "Last Minute Travel" by using the advertised Promo Code "SFLMT10". The user chose to travel on JetBlue Airways Flight 1174, Economy

Class, departing from Newark Liberty International Airport at 12:00 PM on February 14, 2013 and arriving at Boston Logan International Airport at 1:03 PM on February 14, 2013, with a return flight on JetBlue Airways Flight 1173, Economy Class, departing from Boston Logan International Airport at 6:05 AM on February 15, 2013 and arriving at Newark Liberty International Airport at 7:30 AM on February 15, 2013. However, when the user attempted to use the \$10 off “SFLMT10” Promo Code, no savings were generated.

103. Defendant LBF Travel’s bait and switch advertising was directed towards New York consumers and was materially misleading in promising illusory savings. Therefore, this false advertising caused or could have caused injury to New York consumers.

**COUNT I (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)**  
**VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1114**

104. Plaintiffs reallege and incorporate by reference the allegations contained in paragraph 1-103 of this Complaint, as though fully stated herein.

105. Defendants have taken two sets of actions in violation of Section 1114 of the Lanham Act.

106. First, Defendant LBF Travel has violated Section 1114 by purchasing Plaintiff Fareportal’s Registered Marks as advertising keywords and using those Registered Marks in its online advertisements, display URLs, and subdomain names.

107. Defendant LBF Travel has taken these actions in order to create initial interest confusion by making it appear that the keyword advertisement and link will direct the consumer to a website owned or operated by or affiliated with Plaintiff Fareportal, as well as to create confusion in the public mind as to the source of Defendants’ services and the affiliation of Defendants’ services with Plaintiffs’.



108. Second, Defendant Globester has violated Section 1114 by using CheapOcompare, which is confusingly similar in sound and appearance to Plaintiff Fareportal's CheapOair trademark, to unfairly compete with Fareportal by wrongfully suggesting that its competing services are affiliated with, sponsored by, authorized by, or provided by Fareportal.

109. CheapOair is a famous mark. The only reason that anyone in the travel industry would use a mark starting with "CheapO" would be to divert Fareportal's customers away from its CheapOair website.

110. Defendant LBF Travel's aforesaid purchase of Plaintiff Fareportal's Registered Marks as advertising keywords and unauthorized use of the Registered Marks and key parts thereof in online advertisements, display URLs, and subdomain names, and Defendant Globester's use of CheapOcompare and the related mark and website, are likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represents Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by Plaintiff Fareportal, in violation of the Lanham Act, 15 U.S.C. § 1114(1).

111. Defendants committed their wrongful actions with the intent to mislead and misdirect consumers. Defendants' wrongful conduct has deprived, and will continue to deprive, Plaintiff of opportunities for controlling and expanding its goodwill.

112. This is an exceptional case and Plaintiff is entitled to recover reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

113. Plaintiff is being damaged and will continue to be damaged by this conduct and is without an adequate remedy at law to compensate it for Defendants' wrongful acts and therefore is entitled injunctive relief.

**COUNT II (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)**  
**VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

114. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-113 of this Complaint, as though fully stated herein.

115. Section 1125(a)(1)(A) of the Lanham Act provides in pertinent part:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which-

...

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services or commercial activities by another person....

116. Defendants LBF Travel and Globester have violated Section 1125(a)(1)(A) of the Lanham Act in two ways.

117. First, Defendants LBF Travel and Globester's purchase of Plaintiffs' Protected Marks as advertising keyword and unauthorized use of the Protected Marks and key parts thereof in Defendants' online advertisements, display URLs, and subdomain names in interstate commerce, as described extensively in this Complaint, falsely suggests that they are associated with Plaintiffs, in violation of §43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

118. Defendants LBF Travel and Globester's unauthorized uses of Plaintiffs' Protected Marks and key parts thereof constitutes a false designation of origin and a false or misleading description and representation of fact that is likely to cause initial interest confusion, actual confusion and mistake, and to deceive the public as to the affiliation, connection, or association

of Defendants with Plaintiffs and as to the origin, sponsorship, or approval of Defendants' products and services by Plaintiffs all in violation of the Lanham Act, 15 U.S.C. § 1125(a).

119. Defendants LBF Travel and Globester's unauthorized uses of Plaintiffs' Protected Marks threaten to impair the distinctiveness of the Protected Marks, thereby diluting them, and to tarnish them by association with Defendant LBF Travel and Globester's services.

120. Second, Defendant Globester's subjective intent to copy the distinctive appearance of Plaintiff Fareportal's CheapOair trademark and create consumer confusion as to the source of services offered by Defendant Globester is evidenced by the cumulative lack of differentiation between its CheapOcompare mark and Plaintiff Fareportal's CheapOair trademark.

121. This is an exceptional case and Plaintiffs are entitled to recover reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

122. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

### **COUNT III (AGAINST ALL DEFENDANTS) STATE UNFAIR COMPETITION**

123. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 – 122 of this Complaint, as though such allegations were set forth at length.

124. Defendants have violated New York law on unfair competition by attempting to palm off their goods as Plaintiffs'.

125. Defendants have purchased the Plaintiffs' Protected Marks as advertising keywords and willfully and without authorization used those Protected Marks and key parts thereof in online advertisements, display URLs, and subdomain names directed to the market

generally and intentionally mimicked the distinctive “look and feel” of Plaintiffs’ websites in order to make their own competing services appear connected with Plaintiffs’ services and thereby misappropriate Plaintiffs’ good will and customers.

126. Similarly, with its CheapOcompare mark and website, Defendant Globester willfully and without authorization intentionally mimicked the distinctive “look and feel” of Plaintiff Fareportal’s CheapOair trademark and website in order to make Globester’s own competing services appear connected with Plaintiff Fareportal’s services and thereby misappropriate Plaintiff Fareportal’s good will and customers.

127. Defendants’ services compete with Plaintiffs’ for market share. Defendant LBF Travel’s and Globester’s conscious imitation and subjective intent to imitate and create a likelihood of consumer confusion is evidenced by the cumulative lack of differentiation between the distinctive, nonfunctional design elements of their competing websites.

128. Even if Defendants did not intentionally imitate Plaintiffs’ websites, Defendants have at least violated their duty, under New York law, to design their websites in a manner that will avoid a likelihood of consumers confusing Defendants’ websites and services with Plaintiffs’.

129. Defendants’ actions are deceptive and unfair and have caused, and are likely to cause in the future, a public injury and a detrimental effect on consumers as to the origin of Defendants’ products and services; are likely to cause confusion, mistake or deception as to the source, sponsorship, or approval of Defendants’ travel services; and constitute “palming off” in violation of the New York common law on unfair competition.

130. Defendants' wrongful acts are causing damage to Plaintiffs' good will, reputation, and business and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**COUNT IV (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)  
STATE TRADEMARK AND TRADE NAME INFRINGEMENT –  
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 360-1**

131. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-130 of this Complaint, as though such allegations were set forth at length.

132. NY GBL § 360-1 states:

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

133. Plaintiffs are entitled to protection under NY GBL § 360-1 because they possess strong marks and trade names, including CheapOair, CheapOstay, and OneTravel, which each have a distinctive quality and/or have acquired secondary meaning such that they have become associated in the public's mind with Fareportal's and WK Travel's services as distinguished from the services of competitors.

134. Defendants have violated NY GBL § 360-1 by their unauthorized, willful use of Plaintiffs' Protected Marks, trade names, and key parts thereof in online advertisements, display URLs, and subdomain names, as well as by purchasing Plaintiffs' Protected Marks as advertising keywords, all of which creates a likelihood of dilution by: (i) blurring in that the strength of their association with Plaintiffs is diminished by Defendants' unauthorized use thereof; and/or (ii) tarnishment by association with Defendant LBF Travel's and Globester's services.

135. The unauthorized uses of Plaintiffs' Protected Marks by Defendants provide Defendants with an unfair commercial and financial benefit and deprive Plaintiffs of the full value of the good will and reputation they have invested millions of dollars in developing.

136. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**COUNT V (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)  
STATE TRADE NAME INFRINGEMENT –  
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 133**

137. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-136 of this Complaint, as though such allegations were set forth at length.

138. NY GBL § 133 prohibits any person or entity "with intent to deceive or mislead the public" from using all or part of any "corporate, assumed or trade name" for advertising purposes in such a manner as may "deceive or mislead the public" as to the identity of the person or entity or its connection with the person or firm that rightfully owns or uses the "corporate, assumed or trade name."

139. Plaintiffs are entitled to protection under NY GBL § 133 because they possess strong marks and trade names, including CheapOair, CheapOstay, and OneTravel, which each have a distinctive quality and/or have acquired secondary meaning such that they have become associated in the public's mind with Fareportal and WK Travel's services as distinguished from the services of competitors.

140. Defendants have violated NY GBL § 133 by intentionally taking Plaintiffs' CheapOair, CheapOstay, and OneTravel trade names, as well as key parts thereof, purchasing

them as advertising keywords, and using them in online advertisements, display URLs, and subdomain names. Defendants have further violated NY GBL § 133 by using CheapOcompare and the associated logo and website. Defendants have taken these actions in order to create confusion and to deceive the public as to the affiliation, connection, or association of Defendants with Plaintiffs and as to the origin, sponsorship, or approval of Defendants' products and services by Plaintiffs all in violation of §133 of the New York General Business Law.

141. These unauthorized uses of Plaintiffs' trade names by Defendants provide Defendants with an unfair commercial and financial benefit and deprive Plaintiffs of the full value of the good will and reputation they have invested millions of dollars in developing.

142. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**COUNT VI (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)  
DECEPTIVE ACTS AND PRACTICES –  
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349**

143. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-142 of this Complaint, as though such allegations were set forth at length.

144. NY GBL § 349 states in pertinent part:

(a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

...

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the

actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

145. Defendants have violated NY GBL § 349 by: (i) willfully using Plaintiffs' Protected Marks, trade names, and key parts thereof without Plaintiffs' consent; and (ii) engaging in bait and switch advertising. These actions have caused injury to Plaintiffs as well as to the New York consumer public.

146. First, Defendants' unauthorized, willful use of the Protected Marks, trade names, and key parts thereof, as well as Defendant Globester's intentional imitation of the nonfunctional design elements of Plaintiff Fareportal's CheapOair trademark in Globester's CheapOcompare mark are likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represent Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by, Plaintiffs, and constitute deceptive acts and practices under § 349 of the New York General Business Law. These actions provide an unfair commercial and financial benefit to Defendants, have caused or threaten to cause injury to Plaintiffs' good will and reputation, and unfairly divert customers and revenue from Plaintiffs. Defendants' violations of § 349 of the New York General Business Law directly and proximately caused injuries to Plaintiffs in an amount to be determined at trial.

147. Second, Defendants advertise Promo Codes for reduced fares that do not actually provide a price reduction. This type of "bait and switch" advertising constitutes a deceptive act and practice under § 349 of the New York General Business Law. These actions have or could have caused harm to consumers that relied to their detriment on Defendants' representations that fare reductions were available.



148. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief. Further, as authorized by § 349(h) of the New York General Business Law, Plaintiffs are entitled to recover reasonable attorneys' fees and costs.

**COUNT VII (AGAINST DEFENDANTS LBF TRAVEL AND GLOBESTER)  
FALSE ADVERTISING –  
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 350**

149. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-148 of this Complaint, as though such allegations were set forth at length.

150. NY GBL § 350 states: "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

151. Defendants have violated NY GBL § 350 by willfully using Plaintiffs' Protected Marks, trade names, and key parts thereof without Plaintiffs' consent and by engaging in bait and switch advertising. These actions have caused injury to Plaintiffs as well as to the New York consumer public.

152. First, Defendants' unauthorized, willful use of the Protected Marks and key parts thereof is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represent Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by, Plaintiffs, and constitute false advertising under § 350 of the New York General Business Law.

153. Second, Defendants advertise Promo Codes for reduced fares that do not actually provide a price reduction. This type of "bait and switch" advertising constitutes false advertising under § 350 of the New York General Business Law.

154. Defendants' aforesaid acts provide an unfair commercial and financial benefit to Defendants, have caused or threaten to cause injury to Plaintiffs' good will and reputation, and unfairly divert customers and revenue from Plaintiffs.

155. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**COUNT VIII (AGAINST ALL DEFENDANTS)**  
**STATE UNFAIR BUSINESS PRACTICE**

156. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-155 of this Complaint, as though such allegations were set forth at length.

157. Defendants have engaged in unfair business practice in violation of New York State common law by making unauthorized use of Plaintiffs' Protected Marks, trade names, and key parts thereof, and their trade dress.

158. Defendants' unauthorized, willful use of Plaintiffs' Protected Marks, trade names, and key parts thereof, their intentional imitation of the distinctive look and feel of Plaintiffs' websites, and Defendant Globester's intentional imitation of the distinctive look and feel of Plaintiff Fareportal's CheapOair registered trademark, are likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represent Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by, Plaintiffs, and create consumer confusion and cause customers that would otherwise purchase services from Plaintiffs to obtain them through Defendants instead.

159. Defendants' aforesaid acts provide an unfair commercial and financial benefit to Defendants, threaten the good will and reputation of Plaintiffs, and deprive Plaintiffs of the full

value of the commercial and proprietary information that they have invested millions of dollars in developing.

160. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**COUNT IX (AGAINST ALL DEFENDANTS)**  
**UNJUST ENRICHMENT**

161. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-160 of this Complaint, as though such allegations were set forth at length.

162. Defendants' wrongful actions, as described above, provide an unfair commercial and financial benefit to Defendants without compensation to Plaintiffs, who spent millions of dollars developing the Protected Marks and their proprietary and confidential commercial information and trade secrets, threaten the good will and reputation of Plaintiffs, and deprive Plaintiffs of the full value of the commercial and proprietary information that they have invested millions of dollars in developing.

163. Defendants' wrongful acts are causing damage to Plaintiffs and Plaintiffs are without an adequate remedy at law to compensate them for Defendants' wrongful activity and therefore are entitled to injunctive relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Fareportal and WK Travel pray for judgment against Defendants as follows:

- A. That this Court grant preliminary and permanent injunctive relief, pursuant to 15 U.S.C. § 1116, against LBF Travel, Globester, and their respective officers, partners, agents, servants, employees, sales representatives, distributors, parents,

subsidiaries, related companies, heirs, predecessors, successors, assigns, attorneys, and all others in active concert or participation with any of them enjoining them from:

- i. Using, whether directly or indirectly, CHEAPOAIR or CHEAPOSTAY, or any other mark or word similar to any of the Registered Marks, including any key part thereof, in a manner that is likely to cause confusion or mistake, or to deceive, in connection with online travel services, including, without limitation, in any advertising or as part of a domain name;
- ii. Using, whether directly or indirectly ONETRAVEL or any other mark or word similar to any of the Common Law Marks, including any key part thereof, in a manner that is likely to cause confusion or mistake, or to deceive, in connection with online travel services, including, without limitation, in any advertising or as part of a domain name;
- iii. Operating and using CheapOcompare as or as any part of a domain name, in advertising, or in any manner whatsoever as it is likely to cause confusion or mistake and to deceive consumers of online travel services.
- iv. Doing any other act or thing likely to confuse, mislead, or deceive others into believing that LBF Travel, Globester, or any of their respective products or services emanate from Plaintiffs, or are connected with, affiliated with, sponsored by, or approved by Plaintiffs or any of its family of brands;

- v. Aiding or assisting any person in engaging in any of the acts prohibited by subsections (i) through (iv) above;
- B. For an order directing each Defendant to file with this Court and serve on Plaintiffs within three (3) days after service of an injunction a written report under oath setting forth in detail the manner and form in which each Defendant has complied with the injunction pursuant to 15 U.S.C. §1116;
- C. For an order requiring Defendants and all those in privity with them to surrender for destruction all materials incorporating or reproducing any of the Protected Marks or any key part thereof in accordance with 15 U.S.C. 1118, and the equitable power of this Court to enforce the common law of New York;
- D. For an accounting of the gains and profits realized by each of Defendants from their respective wrongful acts of infringement, unfair competition, and/or deceptive acts and false advertising;
- E. For an order requiring Defendants to pay Plaintiffs:
  - i. statutory damages;
  - ii. punitive damages;
  - iii. treble damages;
  - iv. actual damages;
  - v. all profits wrongfully derived by Defendants from the use of the Protected Marks or any key part thereof;
  - vi. Plaintiffs' costs and expenses, including without limitation reasonable attorneys' fees; and
  - vii. prejudgment interest at the maximum legal rate;

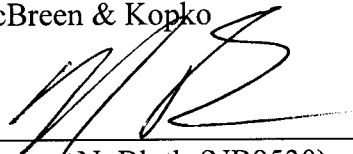
- F. That this case be deemed “exceptional” within the meaning of the Lanham Act,  
15 U.S.C. § 1117; and
- G. For such other and further relief as this Court deems just and equitable.

**JURY DEMAND**

Plaintiffs hereby demand and request a trial by jury on all issues so triable.

Dated: Jericho, New York  
April 10, 2013

McBreen & Kopko



---

Norman N. Bluth (NB9530)  
Lindsay W. McGuire (LM6948)  
Attorneys for Plaintiffs  
500 North Broadway, Suite 129  
Jericho, New York 11753  
(516) 364-1095

and

Burton S. Ehrlich  
Ladas & Parry  
224 S. Michigan Ave  
Chicago, IL 60604  
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*Pro Hac Vice* Motion to Follow

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# EXHIBIT B

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<b>Court</b>	United States District Court for the Southern District of New York; United States District Court for the Southern District of New York
<b>Federal Nature of Suit</b>	Property Rights - Trademark[840]
<b>Docket Number</b>	1:13-cv-02412