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*Via e-mail to brianward1498@comcast.net and bae146@earthlink.net
Originals via Mail*

Planely Speaking
P.O. Box 1146
Campbell, CA 95009

Re: Cease-and-Desist Demand by Delta Air Lines, Inc. Regarding Sale of
Infringing Delta Aircraft Models

To whom it may concern:

I am outside legal counsel for Delta Air Lines, Inc. ("Delta"). I write in relation to the unauthorized and infringing sale by Planely Speaking of model aircraft bearing the Delta name and Delta's protected marks and livery. In accordance with the discussion below, Delta demands that Planely Speaking cease and desist from the manufacture and sale of these infringing models and otherwise comply with the additional demands set forth below.

I. Delta Air Lines, Inc. and the Delta Marks (Delta-Related and Northwest-Related)

Delta is one of the world's leading transportation and travel service companies. As of December 2019 (prior to the global pandemic), Delta transported nearly 200 million travelers annually to over 300 destinations in more than 50 countries around the world via up to 15,000 daily departures, including flights operated by its partners. Delta owns exclusive rights to a family of DELTA-formative marks in the United States and internationally. Delta offers and sells its goods and services under and in conjunction with, among others, the following DELTA-related trademark and service mark registrations in the United States:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
0523611	DELTA AIR LINES	April 4, 1950
0654915	DELTA	November 19, 1957
0970418	DELTA AIR LINES	October 9, 1973

Delta also offers and sells its goods and services under and in conjunction with, among others, the following WIDGET LOGO-related trademark and service mark registrations in the United States:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
0704103	WIDGET LOGO	September 6, 1960

2556013	WIDGET LOGO	April 2, 2002
5413129	WIDGET LOGO	February 27, 2018
5745871	WIDGET LOGO	May 7, 2019
5751617	WIDGET LOGO	May 14, 2019

In addition, Delta offers and sells its goods and services under and in conjunction with, among others, the following LIVERY-related trademark registrations in the United States, as well:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
3489700	LIVERY	August 19, 2008
2058985	LIVERY	May 6, 1997

Last, pursuant to its acquisition of Northwest Airlines (“Northwest”) in 2008, Delta is also the holder of certain Northwest-related marks. These include, but are not limited to:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
1616090	NORTHWEST	October 2, 1990
1718838	NORTHWEST AIRLINES	September 22, 1991
2575777	NWA	June 4, 2002

These Delta-related and Northwest-related registrations and Delta’s numerous other active registered marks (collectively, the “Delta Marks”) issued on the Principal Register and are in full force and effect. Most have long since acquired “incontestable” registration status. The Delta Marks serve as unique and famous source identifiers for Delta and its various goods and services. Through Delta’s long and successful efforts, the Delta Marks have earned extensive goodwill, favorable recognition, and a worldwide reputation for high-quality products and services.

Finally, the registration and accordant protection of the Delta Marks is not limited to the United States. Delta holds corresponding marks in, among many other jurisdictions, the United Kingdom, Canada, Mexico, the European Union, Singapore, India, Australia, and the Philippines.

II. Sale of Infringing Model Delta Aircraft

Delta has learned of the ongoing unauthorized and infringing manufacture, distribution, and sale of model aircraft bearing one or more Delta-related and/or Northwest-related Delta Marks (each an “Infringing Model”) by a number of different manufacturers and under a variety of product lines. These Infringing Models have been and are being produced and sold with no authorization, license, or other such

permission from Delta. The illegality of commerce involving Infringing Models extends not only to the original manufacture and sale of the Infringing Models, but, as well, to any and all subsequent transactions involving the Infringing Models. Planely Speaking is receiving this correspondence because Delta understands that Planely Speaking has sold and/or is selling Delta-related and/or Northwest-related Infringing Models from one or more of the following brands/product lines:

- (1) Aero Classics (aka AeroClassics);
- (2) NG Models (aka Next Generation Models);
- (3) InFlight200 (aka InFlight Models);
- (4) Blue Box (recent generation);
- (5) Green Box (recent generation);
- (6) Blank Box;
- (7) Byrd Models (recent generation); and
- (8) AeroClix Models.

This misappropriation of Delta's intellectual property gives rise to a number of causes for legal and equitable relief in Delta's favor, including: trademark infringement pursuant to 15 U.S.C. § 1114 et seq.; unfair competition in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a); state unfair competition; deceptive trade practices; unjust enrichment; and a host of other federal and state law claims.

III. Delta's Demand

Delta accordingly demands that Planely Speaking:

- (1) immediately upon its receipt of this demand, cease and desist from all offer, sale, shipment, order fulfillment, distribution, and/or other conveyance of ownership or possession of Infringing Models until such time as Delta expressly withdraws or modifies this demand;
- (2) not later than 5:00 p.m. Eastern Standard Time on Friday, March 5, 2021, take down or otherwise remove all mentions of, depictions of, and other references of any sort to Infringing Models from Planely Speaking's websites, webpages, social media pages, online advertising, other online presences, and other informational or promotional materials;
- (3) provide to Delta a complete and accurate accounting of Planely Speaking's purchase, offer, sale, shipment, order fulfillment, order solicitation, and/or

other distribution of any sort of Infringing Models from January 1, 2017 through the date of your response;

- (4) provide to Delta complete and accurate information (including, but not limited to, name, address, contact information, and an accounting of Infringing Model-related transactions) regarding all entities and persons from which/whom Planely Speaking has purchased Infringing Models, received order fulfillment or drop-shipping services in relation to Planely Speaking's sale or marketing of Infringing Models, or from which/whom Planely Speaking has otherwise acquired Infringing Models or received Infringing Model-related services of any sort; and
- (5) acknowledge in writing Planely Speaking's assent to these terms and its understanding that items (1) through (4) above apply not only to Planely Speaking, but with equal vigor to Planely Speaking's officers, directors, employees, members or shareholders, partners, agents, successors, assigns, and affiliates, as well as its parent, sibling, commonly controlled, and affiliated entities.

If Delta ultimately resolves this controversy with the involved manufacturers, Planely Speaking may be allowed to resume sales of the involved model aircraft. Should that not happen, however, Planely Speaking will receive additional instructions from Delta regarding the manner in which Planely Speaking must turn over or destroy its current inventory of Infringing Models. In either event, Planely Speaking is reminded that it must, until further direction from Delta, comply with the demands set forth above. Although Delta hopes that this controversy will be resolved by agreement as to the brands and lines of Infringing Models sold by Planely Speaking, Delta also expressly reserves all of its permissible legal and equitable remedies.

If Planely Speaking believes that any of the underlying facts set forth in this correspondence are incorrect; disputes the infringing nature of any above-referenced models that it has sold or is selling; or has any questions, please call or e-mail me directly. Otherwise, thank you in advance for your attention to these issues.

Sincerely,



Paul F. Wellborn III
Attorney for Delta Air Lines, Inc.