

Duff on Hospitality Law

## **OTA & Travel Distribution Update - Vertical vs. horizontal restraints on trade; Despegar's product diversification; TUI's additional third- party tour operators; Dreamlines secures additional investment**

By Greg Duff on 5.18.18 | Posted in OTA Update

Our weekly client OTA & Travel Distribution Update for the week ending May 11, 2018 is below. This week's Update features a variety of stories, including the third installment in our six-part series dissecting recent anti-trust allegations against hoteliers arising out of their keyword activities. I hope you enjoy.

### **Keyword Restrictions – Part III: Vertical vs. Horizontal Restraints on Trade**

*("Keyword Restrictions - Part III: Vertical vs. Horizontal," GSB Client Update, May 11, 2018)*

In the third installment of our six-part series critiquing recent [articles](#) (and litigation) questioning hoteliers' keyword practices, my colleague, [Don Scaramastra](#), next examines the critical difference between alleged agreements among hotel companies regarding their use of keywords (horizontal) versus agreements between hotel companies and their various downstream distribution channels (vertical).

### **Despegar Diversifies Into More Profitable Product Lines**

*("Despegar Attempts to Expand Further Beyond Flights," Skift Travel News, May 10, 2018)*

Earlier this year, I noted that South American booking powerhouse, Despegar, was a company to watch. In its first quarter earnings release last week, Expedia-backed Despegar reported that its package business (air + hotel) was far more profitable than its traditional air-only business (duh) and that it saw huge opportunities to grow its package, hotel and non-air product. The first quarter saw Despegar's package, hotel and non-air products account for 46% of the OTA's transactions.

### **TUI Opens Its Platform to Third-Party Tour Operators**

*("TUI Has Big Plans for Its Soon-to-Be Enlarged Tours and Activities Business," Skift Travel News, May 9, 2018)*

There seems to be no end to the number of announcements coming out of the hot tours and

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activities market. Hanover-based TUI Group announced this past week that it plans to open its tours and activities booking platform to third-party providers following completion of its planned purchase of Hotelbeds' destination management unit. The addition of third-party operators will only increase the number of excursions booked through TUI, which last year totaled approximately 4.5 million.

### **Dreamlines Secures Additional Investment**

*("Dreamlines, the online travel agency for cruise holidays, scores €45M Series E," Tech Crunch, May 8, 2018)*

It isn't every week that we feature a story on the cruise industry and distribution of cruise-related travel products. Europe's self-proclaimed largest online distributor of cruise products, Dreamlines, announced last week that it had raised an additional €45 million to fund to future growth and international expansion. For years now I have questioned why the largest online distributors did not feature more cruise products – maybe Dreamlines will figure it out.

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Other news:

### **Priceline, Orbitz Escape Communications Intercept Claims**

*Big Law Business, May 8, 2018*

A group of e-merchants including Priceline Group Inc. beat class claims alleging a marketing vendor improperly shared consumer data with the companies without explicit consent. The U.S. Court of Appeals for the Second Circuit affirmed a lower federal court's dismissal of the Electronic Communications Privacy Act (ECPA) claims May 7 because plaintiffs failed to allege sufficiently that they didn't give consent to have their communications shared with Priceline, Buy.com Inc., and Orbitz Worldwide Corp. The case highlights the question of what level of consent is needed to share information with third-party partners. It also shows that consumers alleging ECPA claims must clearly demonstrate they didn't consent to data sharing to survive early attempts to dismiss their cases.