Legal Alerts

# Keyword Restrictions – Part IV: The Benefits of Restrictions on Use of Hotel Trademarks

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In our last post, we discussed how a hotel's restrictions on an OTA's use of the hotel's trademarks to advertise are "vertical" restraints that are not per se illegal, but require fact-intensive scrutiny regarding their likely competitive effects. In particular, this requires consideration of their effects on **inter**-brand competition. So what are the justifications for, and the likely effects of, keyword restrictions on inter-brand competition?We don't claim to have the definitive answer to this question. Still, it doesn't take a seasoned director of sales or revenue management to figure out what some of these might be. These boil down to product differentiation and cost containment strategies.

Let's take product differentiation strategies first. Hotels and the intermediaries pursue different strategies and offer different value propositions. These arise from the fact that the hotel wants to sell **its** rooms, a goal as to which the OTA is probably, mostly, indifferent. To be successful, a hotel must differentiate its products from those of the competition, identify its target customers within the broader market, and foster a direct and individualized relationship with those customers. All of this promotes product differentiation, something that benefits customers.

An OTA does not share these interests. Rather, the OTA's value proposition is that of a skilled middleman who can sift through competing offers to find the best value, most typically measured by room rate, at no perceived cost to the customer. To an OTA, a customer perception that hotel rooms are fungible commodities may be perfectly acceptable. To the hotel, it is potentially disastrous.

Now let's discuss cost containment, specifically, customer acquisition cost containment. Like any good middleman, OTAs charge for their services. Specifically, they charge hotels commissions. Nothing wrong with that. But third-party commissions have reportedly been increasing at roughly twice the rate of revenue growth over the last several years. This trend, if it continues, must eventually come at a price: either higher room rates or lower quality (or a combination of both). Neither option benefits customers.

These considerations make it essential for many hotels to develop direct channels to prospective customers. Doing so promotes both product diversity and lower room rates, both of which benefit customers.

Allowing OTAs to use a hotel's trademarks as keyword searches would undermine all of this. Why? Because it would force a hotel to compete with, and literally bid against, its own distributors to access customers in a particular channel. Regardless of who won this bidding war, it would artificially increase the winner's customer acquisition costs. Those increased costs must eventually find their way back to the customer through increased room rates or lower quality.

Allowing competing hotel brands to optimize their distribution channels is, on balance, good for inter-brand competition, allowing each brand to differentiate and diversify its products, all at lower cost.

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