Duff on Hospitality Law

OTA & Travel Distribution Update: U.S. Circuit Court deals a blow to short-term platforms; Google continues steady evolution; a few words about Airbnb/HotelTonight Acquisition

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U.S. Circuit Court Deals a Blow to Short-Term Platforms

("Airbnb Loses Major Fight Over California City's Rental Law," Bloomberg Quint – Stories, March 13, 2019)

In somewhat of a surprise ruling issued last week, the U.S. Ninth Circuit Court of Appeals refused to strike down a Santa Monica city ordinance holding short-term rental platforms (Airbnb and Homeaway) legally liable for vacation rentals violating the City's short-term rental ordinance. In reaching its decision, the Court rejected arguments by the platforms that the ordinance violated both the US Communications Decency Act of 1996 (which shields online services from liability for the content posted by third-party users on their websites) and the platforms' constitutionally protected rights of free speech. The Ninth Circuit Court's decision is consistent with other lower court decisions in Los Angeles and San Francisco, but runs counter to a separate Los Angeles lower court decision. While a decision by the Ninth Circuit obviously provides stronger precedential value for courts considering similar local laws and regulations in the future, it remains to be seen whether cities seeking to curb the growth of short-term rentals will seek to leverage this decision to more aggressively pursue the platforms facilitating the bookings as opposed to the hosts themselves.

Google Continues Steady Evolution

("Google Quietly Releases Its Hotel Booking Destination With Potentially Huge Implications," Skift Travel News, March 11, 2019)

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Those of you still not convinced that Google has its eyes on ultimately becoming an online booking platform may finally have to throw in the towel. With little to no fanfare, Google launched last week a multi-functional destination site for hotels (Google Hotel Search) similar to existing Google Flights. Users of the new site will find metasearch type listings for requested locations as well as a booking engine. Users seeking to book a room can choose to book through one of the many listed advertisers (OTAs) or, for many hotels, book right on the Google site. Filters available on the site allow users to target particular hotels, including a "deals" filter that identifies particularly low rates for a property (when compared to the property's historical rates or rates for nearby competing properties). What these important changes at Google mean for hotels long term is still to be determined, but short term, the changes (i) may exacerbate current concerns regarding rogue wholesalers' use of non-contract rates (e.g., the use of a "deals" filter will only bring more attention to uncharacteristically low rates) and (ii) may provide further assistance to hoteliers in their direct booking efforts (Google Hotel Search provides direct contact information for each identified property and provides hoteliers the opportunity to contribute to site indices featuring pricing, reviews and photos). I'm sure this isn't our last story to discuss this new Google product.

And Now, a Few Words About the Airbnb / HotelTonight Acquisition

("Airbnb Is Paying $400 Million-Plus for HotelTonight: Is It a Good Deal?" Skift Travel News, March 8, 2019)

By now everyone has had a chance to read the dozens of articles written about the recently announced acquisition of Hotel Tonight by short-term booking platform, Airbnb. We include a story in this week's Update detailing the price paid by Airbnb and how the price may be viewed by Hotel Tonight investors as Airbnb continues its march to becoming a public company. From my outsider's perspective (solely my opinion), the acquisition only accelerates the homogenization that is already well underway among third party booking channels. Soon, every online booking channel will feature the same mix of hotels, resorts, apartments, homes and other forms of accommodations (presumably, all with nearly identical pricing for comparable properties). When that ultimately happens, how will users choose where to book? Will they choose the first site or application they come to (anyone know Google)? Will they choose the channel with the best content? How about the channel with the best user experience (hello, Amazon)? Yes, Airbnb revolutionized the rental home market, but as it moves closer to becoming a traditional online booking channel (while at the same time the established channels grow their home rental inventory), Airbnb is beginning to lose many of the attributes that made it most unique. From a hotelier's perspective, the introduction of a new legitimate general online booking channel may finally introduce competition (and the benefits associated with competition) into the online booking world.

Other news:

Fliggy packs Alibaba technology into debut FlyZoo hotel

Phocus Wire, March 13, 2019

Fliggy sets up FlyZoo hotel with automated services to improve the guest experience.

Would Tax Law Proposals Kill Travel Agencies in Some States?

Skift Travel News, March 12, 2019

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As states look for new sources of tax revenue in the service-driven economy, businesses like travel agencies are viewed as likely targets. Part of the problem is ignorance among legislators of how agencies operate and why added taxes would be devastating for many. Travel advisors in the U.S. states of Connecticut, Utah, and Nebraska are mobilizing for a fight against tax proposals they fear could put travel agencies out of business. In Utah, a tax reform bill that would impose state sales taxes on travel agencies and others who provide professional services is scheduled to be voted on this month by the state legislature. A similar proposal regarding "the gross income received for the services of travel agents and tour operators and for online travel services" is going before the state legislature in Nebraska.

Posted in OTA Update

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