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Duff on Hospitality Law

OTA & Travel Distribution Update – Australian Competition Authorities re-think “narrow” parity; Keyword prohibitions the subject of recent suit

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Our weekly OTA & Travel Distribution Update is below. This week's Update features a number of familiar stories.

Australian Competition Authorities Re-Think "Narrow" Parity

(“Narrow and wide parity clauses have same effects, ACCC chief says, amid renewed probe of online travel agents,” Add source, March 23, 2018)

In comments at a recent anti-trust conference, Rod Sims, Chair of the Australian Competition and Consumer Commission (ACCC), noted that the widely-accepted "narrow" parity commitments offered by Booking.com and Expedia to resolve the ACCC's earlier grievances were having the same effect on hoteliers as their broader predecessors. Sims' comments come as Australian authorities continue their re-examination of the distributors' practices, which began following the Australian Supreme Court's ruling that airlines and distributors were competitors (and not principals and agents as claimed). According to Sims, the ACCC was disappointed to learn that hoteliers did not want to take advantage of the offline pricing opportunities afforded hoteliers under the narrow parity compromise.

Keyword Prohibitions the Subject of Recent Suit

(“Top Hotels Accused of Manipulating Search Results,” Courthouse News Service, March 21, 2018)

We've featured several stories in past Updates on misplaced allegations that hoteliers' widespread demands that distributors not bid on the hoteliers' valuable keywords somehow constituted anti-competitive behavior. Karen Tichy of Clarksville, Virginia must have read some of these same stories. Karen filed suit last week in Chicago against many of the country's largest hotel brands - Hilton, Hyatt, Marriott, Choice, Intercontinental and Wyndham - alleging that the brands agreed back in 2015 not to compete

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against one another by bidding on their respective keywords and demanding that OTAs do the same. According to Tichy, this alleged agreement eliminated competition in online search and cost consumers millions. While I am confident that this lawsuit may not last long, be prepared to hear from distributors that this suit now prohibits them from agreeing to reasonable requests to restrict keyword usage.

Other news:

Expedia, Others Join Bid To Toss Overcharging Suit
Law360 – Tax, March 23, 2018
Hotel booking websites Expedia Inc., Hotels.com LP and Travelscape LLC on Thursday urged a South Carolina court to throw out a proposed class action alleging they overcharged state residents for taxes and fees, saying the court has no jurisdiction over the matter. Expedia, Hotels.com and Travelscape joined together in filing a motion to dismiss lead plaintiff Joseph Church's complaint for lack of personal jurisdiction, saying that he fails to allege facts showing that the Expedia defendants are at home in the state of South Carolina.

Hackers gain access to 880K credit cards from Orbitz customers
TechCrunch News, March 20, 2018
Another day, another breach. Today, online travel agency Orbitz disclosed that hackers managed to get both credit card data and personal information (though no Social Security numbers and passwords) from users who made their travel purchases on the site between January 1, 2016 and December 22, 2017. In total, the company says, that's about 880,000.

IBM Launches Watson Data Kits to Help Accelerate Enterprise AI Adoption
Financial Buzz, March 20, 2018
IBM today announced the launch of IBM Watson Data Kits, which are designed to accelerate the development of AI applications to help support faster, more informed decision making for business leaders. Developed with Triposo an IBM data provider, the Watson Data Kit for travel points of interest (POI) will provide airlines, hotel brands, online travel agencies and others with point-of-interest data to help them create more engaging experiences for travelers. It will contain more than 300,000 points of interest in 100 categories.

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