

The Online Hotel Booking Market

Federal Trade Commission Report to Congress

I. Report Overview

In May 2017, Congress directed the Federal Trade Commission (“FTC” or “Commission”) to report to the Committee on Appropriations of the House and Senate “on recommended enforcement actions against deceptive marketers engaging in the online hotel booking market and appropriate remedies to apply in this area to protect consumers.”¹ The Commission submits this report in response to that Congressional direction.

II. Background

Information technology has transformed the way travelers search for and book travel, including hotel rooms. In the 1990s, travelers seeking a hotel room had limited information available with which to make their booking decisions. A consumer might consult a travel agent at a local brick-and-mortar office or by landline telephone, or might consult a travel guide purchased at a local bookstore. The information available to consumers about the price, availability, and other features of hotels was limited. To try to obtain information about hotels, consumers often made multiple phone calls to hotels or travel agents. Limits on information about hotels and the costs of obtaining available information about them likely made it more difficult for hotels to compete with each other based on price, availability, and other hotel features.

The Internet has radically expanded travel booking options. Simple searches easily and quickly can provide information about multiple hotels, including information about pricing, availability, amenities, and other terms and conditions of interest, as well as photographs and map information. Information about availability and booking is now available digitally from branded hotel websites as well as from online travel agencies (“OTAs”), such as Expedia and Priceline. In addition, information about availability and booking is available from metasearch sites (also called aggregators), such as Kayak. Consumer accommodation platforms, such as Airbnb, also are a new source of lodging information and supply. Greater information about hotels and lower costs of acquiring information about them likely makes it easier for consumers to find and compare hotel options. Consumers likely benefit from these reduced shopping costs.

False or misleading material information about hotels can harm both consumers and competition. Such information harms consumers because it affects or is likely to affect their choices among hotels. False or misleading material information also harms hotels that lose customers to deceitful competitors as well as undermines consumer confidence in the market for hotel rooms.

¹ H. Rept. 114-624, 114th Cong. 2d. Sess. at 62 (June 15, 2016); Explanatory Statement for H.R.244, 163 Cong. Rec. H3327, 3782 (May 3, 2017).

The Commission accordingly has a strong interest in protecting consumers in the digital marketplace, including the robust online market for hotel and travel services. Protecting consumers as they use and benefit from new technologies and platforms is a chief FTC priority.

III. FTC Enforcement Authority over Deceptive Online Hotel Booking Practices

As the nation's consumer protection agency, the FTC has a clear but flexible mandate to protect consumers from unfair and deceptive practices in the marketplace. One of the defining features of the modern FTC has been its ability to adapt to consumers moving from brick-and-mortar transactions to purchasing goods and services online and through their mobile devices.

Although technology and business models continue to change, the principles that underlie FTC enforcement priorities remain constant. One such principle is that consumers should have truthful and accurate information to make informed decisions. In brief, the agency's deception authority requires that advertising, whether on television or radio, or in print, search page results, webpages, or mobile displays, must tell the truth and not mislead consumers acting reasonably. A claim can be deceptive if it states or implies something that is not true or if relevant information necessary to prevent the claim from being misleading is omitted.

Potential law enforcement cases come to the FTC from a number of different sources, including consumers, competitors, consumer and industry organizations, and Congress. If FTC staff identify a potential target that appears to be engaging in potentially deceptive conduct, it may open an investigation and seek relevant information from the target. If formal law enforcement action is warranted, the FTC can file a lawsuit administratively or in federal court. In both administrative and federal court cases, the marketers frequently elect to settle the charges by entering into a consent agreement or stipulated order. Moreover, in disputes between competitors, there are also private rights of action, such as those under the Lanham Act, or self-regulatory programs, such as the one run by the National Advertising Division, that offer remedies for deceptive conduct.

The Commission is aware of complaints reported in the media and by the American Hotel and Lodging Association about allegedly deceptive practices in the online hotel reservation business. Some members of Congress likewise have raised concerns about third-party travel websites using allegedly deceptive search engine ads and websites. These include complaints that consumers thought they were reserving their hotel rooms directly from an advertised hotel when they actually were booking the room through a third-party reseller. Complaints also involve concerns about payment and cancellation terms and other issues. These complaints are consistent with those received by the Commission's Sentinel complaint database.

The Commission shares the concern that third-party search ads and webpages that are not sufficiently transparent about the marketer's identity could mislead consumers seeking to book a hotel room directly from an advertised hotel.² In an analogous fact pattern, the FTC entered into

² At the same time, the nature and appearance of many online travel sites generally would not raise the deception concerns discussed above, absent other factors. For example, consumers are likely to understand that a "Kayak" or

settlements with online ticket resellers for allegedly misrepresenting that they were official entertainment venues offering tickets at face value.³ These companies designed search engine advertisements and corresponding websites that used names and URLs mimicking genuine venue names, combined with other words, phrases, and depictions, to make it appear that they were websites for official venues or artists.

Additionally, consumers who believe they are booking their hotel room directly from the advertised hotel rather than from a reseller may take away from the reseller's representations or omissions that important terms and conditions, such as payment or cancellation requirements, are the same as if they booked their rooms directly from the hotels. If the reseller's terms differ from those frequently required by hotels, the failure to disclose adequately the applicable information might mislead consumers and adversely affect their ability to make informed purchase decisions.

Commission staff currently is conducting a nonpublic investigation of an online reseller. If the Commission has reason to believe an online reseller has violated the law and that proceeding is in the public interest, the agency may issue or file a complaint against the reseller.

IV. Remedies to Protect Consumers

The FTC has strong remedies available to protect consumers from deceptive practices. Most Commission orders involving deceptive conduct include provisions that prohibit practices that are the same or similar to those alleged to be deceptive. In appropriate cases, FTC orders may also require monetary payments to provide redress to consumers or to disgorge ill-gotten gain to the U.S. Treasury. Orders in FTC cases may apply to companies that engaged in allegedly deceptive conduct as well as individuals who participated in that conduct or controlled the companies that engaged in it. In addition, the FTC frequently complements its law enforcement activities with consumer education to encourage informed choices. In July 2015, for example, Commission staff published a blog entitled "Did you book that night at the hotel's site?"⁴ Available on the FTC's website, the blog provides information and tips for consumers who wish to book a hotel room online.

"Travelocity" webpage comparing room availability at multiple hotels in a specified location during specified dates is an Internet page offered by a third party, and is not the hotel's own webpage.

³ See FTC Press Release, TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets (July 24, 2014), available at <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>.

⁴ See www.ftc.gov/blog/did-you-book-night-hotels-site.

V. Proposed Legislation

The Commission is aware that the Stop Online Booking Scams Act of 2017, S. 1164 and H.R. 2495, has been introduced in the Senate and House of Representatives.⁵ The proposed legislation is intended to protect consumers from deceptive online hotel reservation booking practices by requiring third-party resellers to clearly disclose that they are not affiliated with the hotel they are advertising. The FTC would have the authority to enforce the bill if enacted.

The Commission commented on similar legislation in 2016.⁶ In those comments, the Commission noted that it shared the underlying concerns about deceptive online travel sites. The Commission recommended, however, that the bill be modified to ensure that it did not impose undue burdens on legitimate businesses or unintentionally exclude the types of sites it was intended to cover. The Commission noted that mainstream third-party travel agencies generally did not generate the kind of deception addressed by the bill; therefore, it recommended that, rather than requiring all third-party sellers affirmatively to disclose they are not the hotel being advertised, the bill prohibit sales by those entities that misrepresent that they are, or are affiliated with, the hotel.

The Commission reiterates its recommendation that the proposed legislation should be modified to ensure that it does not impose undue burdens on legitimate businesses or unintentionally exclude sites it may intend to cover. As currently drafted, the legislation requires disclosures for some third-party websites when such disclosures are not needed because the sites do not hold themselves out as the hotel site. In addition, if a website mimics, or strongly resembles, a hotel site sufficient to misrepresent that it is an official website for the advertised hotel, it could be difficult for a disclosure by itself to correct the misimpression created by the site's overall appearance.⁷

VI. Conclusion

Information technology has transformed the hotel reservation marketplace. For more than two decades, one of the FTC's top priorities has been ensuring that consumer protection keeps up with technological developments, while encouraging innovations that benefit

⁵ The two bills are identical, and were introduced on May 17, 2017. H.R. 2495 has been referred to the House Committee on Energy and Commerce, which in turn referred it to the Subcommittee on Digital Commerce and Consumer Protection. S. 1164 has been referred to the Senate Committee on Commerce, Science, and Transportation. The proposed legislation also was introduced as H.R. 4526 during the previous Congressional session, which ended in January 2017, but was not enacted.

⁶ Prepared Statement of the Federal Trade Commission on "Legislative Hearing on 17 FTC Bills" before the Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade, United States House of Representatives (May 24, 2016), available at www.ftc.gov/public-statements/2016/05/prepared-statement-federal-trade-commission-legislative-hearing-seventeen. The Commission's testimony, among other things, commented on H.R. 4526, which was introduced but not enacted during the previous session of Congress. See note 5, *supra*.

⁷ See, e.g., FTC Policy Statement on Deception, appended to *Cliffdale Associates*, 103 F.T.C. 110, 180 (1984).

consumers and business. As the nation's consumer protection agency, the FTC is firmly committed to preventing and prohibiting deceptive online hotel reservation practices.