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Judge Has No “Reservations” Dismissing Advertising Suit Against Omni Hotels

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Judge Cathy Ann Bencivengo of the U.S. District Court for the Southern District of California recently dismissed with prejudice a putative class action alleging that the Omni luxury hotel chain deceptively advertised its hotel room rates on Expedia. In doing so, the Court found plaintiff failed to adequately allege that reasonable consumers would be deceived by Omni’s representations. *Charbonnet v. Omni Hotels*, No. 20-cv-01777-CAB-DEB (S.D. Cal. Dec. 16, 2020).

Plaintiff alleged Omni utilized a “drip pricing” scheme that misrepresented the true rates for its hotel rooms. The FTC defines “drip pricing” as a “technique in which firms advertise only part of a product’s price and reveal other charges later as the customer goes through the buying process.” Here, plaintiff alleged Omni engaged in drip pricing by failing to disclose a “property fee” until a consumer is finalizing his or her room purchase on Expedia. Plaintiff contended she was therefore “lured into [Omni’s] artificially lowered rate.” Based on these allegations, plaintiff brought claims for violations of California’s Consumer Legal Remedies Act, Unfair Competition Law and False Advertising Law.

In dismissing plaintiff’s complaint, Judge Bencivengo found plaintiff failed to plausibly allege that Omni had engaged in any deceptive conduct. Omni’s Expedia page explicitly discloses before consumers click “Reserve” that the advertised daily rate is not the room’s total cost. Directly below the daily rate, in only marginally smaller text, Omni states the higher, total price for the room that “includes taxes & fees.”

Even though the total price appeared in slightly smaller print than the daily rate, the court found the disclosure adequate because “anyone reading the daily rate would be able to read the marginally smaller text as well.” The court further noted that on the same page, before beginning the reservation process and without having to search for the added fees, a consumer can also click on the prominently displayed “Price details” drop-down menu to see a breakdown of what taxes and fees will be added to the daily rate. The drop-down menu clearly discloses the property fee. As a result, the court found plaintiff failed to plausibly allege that the fee was hidden from consumers.

In light of all these disclosures, the court noted the implausibility of plaintiff’s theory of deception. Specifically, the court observed “[t]o believe that the total cost of a one-night stay at the Omni is the daily rate amount, solely because it is in slightly larger font than the actual stated total price listed below, would require a consumer to ignore both the total price and the ‘Price details’ link, click ‘Reserve’ directly below them and pay for a room at the higher price including the stated taxes and fees without recognizing the difference.” Finding that this purported consumer “would not be a reasonable one,” the court concluded plaintiff failed to plausibly allege a reasonable consumer would be deceived.

This case serves as a reminder that theories of deception directly contradicted by reasonably prominent disclosures in an advertisement itself are ripe for dismissal. Watch this space for further developments.

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