

Duff on Hospitality Law

Online Travel Update: Legal Developments in the U.S. and EU, Growing Concerns with Generative AI, Chargeback Challenges, and EU Commission's Designation of Booking.com Under DSA

By Greg Duff on 7.3.23 | Posted in Online Travel Update

For those of you in the U.S. and Canada, happy Independence Day. This week's Update features a number of important legal updates – both in the U.S. and in the EU. The next 6-9 months should prove to be interesting as the EU moves forward with the implementation of its new digital legal framework – the Digital Services Act (DSA) and Digital Markets Act (DMA). I hope you enjoy.

- **FTC Identifies Possible Competition Concerns with Generative AI.** This past week, the FTC published a blog post detailing its view of potential competition concerns with generative AI. Key building blocks identified by the FTC for the successful use and implementation of generative AI (and all favoring large industry incumbents over new industry participants) include (1) data, (2) talent and (3) computational resources. Identified areas of concerns include a number of “industry standards” seen with prior emerging technologies – control of critical inputs, bundling and tying of products and services and exclusive dealing. Here we go again.
- **First Fraud, Now Chargebacks.** Having heard firsthand this past week while at HSMIA's events in Toronto of hoteliers' growing frustration with chargebacks, I wasn't surprised by the results of Outpayce's (Amadeus payments business) recent survey of travel executives, which, among other things, detailed the travel industry's growing chargeback challenge. According to the survey, over two thirds (71%) of the respondents have seen an increase in chargebacks with 33% experiencing a growing number of chargeback disputes over the past year. According to the survey, respondents attributed the increase to a number of factors - (1) consumers view that the chargeback process is easier (thanks

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in part to mobile banking apps) than refunds and (2) consumers' increased awareness of chargebacks generally.

- **Booking.com Designated a “Very Large Online Platform” Under DSA.** As many wait to learn Booking.com's fate under the DMA (i.e., whether Booking.com will be designated a “Gatekeeper”), it is important to remember that Booking.com has already been designated a “Very Large Online Platform” (VLOP) under the DSA. Back in April of this year, the EU Commission announced its decision that Booking.com satisfied the 45 million monthly active user threshold to be designated a VLOP. Why is this important? First, Booking.com's designation as a VLOP may be a telltale sign of its pending gatekeeper designation. Second, recent events may provide some indication as to how Booking.com might challenge (and ultimately delay) its VLOP designation or possible future gatekeeper designation. Late last month, German online retailer Zalando, also a recent VLOP designee, filed suit appealing its designation, arguing that its unique hybrid model (combining both retail and platform businesses) caused it to fall well below the 45 million user threshold. What effect Zalando's claims might have on its designation or its eventual compliance with the many VLOP content requirements is unclear, but we may soon see other designees – Booking.com – following Zalando's example.

For those of you who attended HSMAI's events this past week in Toronto, it was great seeing so many of you at Monday's roundtables. I hope each of you got as much out of our sessions together as I did. Have a great week.

Generative AI raises competition concerns, US FTC says

June 29, 2023 via MLex

The US Federal Trade Commission published a blog post highlighting potential competition concerns raised by generative artificial intelligence chatbots and applications. The FTC noted that incumbents that control key inputs or adjacent markets, including the cloud computing market, may be able to use unfair methods of competition to entrench their current power or use that power to gain control over a new generative AI market. Additionally, firms in generative AI markets could take advantage of network effects to maintain a dominant position or concentrate market power.

Alibaba's Fliggy puts the spotlight on new travel tech innovations at VivaTech 2023

June 29, 2023 via Travel Daily News

Alibaba Group's travel services platform, Fliggy, recently presented new travel tech innovations at *VivaTech 2023*, one of Europe's biggest startup and technology events which drew more than 2,000 exhibitors from 149 countries and regions around the world. The event saw Fliggy

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introducing augmented reality (AR) technologies and livestream service to enhance digital travel offerings as travel appetites return.

Booking to defend EUR1.6 billion Etraveli takeover at EU hearing next week

June 28, 2023 via MLex

Booking will defend its plan to buy Swedish online flight agency Etraveli at a closed-door meeting with the European Commission on July 7, MLex has learned. It's expected to use the opportunity to push back on the EU regulator's novel use of a pure conglomerate theory of harm to oppose the deal, allegedly without evidence of foreclosure.

Priceline Unveils Trip Intelligence, its Summer 2023 Product Release – A Game-Changing Suite of Tools and Enhancements for Smarter Travel Booking

June 28, 2023 via Hospitality Net

Informed by Priceline's latest proprietary traveler research and extensive customer data, and bolstered by cutting-edge technology and rigorous testing, this release introduces features that enhance trip planning with greater ease and information, including the introduction of Priceline's Penny, a proprietary generative AI chatbot.

Chargebacks in travel increasing as consumers find them easier than refunds

June 27, 2023 via Phocus Wire

Outpayce, the payments business of Amadeus, surveyed travel executives to uncover that 71% of companies have seen an increase with disputes growing 30% year over year.

Landmark EU digital rules face first legal challenge

June 27, 2023 via Financial Times

German online retailer Zalando alleges it is being unfairly targeted by the Digital Services Act. Zalando has started litigation at the EU's General Court against its designation as a "very large platform."

Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines

April 25, 2023 via EU Commission

The Commission adopted the first designation decisions under the Digital Services Act (DSA), designating 17 Very Large Online Platforms (VLOPs) and 2 Very Large Online Search Engines (VLOSEs) that reach at least 45 million monthly active users.