

Duff on Hospitality Law

Hotels and Consumers Making Headway in Anti-Room Poaching Battle

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It's estimated that room poaching results in upwards of \$1.3 billion in lost revenue for hotels and lost funds for consumers every year. As hotels and consumers look for a way to fight against these losses, trademark infringement may be emerging as the most effective tool.

Room poaching occurs when companies position themselves as an event's housing bureau in order to entice attendees to unwittingly book rooms outside of the official room block. Fake or out-of-block reservations can result in lost reservation fees for hotels, surprise charges and inconvenient and expensive last minute re-booking at alternative hotels for consumers. Further, trademark infringement can erode brand equity and good will between partnering hotels and groups.

In a recent anti-poaching case against Tarzango, an unaffiliated travel agency, U.S. Poultry, was successful in securing a default judgment award of \$750,000 for both statutory and common law trademark infringements, unfair and deceptive trade practices, and attorneys' fees. Tarzango targeted U.S. Poultry's International Production & Processing Expo (IPPE) attendees with unsolicited room offer emails claiming to be endorsed by, or affiliated with, U.S. Poultry. These emails were brought to the attention of U.S. Poultry via attendee inquiries, and continued to be sent by Tarzango even after a cease and desist letter had been served.

This is the first major verdict for anti-poaching efforts, and the biggest win since a substantial settlement victory in 2008 by the American Society of Association Executives ("ASAE") who brought suit against Complete Event Planning, Inc. for similar practices. Both cases were aided by general attendee awareness as well as a willingness by the event group to pursue third party violators past the demand letter phase. This allowed the event groups to collect email evidence, and to also demonstrate to poachers that demand letters might have teeth.

The Tarzango case comes on the heels of proposed legislation in both the U.S. House and Senate to make prosecution of poachers easier. The *Stop Online Booking Scams Act* would create standing for state attorneys general on behalf of the consumer in restitution claims.

While some remedies currently exist, such as restitution claims available to current consumers, and pending legislation, attorneys general, the recent Tarzango case indicates several positive developments and takeaways in the fight against room poaching:

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- Trademarking events provides strong legal leverage for prosecution of violators
- Ongoing and collaborative efforts between hotels, event organizers, and other consumers expedite detection of poaching—building these relationships is important
- Congress is showing a significant interest in, and willingness to help protect, the interests of the industry. It's worth being part of that conversation and those lobbying efforts.

Tags: hotels, room poaching, Stop Online Booking Scams Act, trademark