

Fake Reservations, Real Damages: Chicago Restaurants Left Holding the Bill After OpenTable Employee Sabotages Its Competitor

Amundsen Davis Hospitality Alert
March 8, 2018

On March 5th, Eater published a detailed account of how a former OpenTable employee made hundreds of fake reservations at restaurants that used Reserve, an online reservation company (and a competitor of OpenTable). His actions caused thousands of dollars in losses at more than forty establishments. OpenTable promptly terminated the employee and denounced his behavior in an open letter - though the affected restaurants are left holding the bill. OpenTable vowed to "make it right," but now time, effort and in some cases, legal fees will be incurred to prove the restaurants' losses and negotiate a fair outcome.

OpenTable is the leader in the online restaurant reservation space. Newcomers to the market, like Reserve, distinguish themselves with competitive pricing and enhanced promotional strategies. One common goal is to deter "no-shows." These companies have different solutions to this problem: OpenTable deactivates accounts when users fail to appear for four reservations in a given year. Reserve requires at least 30 minutes forewarning of a cancellation and will suspend repeat offenders. Another competitor, Tock, sells tickets to a seating or will charge a non-refundable deposit to confirm the reservation. Being better at minimizing no-shows is how these companies gain market share.

The relationship between a restaurant and its online reservation company is an exclusive one, and competition can be cutthroat. One can only surmise that the motivation behind this employee's fake reservation scheme was to punish former restaurant clients who switched from OpenTable to Reserve, or, to persuade potential clients that OpenTable was a superior platform. Many owners are furious and are clamoring to recover their losses. The affected restaurants are not without recourse.

PROFESSIONALS

Max Goodman
Partner

Ryan B. Jacobson
Partner

RELATED SERVICES

Hospitality, Leisure & Tourism

Labor, Employment &
Immigration

In Illinois, the restaurants can initiate claims for “interference with prospective economic advantage” by showing (1) a reasonable expectancy of a business relationship; (2) that the offending employee knew of the business opportunity; (3) that the employee intentionally interfered with the opportunity and prevented it from becoming a business relationship; and (4) damages.

The targeted restaurants certainly enjoyed a reasonable expectation of attracting paying customers at the times reserved by the OpenTable employee (many of the fake reservations were made on Valentine’s Day and at other particularly busy times). The offender was also undeniably aware that these fake reservations would equate to empty seats. Restaurants can prove damages by using historical data to estimate the average purchase per cover multiplied by the number of reservations held hostage by this bad actor. Restaurants can also demonstrate losses tied to food waste, over-staffing, and even harm to business reputation. And let us not forget the harm caused to the restaurants’ wait staff (fewer diners means fewer tips). Although the law allows competitors to jockey for customers provided they act in good faith, a party resorting to fraud or deceit will face consequences.

In addition to the employee’s legal exposure, OpenTable could be liable here. OpenTable faces liability if its employee was “acting within the scope of his employment” when he executed his fake reservation scheme. To find OpenTable “vicariously liable,” it is not essential that OpenTable authorized the offender’s actions. The employee was acting within the scope of employment if: (1) his actions were similar to those the employee was hired to perform; (2) the conduct occurred substantially within the authorized time and space of his job; and (3) the scheme was actuated, at least in part, to benefit his employer, OpenTable.

This story is still unfolding. Owners are weighing their options and consulting their legal counsel to make certain they are truly made whole.

Fake
Reservations,
Real
Damages:
Chicago
Restaurants
Left Holding
the Bill After
OpenTable
Employee
Sabotages
Its
Competitor