

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF BIRMINGHAM; CITY OF HUNTSVILLE; CITY OF DECATUR; CITY OF AUBURN; CITY OF MADISON; CITY OF ANNISTON; CITY OF OPELIKA; CITY OF FAIRHOPE; CITY OF GULF SHORES; and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,

Plaintiffs,

v.

ORBITZ, INC.; ORBITZ, LLC; PRICELINE.COM, INC.; EXPEDIA, INC.; SITE 59.COM, LLC; TRAVELCITY.COM, INC.; TRAVELCITY.COM, LP; HOTELS.COM, L.P.; HOTELS.COM GP, LLC; HOTWIRE, INC.; CHEAP TICKETS, INC.; CENDANT TRAVEL DISTRIBUTION SERVICES GROUP INC.; INTERNETWORK PUBLISHING CORP. (d/b/a/ LODGING.COM); LOWEST FARE.COM, INC.; MAUPINTOUR HOLDING, LLC; TRAVELWEB, LLC; TRAVELNOW.COM, INC.; ONETRAVEL, INC. (d/b/a Onetravel.com),

Defendants.

FILED IN OFFICE

DEC 11 2009

ANNE-MARIE ADAMS Clerk

Civil Action Number:

CV-2009-

CV200903607

COMPLAINT FOR DECLARATORY JUDGMENT

Pursuant to Ala. Code § 6-6-220, *et seq.* (the "Declaratory Judgment Act"), Plaintiff municipal taxing authorities seek a declaratory judgment to settle and obtain relief from uncertainty and insecurity with respect to their rights, status, and other legal relations and state as follows for their complaint against Defendants:

INTRODUCTION

This is an action for declaratory judgment against Defendants, who are online travel companies (OTCs). Defendants are in the business of renting Alabama hotel rooms to their customers over the internet and other means. Defendants rent rooms at a "wholesale" rate from Alabama hoteliers and innkeepers and, in turn, re-rent those rooms to their customers at a "retail" rate. The Transient Occupancy Tax provisions of the Plaintiff taxing jurisdictions require that anyone in the business of renting rooms remit a certain percentage of the "charge for the room." *See, e.g.*, Birmingham Ordinance No. 02-113 and ALA. CODE § 40-26-1. While Plaintiffs presumably have been paid the appropriate duty on the wholesale rate charged and paid for rooms, the OTCs have not properly remitted the tax on the retail rate, as they must. Defendants are thus in violation of State and municipal law and are obligated to remit such payment in the future. Defendants have publicly stated that the Plaintiffs' Transient Occupancy Tax provisions do not apply to them and have admitted failing to remit the tax. Accordingly, Plaintiffs seek a declaration from this Court that their respective Transient Occupancy Tax provisions have and do apply to Defendants and that Defendants are required to remit taxes on the "retail" rate charged by Defendants to transients who rent rooms in the Plaintiffs' respective jurisdictions.

PARTIES

1. Plaintiffs are various incorporated subdivisions of the State of Alabama, including: City of Birmingham, City of Huntsville, City of Decatur, City of Auburn, City of Madison, City of Anniston, City of Opelika, City of Fairhope, City of Gulf Shores, and Birmingham-Jefferson County Civic Center Authority (collectively, the "Alabama Taxing Authorities").
2. Defendant Orbitz, Inc. is a Delaware corporation with its principal place of

business in Chicago, Illinois.

3. Defendant Priceline.Com, Inc. is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

4. Defendant Expedia, Inc. is a Washington corporation with its principal place of business in Bellevue, Washington.

5. Defendant Site59.Com, LLC is a Delaware corporation with its principal place of business in New York, New York .

6. Defendant Travelocity.com, Inc. is a Delaware partnership with its principal place of business in Texas.

7. Defendant Travelocity.com, LP is a Delaware partnership with its principal place of business in Texas.

8. Defendant Hotels.Com, L.P. is a Delaware limited partnership with its principal place of business in Dallas, Texas.

9. Defendant Hotels.Com GP, LLC is a Texas corporation with its principal place of business in Dallas, Texas.

10. Defendant Hotwire, Inc. is a Delaware corporation with its principal place of business in San Francisco, California.

11. Defendant Cheap Tickets, Inc. is a Delaware corporation with its principal place of business in Honolulu, Hawaii.

12. Defendant Cendant Travel Distribution Services Group Inc. is a Delaware corporation with its principal place of business in Parsippany, New Jersey.

13. Defendant Internetwork Publishing Corp. (doing business as Lodging.Com), is a Florida corporation with its principal place of business in Boca Raton, Florida.

14. Defendant Lowest Fare.Com, Inc. is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

15. Defendant Maupintour Holding, LLC, is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

16. Defendant, Travelweb, LLC is a Delaware corporation with its principal place of business in Dallas, Texas.

17. Defendant, Travelnow.com, Inc. is a Delaware corporation with its principal place of business in Springfield, Missouri.

18. Defendant OneTravel, Inc. is a Texas corporation with its principal place of business in East Greenville, Pennsylvania.

VENUE

19. Venue lies in this Court pursuant to Ala. Code § 6-3-7 in that a substantial part of the acts and omissions giving rise to this action occurred in Jefferson County, Alabama.

THE TAX

20. Section 2(a) and (b), *Birmingham Lodging Tax Code*, Birmingham Ordinance No. 02-113, provides as follows:

(a) Lodgings Tax Rate. On each person, firm, or corporation engaging or continuing within this City in the business of renting or furnishing any room or rooms, lodgings, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms lodgings, or accommodations are regularly furnished to transients for a consideration, there is hereby imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax, in an amount to be determined by the application of the rate of three percent (3%) of the charge of such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such rooms.

(b) Relationship to State Law. This ordinance and the taxes levied herein shall be subject to all definitions, exceptions, exemptions, proceedings,

requirements, rules, regulations, provisions, penalties, fines, punishments and deductions that are applicable to the taxes levied pursuant to Section 40-26-1 *et seq*, Code of Alabama 1975 (the "Lodgings or Transient Occupancy Statutes"), except where inapplicable or herein otherwise provided.

Section 40-26-1, Code of Alabama 1975, states as follows:

There is levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in [certain counties] in an amount to be determined by the application of the rate of five percent of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room, and the rate of four percent of the charge in every other county.

21. Each Plaintiff taxing jurisdiction has a similar provision, identical to those above in every material respect, requiring any person in the business of renting rooms for consideration to remit a percentage of the charge for the room (collectively, the Lodging Tax).

22. Defendants are persons in the business of renting Alabama hotel rooms to transients for consideration. They are therefore obligated to remit the Lodging Tax, calculated as a percentage of the amount they charge for each room, but have not done so.

DEFENDANTS' CONDUCT

23. Defendants rent Alabama hotel rooms to customers over the internet. Operating on what they term the "merchant model," Defendants contract with hotels to secure a "wholesale" rate for the rooms, and then advertise and rent Alabama hotel rooms to transients for a higher "retail" rate.

24. Pursuant to their contracts with the hotels, Defendants then market the rooms online to individual customers. Defendants determine the increased rate at which the rooms are

offered and disclose to the customers only that "retail" rate. Defendants also charge their customers a separate amount for "taxes and service fees." In each such transaction, the Defendant OTC is the merchant of record for the booking and sale of the Alabama hotel room to the customer. The customer has no interaction with the hotel at the time of payment.

25. When a Defendant OTC purchases a room at wholesale rate from a hotel owner, the hotel owner remits the Lodging Tax to Plaintiffs on the wholesale rate even though the customer was charged a higher rate for the room by the Defendant OTC. Additionally, the customer normally pays to the Defendant OTC an amount denominated as "tax," which is calculated based upon the higher rate of the room charged by the Defendant OTC. The new retail rate plus the "tax" charge make up a final "retail price" paid by the customer.

26. Yet, Plaintiffs do not receive the Lodging Tax on the retail price – the actual charge for the room to the customer. The Defendant OTC thereafter remits the wholesale cost of the room and the Lodging Tax based upon the wholesale cost of the room to the hotel owner who, in turn, remits to the Alabama Taxing Authorities only the tax on the wholesale price of the room. The Defendant OTC then keeps the net profit obtained through the retail price (which includes a portion of the charge denominated to the customer as "tax").

27. The Defendant OTC remits no tax to the Alabama Taxing Authorities and expressly denies that it is subject to the Lodging Tax.

COUNT ONE
DECLARATORY JUDGMENT

28. Plaintiffs adopt and incorporate the previous paragraphs as though fully set forth herein.

29. Defendants are corporations engaged in the business of renting Alabama hotel rooms, lodgings, or other accommodations to transients for consideration.

30. Defendants' online charges to consumers are made in consideration for the use of Alabama hotel rooms, lodgings, or other accommodations.

31. Defendants are therefore subject to the Lodging Tax provisions of the Alabama Taxing Authorities and are required to remit for collection by the Alabama Taxing Authorities the appropriate percentage of the charge to the transient customer for each room.

32. Defendants have not remitted those amounts, which are due and owing. Defendants are in violation of *Alabama Code* Section 40-26-1 and the corresponding Lodging Tax provision of each Plaintiff authority.

33. Defendants have publicly claimed that they are not subject to the Lodging Tax and are not liable to the Alabama Taxing Jurisdictions for Lodging Taxes.

WHEREFORE, Plaintiffs demand a declaration that:

- (a) Defendants are charging their customers for the use of rooms, lodgings, or other accommodations in Alabama;
- (b) Defendants are engaged in the business of renting rooms or lodgings or furnishing accommodations to transients;
- (c) Defendants are subject to and liable for the respective Lodging Tax provisions of the Alabama Taxing Jurisdictions for any rooms they have rented or will rent to transients in the respective jurisdictions of the Alabama Taxing Authorities;
- (d) Defendants have failed to remit the appropriate Lodging Tax to the Alabama Taxing Jurisdictions;
- (e) The Lodging Tax mandates that Defendants remit tax to the Alabama Taxing Jurisdictions for Lodging Tax based upon the total amounts charged by the Defendants to transients for rooms in the respective jurisdictions of the Alabama

Taxing Authorities.

Plaintiffs pray the court will award to Plaintiffs attorneys' fees and costs under the Alabama Declaratory Judgment Act, together with such other, further, or different relief as the Court may deem equitable and just.

Date: December 11, 2009.



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PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL AS FOLLOWS:

Orbitz, Inc. and Orbitz, LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Priceline.com, Inc.
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Expedia, Inc.
c/o National Registered Agents, Inc.
1780 Barnes Boulevard SW, Bldg. G
Tumwater, WA 98512-0410

Site59.com, LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Travelocity.com, Inc. and Travelocity.com, LP
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Hotels.com, L.P.
c/o National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

Hotels.com, GP, LLC
c/o National Registered Agents, Inc.
16055 Space Center, Suite 235
Houston, TX 77062

Hotwire, INC.
c/o National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

Cheap Tickets, Inc.
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Cendant Travel Distribution Services Group, Inc.
c/o Cendant, Inc.
1 Sylvan Way
Parsippany, New Jersey 07054

Internetwork Publishing Corp.
(d/b/a/ Loding.com)
c/o Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301-2525

Lowest Fare.com, Inc.
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Maupintour Holding, LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Travelweb, LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
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Travelnow.com, Inc.
c/o National Registered Agents, Inc.
160 Greentree Drive, Suite 101
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Onetravel, Inc.
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c/o CT Corporation System
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