

Getting Junked? FTC Focusing on Unfair and Deceptive Fees

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🔑 Key Take: *Hotels that have adopted charging a resort fee should be aware of the changing landscape regarding disclosures to guests.*

On October 9, 2023, the Federal Trade Commission published a notice of proposed rulemaking entitled “Rule on Unfair or Deceptive Fees.” The proposed rule prohibits unfair or deceptive practices in the sale of goods or services, and, specifically, prohibits misrepresentations regarding the total cost of goods and services resulting from the failure to disclose fees and the nature and purpose of such fees, which they refer to as “junk fees.” The resort fees, which have become a typical part of the nightly rate of hotel accommodations, are included in these so-called junk fees that will be subject to any such final rule.

What Are Resort Fees?

It is commonplace for a hotel guest to be charged a “resort fee” on top of the base room rate. The resort fee is typically a daily extra charge. It is mandatory

and is charged even if the hotel guest does not use any amenities or services which are identified by the hotel as being covered by the resort fee. A resort fee may also be called a destination fee, facility fee, service fee, amenity charge, resort charge, urban fee, or a similar term. The amount of the resort fee varies greatly by hotel, and can be as low as \$20 a day and as high as \$160 a night.

Consumer complaints arise with respect to resort fees when they are not prominently disclosed in advance with specificity. This often results in the hotel guest being surprised at the amount of the final bill at check out.

Government and Other Responses to Resort Fees

Resort fees have become a point of contention between hotels and consumers in the U.S., and have been and continue to be addressed by consumer advocacy groups, state and federal lawmakers, courts, and attorney generals. Resort fees were even mentioned with specificity in President Biden's 2023 State of the Union address.

In addition to general laws prohibiting deceptive trade practices and false advertising, legislation specifically addressing resort fees has been adopted or proposed in several states and at the federal level. As discussed above, the Federal Trade Commission final rule addressing resort fees is pending following rounds of public input.

How Should Hotels Respond?

Hotels should be transparent in their disclosure of all resort fees when advertising room pricing. The resort fee should be clearly and conspicuously disclosed such that the average consumer will be able to understand the cost of the stay. To avoid negative outcomes, it is important for consumers to be made aware of their financial responsibility when booking a hotel stay, as well as for the hotel to

observe any specific requirements of any applicable
legislation or court order.