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“Getting Junked?": A New Update for Hoteliers

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Key Take: *FTC’s final “Junk Fees” Rule Targets Hotels and Resort Fees. What every hotelier needs to know.*

On December 17, 2024, the U.S. Federal Trade Commission (FTC) announced its Final Rule on Unfair or Deceptive Fees, known as its Junk Fees Rule, prohibiting bait-and-switch pricing and other deceptive tactics that obscure a consumer’s final price until after payment in the live-event ticketing and short-term lodging industries.

The final rule is far more expansive than the initial version of this rule proposed by the FTC in October of 2023. The initial proposed rule had no limitations on the types of businesses or sellers of goods and services it would cover. The proposed rule intended to regulate two forms of junk fees: hidden fees, where businesses bait-and-switch a lower price pre-checkout to a significantly higher price with hidden mandatory fees, and bogus fees, which refer to fees that are vague, inadequately described, or

misrepresented in an invoice or receipt. The final rule does address both hidden fees and bogus fees in its prohibition (sections 464.2 and 464.3), but it is significantly narrower in many respects.

The rule was promulgated to combat so-called junk fees — including fees that are common in the hospitality industry, such as resort fees, convenience fees, and services charges. Ultimately, these fees raise the cost of a hotel stay for the consumer, which the FTC contends is unknown to the consumer until check out. The rule is geared towards creating more transparency regarding the total cost a hotel guest may face when booking a reservation.

The rule specifically requires that businesses in the live-event ticketing and lodging industries must clearly and conspicuously disclose the total and inclusive price of their good or service in any offer, display, or advertisement. And, the total price must be the most prominent display of pricing information communicated by the business.

In FTC Chair Lina M. Khan's statement on December 17, 2024, the FTC issued a stark warning to businesses outside the purview of the rule, stating, "I urge policymakers to continue building on the FTC's success in challenging junk fees and to guarantee more sweeping protections across the economy." Notably, California has already taken such action — passing an expansive junk fee prohibition law that applies to virtually all California businesses and those targeting California consumers that sell or lease goods and services for a consumer's personal use.

What Is required Under the Rule?

Under the new rule, hotels are required to clearly and conspicuously disclose the all-in cost of booking a reservation in any advertisement, offer, or display. Even when an itemized list of costs is shown, the total cost must be displayed as the most clear and prominent figure. Additionally, the rule provides that

when a business excludes allowable fees, like shipping or taxes, that exclusion must be clearly and conspicuously disclosed before the consumer proceeds to checkout.

Specifically, the rule defines the “Total Price” as “the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service,^[1] except that Shipping Charges and Government Charges may be excluded.” This definition allows businesses to exclude fees for optional ancillary goods or services. Shipping charges, government charges, taxes, and the like are permitted to be excluded from the total price, so long as there is a disclosure to the consumer that these fees have not been included in the total price yet.

What Should Impacted Businesses Do?

Hoteliers should take steps to ensure that their reservation systems comply with the FTC’s rule, including prominently displaying the “Total Price” in any advertisement and/or potential sale of a guest room. For example, if taxes are excluded from the reservation price that a consumer initially sees when evaluating a room, that exclusion should be clearly and conspicuously stated before check out.

While the new administration may have a different view of this policy, the rule is currently set to go into effect within 120 days after it is published to the Federal Register. Hoteliers should take action now to ensure compliance ahead of this date and should consult with knowledgeable legal counsel for any questions regarding implementation of the rule.

^[1] Ancillary Good or Service is defined in the rule as “any additional good(s) or service(s) offered to a consumer as part of the same transaction.”