

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR LEON COUNTY, FLORIDA

LEON COUNTY, DORIS MALOY,  
Leon County Tax Collector, FLAGLER  
COUNTY, LEE COUNTY, MANATEE  
COUNTY, PINELLAS COUNTY, DIANE  
NELSON, Pinellas County Tax Collector,  
POLK COUNTY, and JOE G. TEDDER,  
Polk County Tax Collector,

Plaintiffs,

CASE NO: 2009CA4319

vs.

EXPEDIA, INC., HOTELS.COM, LP,  
HOTELS.COM GP, LLC, DELAWARE  
HOTWIRE, INC., TRAVELNOW.COM,  
ORBITZ WORLDWIDE, INC., ORBITZ,  
LLC, ORBITZ FOR BUSINESS, INC., TRIP  
NETWORK, INC., PRICELINE.COM, INC.,  
TRAVELWEB LLC, SABRE HOLDINGS,  
CORP., TRAVELOCITY.COM, INC., and  
TRAVELOCITY.COM, LP,

Defendants.

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ROB INZER  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

FILED

**COMPLAINT FOR DECLARATORY AND SUPPLEMENTAL RELIEF**

Plaintiffs LEON COUNTY, DORIS MALOY, Leon County Tax Collector, FLAGLER  
COUNTY, LEE COUNTY, MANATEE COUNTY, PINELLAS COUNTY, DIANE NELSON,  
Pinellas County Tax Collector, POLK COUNTY, and JOE G. TEDDER, Polk County Tax  
Collector, by and through their undersigned counsel, sue Defendants EXPEDIA, INC.,  
HOTELS.COM, LP, HOTELS.COM GP, LLC, DELAWARE HOTWIRE, INC.,  
TRAVELNOW.COM, ORBITZ WORLDWIDE, INC., ORBITZ, LLC, ORBITZ FOR  
BUSINESS, INC., TRIP NETWORK, INC., PRICELINE.COM, INC., TRAVELWEB LLC,



SABRE HOLDINGS, CORP., TRAVELOCITY.COM, INC., and TRAVELOCITY.COM, LP, and allege as follows:

**INTRODUCTORY STATEMENT**

1. Pursuant to state and local law, each Plaintiff county levies a sales tax, in the form of a Tourist Development Tax, on the sale of hotel rooms within their respective boundaries. Defendants, through their internet sites, sell hotel rooms to their customers, including hotel rooms located in each of the Plaintiff counties. Although Defendants charge and collect sales tax from their customers, Defendants refuse to send Plaintiffs the full amount of the tax that is due. Instead, Defendants keep the difference between the amount of sales tax owed to each Plaintiff and a lesser amount calculated by Defendants that is contrary to and in violation of state and local law. This action seeks to recover that difference.

**JURISDICTION AND VENUE**

2. This is an action for declaratory and supplemental relief pursuant to Chapter 86, Florida Statutes. The amount in controversy exceeds \$15,000. Jurisdiction is vested in the Circuit Court pursuant to the provisions of § 26.012, Florida Statutes.

3. This court has subject matter jurisdiction pursuant to § 86.011, Florida Statutes, and venue is proper, pursuant to Chapter 47, Florida Statutes, because the cause of action accrued in Leon County and Defendants ORBITZ FOR BUSINESS, INC., TRIP NETWORK, INC. (d/b/a CHEAP TICKETS), TRAVELWEB LLC, TRAVELOCITY.COM, and TRAVELOCITY.COM, LP each maintain a registered agent in Leon County.

**PARTIES**

4. Plaintiffs LEON COUNTY, FLAGLER COUNTY, LEE COUNTY, MANATEE COUNTY, PINELLAS COUNTY and POLK COUNTY are each political subdivisions of the

State of Florida, duly organized and validly existing under the Constitution and laws of the State of Florida.

5. Plaintiffs DORIS MOLOY, DIANE NELSON, and JOE G. TEDDER are the Tax Collectors for Leon, Pinellas and Polk Counties respectively. Each is a duly elected constitutional officer empowered to enforce, assess and collect the local option Tourist Development Tax in their respective counties.

**(a) The Expedia Defendants**

6. Defendant EXPEDIA, INC. ("EXPEDIA") is a foreign corporation authorized to transact business in the State of Florida, and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. EXPEDIA is an online travel company whose portfolio of brands include Expedia.com, Hotels.com, Hotline.com, and Egencia.com.

7. Defendant HOTELS.COM, LP is a foreign limited partnership authorized to transact business in the State of Florida, and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties.

8. Defendant HOTELS.COM GP, LLC is a foreign limited liability company authorized to transact business in the State of Florida, and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. HOTELS.COM GP, LLC is the general partner of HOTELS.COM, LP, and both of these Defendants are subsidiaries of EXPEDIA.

9. Defendant DELAWARE HOTWIRE, INC. is a foreign corporation authorized to transact business in the State of Florida, and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. DELAWARE HOTWIRE, INC. is a subsidiary of EXPEDIA.

10. Defendant TRAVELNOW.COM, INC. is a foreign corporation transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. TRAVELNOW.COM, INC. is a subsidiary of EXPEDIA.

**(b) The Orbitz Defendants**

11. Defendant ORBITZ WORLDWIDE, INC. (“ORBITZ”) is a foreign corporation transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. ORBITZ is an online travel company whose portfolio of brands includes Orbitz.com, Cheaptickets.com, OrbitzforBusiness.com, HotelClub.com, Accomline.com, and RatesToGo.com.

12. Defendant ORBITZ, LLC is a foreign limited liability company transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. ORBITZ LLC is a subsidiary of ORBITZ.

13. Defendant ORBITZ FOR BUSINESS, INC. is a foreign corporation authorized to transact business in the State of Florida and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties and maintaining a registered agent in Leon County. ORBITZ FOR BUSINESS, INC. is a subsidiary of ORBITZ.

14. Defendant TRIP NETWORK, INC. (d/b/a CHEAP TICKETS) is a foreign corporation authorized to transact business in the State of Florida and transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties and maintaining a registered agent in Leon County. TRIP NETWORK, INC. is a subsidiary of ORBITZ.

**(c) The Priceline Defendants**

15. Defendant PRICELINE.COM, INC. (“PRICELINE”) is a foreign corporation transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. PRICELINE is an online travel company whose portfolio of brands includes Priceline.com and Booking.com.

16. Defendant TRAVELWEB LLC is a foreign limited liability company authorized to transact business in the State of Florida, transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties, and maintaining a registered agent in Leon County. TRAVELWEB LLC is a subsidiary of PRICELINE.COM, INC.

**(d) The Travelocity Defendants**

17. Defendant SABRE HOLDINGS, CORP. is a foreign corporation transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties. SABRE HOLDINGS, CORP.'s subsidiary TRAVELOCITY.COM, INC. is an online travel company.

18. Defendant TRAVELOCITY.COM, INC. is a foreign corporation authorized to transact business in the State of Florida, transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties, and maintaining a registered agent in Leon County, Florida. TRAVELOCITY.COM, INC. is an online travel company.

19. Defendant TRAVELOCITY.COM, LP is a foreign limited partnership authorized to transact business in the State of Florida, transacting business in Leon, Flagler, Lee, Manatee, Pinellas and Polk Counties, and maintaining a registered agent in Leon County, Florida. TRAVELOCITY.COM, INC. is the general partner of TRAVELOCITY.COM, LP.

**GENERAL ALLEGATIONS**

**The Local Option Tourist Development Tax**

20. Section 125.0104, Florida Statutes, permits each Plaintiff County to levy and impose a local option Tourist Development Tax ("TDT"). The TDT is imposed on any person that rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home

park, recreational vehicle park, or condominium for a term of six months or less. The TDT is also sometimes referred to as a hotel bed tax or a transient rental tax.

21. It is the intent of the Florida Legislature to tax each and every rental/lease/letting of a hotel room unless the transaction is made specifically exempt in Chapter 212, Florida Statutes. See §§ 125.0104(3)(a) and 212.21(2), Florida Statutes.

22. Section 125.0104(3)(g) provides that the TDT “shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration of such lease or rental.”

23. Pursuant to §§ 125.0104(4) and (6), Florida Statutes, each Plaintiff County enacted an ordinance levying and imposing a local option TDT, copies of which are attached hereto as EXHIBITS A - F.

24. Chapter 212, Florida Statutes, provides, *inter alia*, for the State of Florida to levy and impose a similar transient rental tax on a statewide basis. The same privileges, duties and obligations imposed by Chapter 212 and the Florida Department of Revenue’s administrative rules for purposes of the statewide transient rental tax are applicable and binding for purposes of the calculation, collection and remittance of the TDT to each Plaintiff. § 125.0104(3)(g), Florida Statutes.

25. The TDT is levied upon “the total rental charged for ... living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental.” § 212.03(1), Florida Statutes.

26. A “dealer,” for purposes of the TDT, is “any person who leases, or grants a license to use, occupy or enter upon, living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, real property, space or

spaces in parking lots or garages, for motor vehicles, docking or storage space or spaces for boats in boat docks or marinas, or tie-down or storage space or spaces for aircraft at airports.” § 212.06(2)(j), Florida Statutes.

27. Dealers must register with and obtain a certificate of registration from the Florida Department of Revenue. Rule 12A-1.060, Florida Administrative Code.

28. Defendants are not registered as dealers pursuant to § 212.06(2)(j), Florida Statutes, and Rule 12A-1.060, Florida Administrative Code.

29. Failure to pay the local option TDT results in penalties and interest as set forth in Chapter 212, Florida Statutes.

30. The Plaintiff Tax Collectors have a legal duty to faithfully and fairly administer the local option TDT in accordance with legal requirements, and can find no exemption that would exempt from levy of local option TDT any part of the total consideration charged by the Defendants to their customers for the letting of accommodations in each of their respective Counties.

#### **Defendants' Business Model**

31. Defendants are internet travel companies that provide customers with the ability to search for, reserve and pay for hotel accommodations and other travel-related services through the internet.

32. Defendants sell, lease and/or let hotel rooms to their customers using what is often called the merchant model of business. As discussed in more detail below, Defendants do not act as a hotel's agents, but instead are the actual merchants of record for the hotel rooms purchased by their customers.

33. Under the merchant model, the Defendants contract with hotels for the right to obtain an inventory of rooms at negotiated discount or wholesale rates. These hotel rooms include rooms located in each Plaintiff county, as well as other counties across the State of Florida.

34. Defendants are not the users, consumers, or occupants of these hotel rooms. Instead, Defendants advertise and offer these rooms for sale to the public on their websites.

35. Defendants charge their customers a room rate that is greater than the wholesale rate Defendants have negotiated with the hotels. Defendants determine the amount of this mark up, and Defendants represent this room rate to the public as the price the consumer must pay to secure his or her right to occupy the room.

36. Defendants' customers pay Defendants directly for the rooms purchased on their websites. After the customer's credit card is charged, Defendants inform the selected hotel of the transaction. At check-in, the customer provides the hotel with identification and receives access to the room purchased from the Defendants. The Defendants' customer does not pay the hotel any money for the room, although he or she is responsible to pay the hotel for incidentals, such as food, that are not included as part of the room rate.

37. Defendants remit to the hotels the TDT calculated based on the wholesale price that Defendants have negotiated with the hotels. Defendants do not remit the TDT based on the retail price their customer actually pays when he or she purchases a room from the Defendants.

38. After a customer checks out of the hotel, the hotel invoices Defendants. Defendants remit to the hotel the discounted or wholesale room rate and the TDT as calculated using that discounted or wholesale room rate. Defendants retain the remainder of what they have charged their customer for the room, including the difference between the TDT calculated using

the wholesale rate and what the TDT would be if calculated using the retail rate actually paid by the consumer.

39. The hotels remit the TDT they have received from the Defendants to the Counties and/or the State of Florida.

## COUNT I

### **DEFENDANTS MUST CALCULATE TDT BASED ON THE AMOUNT THAT THE CONSUMER ACTUALLY PAYS FOR THE HOTEL ROOM.**

40. Plaintiffs reallege Paragraphs 1 through 39 of the Complaint as if fully set forth herein.

41. Under Plaintiffs' interpretation of Florida law, the Defendants are engaged in the business of renting, leasing or letting transient accommodations and/or hotel rooms within each Plaintiff County. As a result, Defendants should register as dealers with the Florida Department of Revenue. Moreover, the TDT is due on the total consideration paid to Defendants by their customers for the use of the hotel rooms, not merely the discounted or wholesale price Defendants pay to the hotels.

42. Defendants contend that they are not engaged in the business of renting, leasing or letting transient accommodations. Defendants also contend that the TDT is due only on the discounted or wholesale room price they pay to the hotels.

43. As a result of the dispute between Plaintiffs and the Defendants regarding the amounts of TDT which should be collected and remitted, Plaintiffs are in doubt as to their rights to receive the TDT due on the total consideration received by Defendants from their customers.

44. There is a bona fide, actual, present, and practical need for a declaration of the parties' respective rights and obligations pursuant to Plaintiffs' TDT ordinances, as further described in § 125.0104 and Chapter 212, Florida Statutes.

45. All conditions precedent to the filing of this action have occurred or have been waived.

**WHEREFORE**, Plaintiffs pray that this Court will enter a judgment declaring and determining the rights, powers and obligations of the parties, as follows:

A. Declare that Defendants are exercising a taxable privilege by renting, leasing or letting transient accommodations in each Plaintiff County;

B. Declare that Defendants are dealers for purposes of the TDT;

C. Declare that the statute of limitations set forth in § 95.091(3)(a)1.b., Florida Statutes, is inapplicable due to Defendants' failure to register as dealers or to file required sales tax returns

D. Declare that, on a prospective basis, Defendants must calculate the TDT due to each Plaintiff County based on the total consideration paid by the consumer for the hotel rooms purchased from the Defendants;

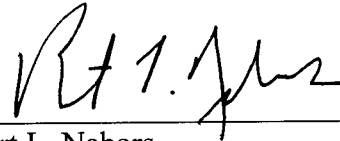
E. Declare that, on a retrospective basis, Defendants owe each Plaintiff County the difference between the TDT calculated using the wholesale or discounted price and what the TDT would have been had Defendants used the total consideration paid by the consumer for their calculations, as well as applicable penalties and interest on that difference;

F. Determine the amount owed to each Plaintiff County on a retrospective basis; and

G. Order such further relief, including supplemental relief pursuant to Chapter 86, Florida Statutes, as the Court deems just and proper.

DATED this 3rd day of November, 2009.

Respectfully Submitted,



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Robert L. Nabors  
Florida Bar No. 097421  
NABORS GIBLIN & NICKERSON, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Telephone: (850) 224-4070  
Facsimile: (850) 224-4073

Edward A. Dion  
Florida Bar No. 267732  
NABORS GIBLIN & NICKERSON, P.A.  
208 S.E. Sixth Street  
Ft. Lauderdale, Florida 33301  
Telephone: (954) 525-8000  
Facsimile: (954) 525-8331

Roberto Martínez  
Florida Bar No. 305596  
Paul C. Huck, Jr.  
Florida Bar No. 968358  
COLSON HICKS EIDSON  
255 Aragon Avenue, 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134  
Telephone: (305) 476-7400  
Facsimile: (305) 476-7444

ATTORNEYS FOR PLAINTIFFS  
LEON COUNTY, DORIS MALOY,  
FLAGLER COUNTY, LEE COUNTY,  
MANATEE COUNTY, PINELLAS  
COUNTY, DIANE NELSON, POLK  
COUNTY, and JOE G. TEDDER