

National Class Action Suit Challenges Hotel Group's Disclosure of Guest Newspaper Fees

Hospitality Industry Alert

By Paul Riehle

August 08, 2011

Hotel companies could soon be facing class action suits over fees for morning newspapers in the wake of a recently filed complaint in federal court in California. A Sacramento man accuses Hilton Group, PLC, Hilton International, Inc. and Hilton Hotels Corporation (collectively "Hilton") of unfair business practices for allegedly concealing a 75-cent per newspaper fee after his stay at the Hilton Garden Inn Sonoma County Airport.

In the complaint filed July 27, 2011, the hotel guest alleges Hilton hid confirmation of the daily fee and an opt-out provision in fine print on the guestroom keycard sleeve handed to him at check-in. The hotel's itemized invoice made no reference to the fee: "The word 'newspaper' does not appear anywhere on this invoice and there is no mention of any charge relating to a newspaper." If a guest opts out of receiving the newspaper, then a 75-cent credit appears on the invoice. The plaintiff alleges that he did not read or otherwise use the newspaper. In a lengthy diatribe, the plaintiff alleges that the newspaper policy results in waste of resources and environmental pollution because newspapers produce greenhouse gases, cause deforestation and result in garbage accumulation. The complaint seeks to certify a nationwide class and alleges that an estimated 7 million U.S. residents unwittingly paid the newspaper fee at Hilton hotels.

The suit asserts three claims: unfair business practices under California's Unfair Competition Law (UCL), violation of the Consumers Legal Remedies Act (CLRA), and common-law unjust enrichment.

The complaint may not survive a pleadings challenge. A fair reading of the allegations is that a newspaper is included in the room charge and that one can opt out of receiving the newspaper by notifying the front desk. That is why there is no charge on the invoice and that is why there is a credit on the invoice if one opts out. Understood in this light, the allegations should not be held to support a claim under the fraud prong of the UCL or any fraudulent activity under the CLRA: the conduct is not deceptive; the element of reliance is missing; and there is no loss of money or property under the UCL nor damages under the CLRA.

The plaintiff's allegations of greenhouse pollution are seemingly apropos of nothing and calculated to engender either support from environmentalists or publicity. The charges also may be calculated to support a claim based one of the tests under the "unfair" prong of the UCL. That test looks to whether there is any countervailing benefit to consumers of the activity in question. Presumably, the plaintiff will argue that there is a substantial detriment to consumers because of the environmental burden alleged. This argument ignores the substantial consumer benefit that a newspaper provides. Moreover, that test for unfairness also evaluates whether the consumer injury is substantial. Including a newspaper in the cost of a room should not be held to meet that standard.

There is a significant body of law in California holding that unjust enrichment is not a cause of action, but is instead a remedy.

From a policy point of view, the absurdity of the claim is evident if its premise is extended to other customary hospitality practices. Are hotels engaged in deceptive business practices if they fail to disclose the cost of a free breakfast without giving guests a chance to opt out? What about the mints they leave on the pillow? The free soap?

Assuming the complaint survives the pleadings, the plaintiff's counsel may be unable to convince a court to certify a class. As to the request to certify a nationwide class, neither the UCL nor CLRA applies to actions outside of California with respect to non-California companies -- and as to California companies, many courts have refused to certify a nationwide class because common issues of law do not predominate and because of manageability concerns. Even if the putative class were limited to California hotel guests, a class should not be certified because it would contain members who lack Article III standing, as well as because individual issues relating to reliance and causation predominate.

Notwithstanding the hurdles that the plaintiff faces, the hospitality industry should be concerned about this new lawsuit. Plaintiff class action attorneys often act in lockstep with one another, so that if a new type of complaint is filed, one can expect more.

Related Practices:

Class Action

Commercial Practices