



February 6, 2024

Janice Kopec
Stacy Cammarano
Division of Advertising Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Unfair or Deceptive Fees NPRM
R207011

Dear Ms. Kopec and Ms. Cammarano:

On behalf of the American Society of Travel Advisors, Inc. (ASTA), I am writing to express ASTA's viewpoint with respect to the issues raised in the above-referenced Notice of Proposed Rulemaking (NPRM) by the Federal Trade Commission ("FTC" or the "Commission") which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees.¹

Established in 1931, ASTA is the world's leading professional travel trade organization. Our current membership consists of more than 8,000 businesses representing more than 90,000 travel professionals, from the smallest home-based businesses to traditional brick-and-mortar storefront agencies to the largest travel management companies and online travel agencies. Together, they account for an annual payroll output of \$5.5 billion and annual revenues of \$17.7 billion.

Given its focus on hotel resort fees, among other types of mandatory charges related to the sale of other goods and services, ASTA has a specific interest in the outcome of this NPRM as travel agencies in the aggregate were responsible for \$18.7 billion in hotel bookings in 2022, a figure that was expected to grow to nearly \$22 billion by the end of 2023.²

¹ *Trade Regulation Rule on Unfair or Deceptive Fees*, Notice of Proposed Rulemaking, 88 Fed. Reg. 77420 (November 9, 2023).

² *U.S. Travel Agency Landscape 2023*. Phocuswright and Travel Weekly Agency Study 2023, p. 16.

As an advocate for not only travel agencies and individual advisors but also the millions of consumers who rely on our members' services, ASTA believes that the rule as proposed would greatly benefit consumers of hotel and other short-term lodging services, and it is in that context that ASTA has the greatest interest in the proposed rulemaking. While charging mandatory resort fees has come under greater scrutiny in recent years, up until now predominantly by regulators and enforcement agencies at the state level, the practice remains common in the industry.

Moreover, the manner in which resort fees, also alternatively referred to by hoteliers as "amenity fees" or "destination fees," among other terms commonly used, are disclosed to consumers is highly inconsistent. And, as many hotel properties are independently owned and operated franchises, there is little uniformity in this regard even among hotels doing business under the same brand name.

The failure by certain hotel retailers to disclose or adequately disclose the total nightly room charge, upfront, makes meaningful price comparisons among the available options unnecessarily difficult, if not altogether impossible in some cases. It can often lead to unpleasant surprises when the true cost of the lodging is only discovered after booking, or even worse, upon checkout.

The likelihood that a hotel booking will be made without full knowledge by the consumer of the true total nightly rate is greater for those who elect to shop on their own, without the assistance of a trusted advisor. Typically, these consumers will either book their reservations directly with the hotel chain or the specific property in question via telephone or online, or utilizing a metasearch travel site or online travel agency (OTA). How the mandatory fee information is displayed or otherwise communicated, and the degree to which it is clear and conspicuous, will vary based on the channel selected for the booking.

In contrast, consumers who book their lodging utilizing the services of a travel agency can depend on the knowledge and expertise of their advisor who in many cases will be much more familiar with the practices of hotels in general and, often, those of the specific properties under consideration. In many cases, they are also able to provide information concerning the nature of the services or amenities on site that are included in the fee, if any, that may (or may not) be of value to the client so that an informed decision can be made.

While there is little question that the guidance of an experienced travel professional can be of great value in ascertaining the true price of a hotel room, inclusive of any mandatory fees, ASTA strongly believes that *all* consumers, regardless of where or how they choose to book their travel, have a right to expect that hotels, as well as OTAs, short-term rental intermediaries and

other distributors of lodging services, provide complete pricing information, exclusive of any Government Charges,³ up front in a transparent manner to permit meaningful comparison shopping.

Moreover, we are of the opinion that the full disclosure obligation should apply uniformly irrespective of the distribution channel or medium used by the consumer when booking a hotel room. As noted above, in addition to working with a trusted travel advisor to secure a reservation, which ASTA recommends, consumers also have the option of visiting the hotel's website, calling the specific hotel property directly, or utilizing an OTA or aggregated metasearch site.

As noted by many other commenters, beyond the obvious economic and non-economic harm to consumers, the imposition of undisclosed fees also unfairly places honest retailers – those that do disclose the full, all-in price upfront – at a competitive disadvantage relative to those that do not. It goes without saying that market transparency, including full transparency in pricing, is essential to fair competition in any industry, and the hotel and lodging industry is no exception here. Prohibiting the omission of mandatory fees from advertised prices will go a long way toward leveling the playing field.

ASTA is pleased to note that the proposed rule would also prohibit misrepresentations as to the nature and purpose of any mandatory fees, whether through the use of vague descriptions or otherwise.⁴ We share the FTC's view that due to such practices, consumers frequently do not know what the fees are for or why they are being assessed by the seller, and this is a problem altogether distinct from the failure to disclose the charge upfront.

As many other commenters have noted, consumers are misled when they are assessed resort fees by hotel properties that cannot, by any construction of the word, be considered resorts. While admittedly there is no universally accepted industry definition of what constitutes a "resort," hotels offering only typical or ordinary accommodations and/or amenities but nevertheless characterize their fees as such misrepresent the nature of the property being booked. And even where use of the term "resort" to describe the property may be warranted, often the amount of the fee collected appears arbitrary and bears no relationship to the value of the services purportedly being provided.⁵

³ The NPRM defines the term "Government Charges" to mean "all fees or charges imposed on consumers by a Federal, State, or local government agency, unit, or department" but is intended to exclude "fees or charges that the government imposes on a business and that the business chooses to pass on to consumers." 88 Fed. Reg. at 77484, 77439.

⁴ 88 Fed. Reg. at 77439.

⁵ 88 Fed. Reg. at 77422.

Arguably more egregious from a misrepresentation standpoint is the use of terms such as “destination fee” to identify a charge added to a hotel’s standard room rate. A charge labeled in this manner and broken out separately from the base rate will inevitably mislead many consumers into mistakenly believing that it represents a tax or government surcharge that must be collected from the consumer and passed on to a local jurisdiction. That such charges are in fact wholly retained by the hotel as additional revenue may be lost on even seasoned travelers, as many cities assess occupancy or lodging taxes on the price of hotel accommodations, in addition to any applicable state and/or local sales taxes.

Given the potential for confusion, it is ironic that in most jurisdictions the amount of any resort fee assessed by a hotel in addition to the advertised base rate is not subject to occupancy or lodging taxes. Instead, these amounts are typically subject only to the state or local sales tax rate. This widespread incongruity lowers the effective tax rate of hotels charging resort fees vis-à-vis hotels advertising a single all-in price, again placing the latter at a competitive disadvantage.⁶ While we acknowledge that addressing this discrepancy lies with the taxing authorities and is beyond the scope of the FTC’s rulemaking authority, it plainly represents an additional incentive for hoteliers assessing resort fees to maintain their current practices.

Another industry-specific concern associated with omission of resort fees and similar mandatory fees from the advertised price of hotel rooms is the impact on the calculation of commissions paid to travel agencies and other distribution intermediaries. Most hotel brands pay travel advisor commissions only on the base room rate and exclusive of any taxes. Where a resort fee is charged to and collected from the consumer, it is typically excluded from the calculation of the commission payable to the travel advisor or agency. So, for example, a 10 percent commission on a \$200 hotel stay results in a \$20 commission to the booking agency. But if instead the hotel charges a base rate of \$160 for the room but separately assesses a mandatory \$40 resort fee, the commission payable is only \$16 – an effective rate of only 8 percent – even though in both cases the revenue to the hotel derived from the advisor’s efforts is the same, \$200.

Again, ASTA recognizes that a direct remedy for this situation is beyond the FTC’s consumer protection mandate and the present rulemaking, but it is nonetheless instructive as it demonstrates another way in which hotels that assess resort fees on their customers gain an

⁶ Moreover, according to consumer advocacy group Travelers United, the forgone occupancy tax revenue attributable to hotels’ charging of resort fees in New York City was nearly \$8.9 million in 2017 alone, a figure that has increased “exponentially” since then. *End Hotel Resort Fees: TravelersUnited.org Sues Hotels and Resorts to End Hotel Resort Fees and other Mandatory Fees*. <https://www.travelersunited.org/end-hotel-resort-fees/> (accessed January 30, 2024).

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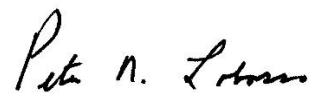
economic advantage over those that do not. That said, adoption of a Final Rule as proposed could well result in a decision by some hoteliers to voluntarily abandon the practice of separately assessing these fees, resulting in our members receiving the appropriate compensation for the work that they do.

Finally, we wish to bring to the Commission's attention something notably absent from the NPRM, namely, discussion of the application of the proposed penalty provisions in the context of intermediated transactions. Where the selling party and the entity imposing a mandatory fee are not one and the same, a situation common in the travel industry, the possibility exists that a seller may unknowingly pass on to a consumer inaccurate or incomplete information regarding the existence or amount of a mandatory fee.

As a matter of fairness, we believe intermediaries that reasonably rely on erroneous information provided by the entity charging the fee should be relieved of liability for the error. To that end, ASTA respectfully requests that the Final Rule include either an outright exemption or a "safe harbor" mechanism to protect an innocent third-party seller from enforcement action in this scenario.

We thank you for considering ASTA's views on this critically important subject. If you or your staff have any questions regarding our comments or any issues related to the travel agency business, please do not hesitate to contact me at (703) 739-6854 or plobasso@asta.org.

Sincerely,



Peter N. Lobasso
Senior Vice President & General Counsel
American Society of Travel Advisors, Inc. (ASTA)