

Priceline Can't Escape Resort Fee Suit, Class Says

By **Maya Rajamani**

Law360, New York (October 26, 2015, 10:39 PM EDT) -- A proposed class suing Priceline and Hilton Worldwide in Connecticut federal court fired back at Priceline's motion to dismiss Friday, claiming it sidestepped allegations that the site concealed mandatory resort fees from customers who used its "Name Your Own Price" feature and mischaracterized class arguments.

Adam Singer — who sued The Priceline Group Inc. and Hilton Worldwide Inc. on behalf of the proposed class in July, claiming that travelers who bid on hotel rooms through Priceline ended up paying undisclosed fees to Hilton and other hotels on top of what they offered to pay — said Priceline focused its argument for dismissal on the fact that its contract states that some hotels might charge resort fees.

The site, however, failed to address why it matched consumers with hotel rooms it knew would not be covered by their bid price in the first place, Singer maintained.

"[T]here is simply no reason to mismatch consumers with hotels not willing to accept their bid amount — except to deceive, to gouge and to create a competitive advantage for Priceline over other purveyors of hotel rooms," Singer said in the filing.

"Priceline had the benefit of superior information at the time it matched bidding consumers — it knew precisely which hotels would charge resort fees and which hotels would not.... but it ignored that information," he added.

According to his complaint, Singer used the "Name Your Own Price" option to find a hotel in Puerto Rico within his budget. He was matched with a Hilton property and presented with a contract, quoting his offer price plus \$60.68 in taxes and fees, which he accepted.

But when he checked out after his stay, the hotel allegedly charged him \$66 in mandatory resort fees on top of the total price he'd agreed to pay. He said those fees caught him by surprise, since Priceline didn't adequately inform him that any resort fees would be included in the total.

The plaintiff alleged that Hilton benefits from Priceline's deception because it gets to charge guests more than they would knowingly consent to pay.

In his filing on Friday, Singer claimed that each hotel informed Priceline before the hotel matching process began that their room rates included mandatory "resort fees," and that Priceline knew which hotels would charge those fees and which wouldn't.

But Priceline “intentionally” mismatched consumers with bid amounts that wouldn’t cover the resort fees, misrepresenting that hotels had accepted those bid amounts when the site knew that the bid price would not actually cover the room reservation, and as a result were not actually “accepted,” even though Priceline said that it “would do its best not to,” Singer’s filing maintained.

Priceline’s argument that it never promised Singer’s “total room cost” would not be more than the cost of the room misconstrued his actual allegation, Singer maintained.

“Plaintiff’s allegation is actually that the ‘Name Your Own Price’ matching process itself was deceptive, especially combined with a post-bidding email that continued to misrepresent Priceline’s true knowledge regarding mandatory resort fees at identified hotels,” he said. “Priceline promised, by way of the very name of the NYOP program and other website representations... that it would operate that program fairly and consistently with common sense. It did not do so.”

In early September, Priceline blasted Singer’s class certification bid, saying the motion failed to satisfy any of the requirements for a successful class certification and showed Singer is not prepared to pursue such a certification.

Representatives for Singer, Priceline and Hilton Worldwide did not immediately respond to requests for comment on Monday.

The Priceline Group Inc. is represented by Thomas D. Goldberg and Erick M. Sandler of Day Pitney LLP.

Hilton Worldwide Inc. is represented by Angela C. Agrusa of Liner LLP and Thomas J. Murphy and John P. D’Ambrosio of Cowdery & Murphy LLC.

Adam Singer is represented by Robert A. Izard Jr. of Izard Nobel LLP-CT and Jeffrey D. Kaliel of Tycko & Zavareei LLP.

The case is Singer v. The Priceline Group Inc. et al., case number 3:15-cv-01090, in the U.S. District Court for the District of Connecticut.

--Additional reporting by Matthew Perlman and Jeff Zalesin. Editing by Philip Shea.