

TOURISM AND HOSPITALITY LAW

INFORMATION MEMO

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FTC's "Junk Fees" Rule Impacts the Hospitality and Tourism Industry

In response to alleged "bait and switch" tactics in the live event ticketing and short term lodging industries, the Federal Trade Commission (FTC) issued a new rule (Rule) earlier this year to lessen the impact of "junk fees" on consumers. The Rule prohibits omitting "mandatory" fees from the advertised total price of goods and services and misrepresenting the nature of fees. Despite proposals for this Rule to apply across all industries, the final Rule only applies to the sale or advertisement of live event tickets and the offering of short term lodging.

A "live event ticket" is admission to programs where audiences watch events as they occur. This would include live performances such as concerts, sporting events and theater. Pre-recorded audio and visual performances and film screenings will generally not be considered live events. "Short term lodging" includes hotels, motels, inns, short term rentals, vacation rentals and other places of lodging. In addition to direct sales, the Rule also covers third party platforms, resellers, and travel agents and applies to both business to business and business to consumer transactions.

The Rule requires clear and conspicuous disclosure of the total price of the goods or services on any display or advertisement of the price and, if different from the total price, the final amount of payment for the transaction. The total price includes the cost of the underlying goods or services plus all additional fees for the goods or services that the consumer is required to pay. However, the Rule specifically provides that taxes and shipping charges may be excluded from the total price. "Mandatory" fees to be included in the total price encompass 1) fees that cannot be reasonably avoided; and 2) fees for mandatory ancillary goods and services. An example of a fee that cannot be reasonably avoided is a credit card surcharge if the business does not accept other forms of payment. A mandatory ancillary good or service is something that a reasonable consumer would need to achieve the purpose of the underlying goods or services. For example, if a hotel charges extra for blankets and pillows, that fee would need to be included in the total price.

The final price includes the total price plus optional fees, optional ancillary goods and services, charges imposed on the transaction by the government and charges related to shipping and delivery. When the final price differs from the total prices, the final price must be displayed as prominently or more prominently than the total price. Additionally, under this Rule, before a consumer consents to payment, the business must clearly and conspicuously disclose the nature, purpose and amount of any fee or charge imposed on the transaction that has been excluded from total price and the identity of the goods or services for which the fee or charge is imposed.

In order to avoid misleading fees and practices, businesses must accurately inform consumers of a fee's material characteristics which affect the value of the covered goods or services. This requirement prohibits describing goods or services as fully refundable without warning of material limitations on refundability. For example, it would be a misrepresentation to omit details regarding a limited time frame for returns. It also

prohibits the use of vague fee descriptions, such as a “service” or “convenience” fee, that do not accurately inform consumers. Another common issue this Rule seeks to address is the mischaracterization of fees as mandatory when they are optional and the mischaracterization of fees as optional when consumers are automatically opted in to pay them.

The FTC released FAQs that indicate how it will be enforcing this Rule. The FAQs can be viewed [here](#).

If you are in the business of selling live event tickets or offering short term lodging or question whether this Rule applies to you, please contact a member of [Bond’s hospitality and tourism practice](#).

