

# Travel, Tourism and Hospitality Law

**Y**  
NEWS

Newsletter of Committee Y  
(Travel, Tourism and Hospitality Law) of the  
International Bar Association Section on Business Law

Number 4 August 1999

## Electronic travel, tour and accommodation advertising

The last session presented in Vancouver by Committee Y in conjunction with Committee R (International Computer and Technology Law) dealt with the legal developments on the use of the Internet for the promotion and sale of travel opportunities.

The session chair, Laura K Christa, had prepared a Sydney 2000 Website offering travel products and paraphernalia, accommodation as well as a package tour and also the sales of Olympic pins and the organisation of sweepstake on the Internet.

One misrepresentation was the advertisement of a luxury hotel near the main Olympic Games events at under \$100 per night for accommodation was clearly an attempt to 'bait' the customer to make a booking inquiry then 'switch' them to another, more expensive hotel.

All speakers looked at the Website 'Sydney 2000' in order to review the legal implications from their jurisdictions' point of view.

### Canadian Competition Act

Richard Wozanilek concentrated his presentation on the Canadian Competition Act, which is legislation dealing with the prohibition of false and misleading representation in a material respect relative to (travel) consumers.

He considered that the Sydney 2000 Website would be considered as advertisement because it intends to promote business. The Canadian Competition Act would apply. He showed that references and principles could be found also in the voluntary industry standards and even the Code of Conduct and practices.

He went on to say that there are

some Internet issues that have not been addressed by existing principles. For example, is the Internet provider a publisher or distributor – this can have a significant effect on liability for what is transmitted.

In the Sydney 2000 Website, do you look to the travel agency, franchisor or tour operator to sue?

Where to you do sue? Where is there a real and substantial connection? On this issue of jurisdiction, he took the view that there is jurisdiction where there is an active business in the place or where there is sufficient level of activity in the place. However, there is no jurisdiction in a passive Website.

### Criminal offences

Robert McKay emphasised that infringement of the Competition Act can lead to injunction orders or even criminal offences with fines if appropriate.

As a general rule, he emphasised that brevity is a good principle – 'give me six lines from the most honest man and I will find something to hang him'.

Interestingly enough, a Website available in a certain country might be sent from another country and prepared by a company even located in yet a third country.

Consequently, important issues of jurisdiction are raised with internet advertisements.

The Canadian Government has indicated it wishes to become more active and interventionist with misleading Internet advertising. It will pursue anyone with any strong nexus to Canada. It will insist upon correction of incorrect information.

In relation to the Sydney 2000 Internet site, he commented that there was unacceptable use of

disclaimers, for example 'acceptance of a reservation for merchandise does not guarantee the availability of the merchandise'. A further problem rose when a link was used to go to another site – the disclaimer on the previous site is lost and does not exist in the linkage. He also commented upon the 'sweepstakes contest' on the site which invited visitors to the site to register their details – was this merely a sham to obtain information upon registrants? Should there not be a need to disclose the purpose if this is the case?

### Representations

Peter Stevens made a presentation on the current law on representations in travel, tour and accommodation advertising in the United Kingdom, and, as a second part of his presentation, the particular issues, in Internet advertising.

He made an in-depth study of the principles of misrepresentations, negligent mis-statement, breach of contracts and exclusion clauses.

The analysis concentrated upon where the sale was taking place – in terms of offer and acceptance. He concluded that the contract was made where there was acceptance by the offeror (ie, the consumer) and therefore the consumer's jurisdiction was the appropriate jurisdiction for the application of legislation dealing with misrepresentation and other aspects of the transaction.

Is the Internet site a brochure – does it provide information in writing or other appropriate form – he concluded that the Internet site could be a brochure as what appears on the Internet is in written form.

The next issue relates to jurisdiction in respect of the Internet advertisement, namely, when a company creates a Website, it knows that from anywhere in the world someone can have access to this Website. Does that mean that he has to comply with the regulations in all countries?

It could be maintained that it is the user of Internet who is responsible for 'importing' the advertisement into his country by entering the Website wherever it is located.

### Internet advertising

Carroll E Dubuc followed on this issue. He insisted on the fact that Internet advertising in the tourism sector is a very important issue. He saw dangers that through the Internet, a linkage can even be organised through a Website to gain access on the page of someone else, even though that person may have no knowledge of it. Issues are raised firstly as to whether the use of trademarks on the Website have been licensed or authorised? Problems arise with endorsement issues in terms of linkages – have they been authorised or licensed? And finally, problems arise with the information/consent form completed by the consumer – where is the privacy notice/opt-out provision?

Creative 'lawyering' and legislation will be needed in order to cope with advertisements and sales within Internet.

### Switzerland

Marc Russenberger made a presentation on advertising and unfair competition law in Switzerland concerning the jurisdiction issue. He demonstrated that the principles of Swiss Private International Law would lead to the conclusion that claims based on unfair competition will be dealt with by the law of the country in which the market has been affected by the unfair actions.

Up to now, there has not been any specific legislation enacted concerning the Internet. But in Switzerland as in most of the European countries which have enacted the Directives on package holidays and package tours, specific obligations exist concerning information to be communicated to the consumers.

He considered the following damages and remedies might be available:

- cease and desist orders;
- illumination/correction orders;
- publication of a judgment on the site;
- declaration;
- damages;
- disgorgement of profit;
- corrective advertising order.

### Digital signatures and encryption

Finally, Alan Asay made a technical presentation on digital signatures and security in electronic transactions ('encryption').

There are two main issues:

- (i) maintaining privacy of customer information as well as confidentiality on commercial terms; and
- (ii) authentication of origin of messages.

These are the challenges of e-mail communication and the Internet.

He explained that his company is proposing a 'two-key system': one key to sign (private key) and another key to send the message (public key). Only the person with the private key can read or authenticate the message.

An independent authority should be created, to issue certification to confirm the identity of a person, as necessary.

### Advancing legal discussion

Committee Y, in these various sessions, is trying to bring forward legal discussion on new developing areas.

The programme, which has been coordinated by the Chair of Committee Y, Anthony J Cordato, was certainly successful and well attended.

A special thank you to Philip D Lorio for his notes which helped me to draft this report.