

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

CITY OF COLUMBUS,

90 West Broad Street
Columbus, Ohio 43215

- and -

CITY OF DAYTON,

101 West Third Street
Dayton, Ohio 45402, on behalf of
themselves, and all others similarly situated,

Plaintiffs,

-vs-

HOTELS.COM, L.P.

10440 North Central Expressway, Suite 400
Dallas, TX 75231

Statutory Agent:
National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

HOTELS.COM, Inc.

10440 North Central Expressway, Suite 400
Dallas, TX 75231

Statutory Agent:
National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

HOTELS.COM GP, LLC

10440 North Central Expressway, Suite 400
Dallas, TX 75231

Statutory Agent:
National Registered Agents, Inc.
1614 Sidney Baker St.
Kerrville, TX 78028

CASE NO.

JUDGE

**CLASS ACTION COMPLAINT
with JURY DEMAND**

HOTWIRE, INC. :
333 Market Street, Suite 100 San Francisco, :
CA 94105 :
Statutory Agent: :
National Registered Agents, Inc. :
160 Greentree Drive, Suite 101 :
Dover, DE 19904 :
:

CHEAP TICKETS, INC. :
200 South Wacker Drive, Suite 1900 :
Chicago, IL 60606 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :
:

CENDANT TRAVEL DISTRIBUTION :
SERVICES GROUP, INC. :
9 West 57th Street :
New York, NY 10019 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :
:

EXPEDIA, INC. :
Agent: National Registered Agents :
145 Baker Street :
Marion, OH 43302 :
Statutory Agent: :
National Registered Agents, Inc. :
1780 Barnes Blvd, SW, Bldg. G :
Tumwater, WA 98512-0410 :
:

INTERNETWORK PUBLISHING :
CORP. (d/b/a/ LODGING.COM) :
5455 N. Federal Hwy, Suite O :
Boca Raton, FL 33487 :
Statutory Agent: :
Corporate Service Company :
1201 Hays Street :
Tallahassee, FL 32301-2525 :
:

LOWESTFARE.COM, INC. :
10650 W. Charleston Blvd. :
Las Vegas, NV 89135 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

MAUPINTOUR HOLDING, LLC :
10650 W. Charleston Blvd. :
Las Vegas, NV 89135 :
Statutory Agent: :
CSC Services, Inc. :
502 East John Street, Room E :
Carson City, NV 89706 :

ORBITZ, INC. :
200 S. Wacker Drive, Suite 1900 :
Chicago, IL 60606 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

ORBITZ, LLC :
200 S. Wacker Drive, Suite 1900 :
Chicago, IL 60606 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

PRICELINE.COM, INC. :
c/o Corporation Service Company :
50 W. Broad Street, Suite 1800 :
Columbus, OH 43215 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

TRAVELOCITY.COM, L.P. :
3150 Sabre Drive :
Southlake, TX 75207 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

TRAVELWEB, LLC :
2777 Stemmons Fwy, Suite 675 :
Dallas, TX 75207 :
Statutory Agent: :
Corporation Service Company :
2711 Centerville Road, Suite 400 :
Wilmington, DE 19808 :

TRAVELNOW, COM, INC. :
4124 South McCann Ct. :
Springfield, MO 65804 :
Statutory Agent: :
National Registered Agents, Inc. :
160 Greentree Drive, Suite 101 :
Dover, DE 19904 :

and :

DOES 1 THROUGH 1000, INCLUSIVE :

PARTIES

1. Plaintiff, The City of Columbus, is a chartered home rule municipality.
2. Plaintiff, The City of Dayton, is a chartered home rule municipality.
3. Defendant, Hotels.Com, L.P., is a Delaware limited partnership with its principal place of business in Dallas, Texas.
4. Defendant, Hotels.Com GP, LLC., is a Texas corporation with its principal place of business in Dallas, Texas.

5. Defendant, Hotwire, Inc., is a Delaware corporation with its principal place of business in San Francisco, California.

6. Defendant, Cheap Tickets, Inc., is a Delaware corporation with its principal place of business in Honolulu, Hawaii.

7. Defendant, Cendant Travel Distribution Services Group Inc., is a Delaware corporation with its principal place of business in Parsippany, New Jersey.

8. Defendant, Expedia, Inc., is a Washington corporation with its principal place of business in Bellevue, Washington.

9. Defendant, Internetnetwork Publishing Corp. (D/B/A/ Lodging.Com), is a Florida corporation with its principal place of business in Boca Raton, Florida.

10. Defendant, Lowest Fare.Com, Inc., is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

11. Defendant, Maupintour Holding, LLC., is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

12. Defendant, Orbitz, Inc., is a Delaware corporation with its principal place of business in Chicago, Illinois.

13. Defendant, Orbitz, LLC., is a Delaware corporation with its principal place of business in Chicago, Illinois.

14. Defendant, Priceline.Com, Inc., is a Delaware corporation with its principal place of business in Norwalk, Connecticut.

15. Defendant, Travelocity, LP., is a Delaware partnership with its principal place of business in Texas.

16. Defendant, Travelweb, LLC., is a Delaware corporation with its principal place of business in Dallas, Texas.

17. Defendant, Travelnow.Com, Inc., is a Delaware corporation with its principal place of business in Springfield, Missouri.

18. The true names and capacities, whether individual, corporate, associate or otherwise, of each of the Defendants designated herein as a DOE are unknown to Plaintiffs and therefore Defendants are sued by fictitious names. Plaintiffs will ask leave of Court to amend this Complaint to show their true names and capacities when ascertained. Plaintiffs are informed and believe and allege that each of the Defendants designated herein as a DOE is legally responsible in some manner and liable for the events and happenings alleged and in such manner, proximately caused damages to Plaintiffs.

19. Plaintiffs are informed and believe that each of the Defendants, including all DOE defendants, at all times mentioned, acted as the agent, servant and employee of each of the other Defendants and within the scope of agency and employment. Plaintiffs are further informed and believe and allege that at the time and place of the incident described, each of the Defendants, their agents, servants and/or employees became liable to Plaintiffs for one or more of the reasons described herein.

INTRODUCTION

20. This action is brought to remedy violations of state, county and municipal law in connection with Defendants' misconduct in the failure to remit taxes to the City of Dayton, the City of Columbus and other political subdivisions of the State of Ohio similarly situated. Defendants

failed to remit taxes due and owing under transient occupancy taxes to the Plaintiffs and Plaintiff Class Members.

JURISDICTION AND VENUE

21. All Defendants regularly transact business within this State and the claims asserted herein arise from their business conducted within this State.

22. This Court possesses subject matter jurisdiction of the claims asserted herein pursuant to 28 U.S.C. §1332 in that there is complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

23. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

COMMON ALLEGATIONS

24. Defendants, each of them, are on-line sellers and operators of hotel rooms to the general public. Defendants sold hotel rooms to the public and collected transient occupancy taxes on those rooms, but failed to pay such taxes due and owing to the Plaintiffs and Plaintiff Class Members on these transactions.

25. Plaintiffs' transient occupancy tax requires Defendants to remit transient occupancy taxes collected to the city. Plaintiff Class Members have similar transient occupancy taxes requiring Defendants to collect taxes on the sale of hotel rooms and to remit the same to the Plaintiff Class Members, including municipalities that have the authority to levy an additional excise tax on transactions by which lodging by a hotel is furnished to transient guests.

26. Defendants are charging and collecting "taxes" from consumers that are not being remitted to the appropriate Plaintiff Class Members. In addition to the rental price of the hotel

rooms, all occupants are also required to pay a transient occupancy tax. The tax is paid by the consumer occupants to Defendants and collected on behalf of Plaintiffs and Plaintiff Class Members by the Defendants. The amount of the transient occupancy tax is correctly calculated as a percentage of the price each consumer occupant pays each Defendant operator for a hotel room. That is the amount each Defendant is required to remit to Plaintiffs and Plaintiff Class Members.

27. Defendants contract with hotels for rooms at negotiated discounted room rates. Defendants then mark up their inventory of rooms and sell the rooms to members of the public, who actually occupy the rooms. Defendants charge and collect taxes from occupants based on the marked up room rates, but only remit to Plaintiffs and Plaintiff Class Members the tax amounts based on the lower, negotiated room rates. Each Defendant then pockets the difference.

28. For example, if a consumer pays Hotels.com \$100.00 for a room in a hotel located in Dayton, Ohio, Hotels.com calculates the tax rate the consumer pays on that “gross” amount (\$100.00). Hotels.com, however, obtains that room at a lower “net” rate, for instance, \$70.00. Because Hotels.com and other Defendants function as retailers selling the rooms to the consumer, the amount of transient occupancy tax due to The City of Dayton is 3% or \$3.00. However, the amount the Defendants have remitted to The City of Dayton has been based on the lower “net” rate. In this example, Hotels.com would remit \$2.10, underpaying the tax liability to Dayton by \$.90.

29. Defendants have failed and are continuing to fail to remit the transient occupancy taxes due and owing to the Plaintiffs and Plaintiff Class Members.

30 The Ordinances of the named Plaintiffs, Title III, Article XI, Chapter 371 of the Charter for the City of Columbus, Ohio and Title III, Section 36 et seq. of the Code for the City of

Dayton, Ohio, clearly and unambiguously state that the taxes on the transaction are the total amount paid by the consumer to occupy the room.

31. Defendants have collected the taxes due.

32. Defendants have wilfully failed to remit the taxes.

33. Defendants' business practices include charging the general public a "taxes and services" fee on the sale of each hotel room. The general public is led to believe Defendants are remitting the correct amount of hotel tax to the hotels. Defendants, however, are calculating and paying the tax liability of the general public based upon the price Defendants paid the hotel for the room, not upon the price the general public paid Defendants. As a result, the hotel tax liability paid by the general public and owed to Plaintiffs and Plaintiff Class Members is underpaid by the Defendants. Defendants unlawfully pocket the difference, which deprives the Plaintiffs, Plaintiff Class Members, the amount due and owing to them from the sale of each hotel room. In short, Defendants collect a greater amount in hotel taxes from the general public than they remit to the hotels, which ultimately remit the hotel tax to the Plaintiffs and Plaintiff Class Members.

34. Defendants do not delineate to the general public the amount paid for taxes and the amount paid for service fees. Defendants require that the hotels not reveal to the general public what Defendants paid for the hotel room. Likewise, the hotels do not know what the general public paid Defendants for the hotel room. The only way for the hotel to pay the correct tax to the Plaintiff and Plaintiff Class Members is if Defendants inform the hotel what the hotel room actually sold for and for Defendants to submit the additional tax owed which was actually paid by the general public to Defendants.

PLAINTIFFS' CLASS ALLEGATIONS

35. Plaintiffs request the Court certify these claims as a class action. They seek relief for violation of transient occupancy tax ordinances; and assert causes of action for conversion, unjust enrichment, and money had and received. As well, Plaintiffs seek the imposition of a constructive trust and a declaratory judgment.

36. Plaintiffs seek to certify a state-wide class of all Ohio cities, counties and townships who have enacted uniform transient occupancy taxes on lodging.

37. Plaintiffs bring this action pursuant to Fed. Civ. R. 23. The Class meets the prerequisites for the maintenance of a class action in that:

- a) The Class is so numerous that joinder of all Class members is impractical. Plaintiffs are informed and believe the practices complained of herein affected hundreds of municipalities and other government entities, although the exact number and identities of the members of the Class are currently unknown to Plaintiffs;
- b) Nearly all factual, legal, and statutory relief issues that are raised in this Complaint are common to each of the members of the Class and apply uniformly to every member of the class;
- c) The claims of the representative Plaintiffs are typical of the claims of each member of the Class. They, like all other members of the Class, sustained damages arising from Defendants' violations of law, including (1) Violations of uniform transient occupancy tax ordinances; and (2) Conversion. The representative Plaintiffs and the Members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct;
- d) The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class that would make a class certification inappropriate; and,

- e) The counsel selected to represent the Class will fairly and adequately protect the interests of the Class. They are experienced trial lawyers who have experience in complex litigation and are competent counsel for this class action. Counsel for the Class will vigorously assert the claims of all members of the Class.

38. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- (a) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- (b) The extent and nature of any other proceedings concerning the controversy already commenced by or against members of the Class;
- (c) The desirability or undesirability of concentrating the claims in a single forum; and,
- (d) The difficulties likely to be encountered in the management of a class action.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

- (a) Given the number of class members involved, a class action is the only “fair and efficient” means to adjudicate the controversy;
- (b) Multiple lawsuits would be costly, inefficient, and duplicative;
- (c) Relatively few class members will have been damaged to a degree that would induce them to initiate litigation solely on their own behalf;
- (d) The public interest in protecting the rights of class members favors disposition of the controversy in the class action form;
- (e) The class members can largely be identified from Defendants’ records; and

- (f) There are no manageability problems that would create a situation that would be less fair and efficient than other options.

40. This case is properly maintained as a class action because prosecution of several actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, as well as create inconsistent standards of conduct for those opposing the Class. Further, individual actions by members of the Class may be dispositive of the interests of other members not parties to the adjudication of the claim, which would impair or impede the ability of those class members to protect their interests.

41. A class may also be certified because the Defendants have acted on grounds generally applicable to the class, applicable to the class, thereby making appropriate finally injunctive relief or corresponding declaratory relief with respect to the class as a whole.

42. The members of the Class contemplate the eventual issuance of notice to the proposed Class members which would set forth the subject and nature of the instant action. The Defendants' own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, Plaintiffs would contemplate the use of additional media and/or mailings.

43. Among the numerous questions of law and fact common to the Class are:
- (a) Whether Defendants have committed violations of transient occupancy tax ordinances;
 - (b) Whether Ohio Rev. Code §5739.02(E), in cause and effect, prohibits Defendants from enjoying the fruits of their illegal scheme;
 - (c) Whether Defendants actions as described herein render them liable to Plaintiffs and Plaintiff Class Members for conversion;

- (d) Whether Defendants actions as described herein render them liable to Plaintiffs and Plaintiff Class Members for unjust enrichment;
- (e) Whether Defendants actions as described herein render them liable to Plaintiffs and Plaintiff Class Members for money had and received.
- (f) Whether Defendants have committed acts of conversion;
- (g) Whether Plaintiffs and Plaintiff Class Members are entitled to the imposition of a constructive trust;
- (h) Whether, and in what amount, the Plaintiff Class Members are entitled to recover court costs and attorneys' fees.

**COUNT I: VIOLATIONS OF UNIFORM
TRANSIENT OCCUPANCY TAX ORDINANCES (OHIO REV. CODE § 5739.09, et seq.)
(Against All Defendants)**

44. Plaintiffs incorporate each of the above allegations by reference as if fully rewritten herein.

45. Plaintiffs and Plaintiff Class Members are counties, cities, and townships that have the authority to collect transient occupancy taxes and the authority to pursue taxes owed pursuant to Ohio Rev. Code § 5739.02, et seq.

46. Defendants have failed to collect and remit to Plaintiffs and Plaintiff Class Members the amounts due and owing to them pursuant to the Codified Ordinances of the City of Dayton and the City of Columbus and similar ordinances. Plaintiffs and Plaintiff Class Members are entitled to penalties and interest to be determined by the Codified Ordinances of the City of Dayton and the City of Columbus and similar ordinances. Failure to remit these taxes to Plaintiffs and Plaintiff Class Members are deemed a debt owed by the Defendants to Plaintiffs and Plaintiff Class Members and are hereby sought to be recovered pursuant to the Codified Ordinances of the City of Dayton and the City of Dayton and similar ordinances.

COUNT II: UNJUST ENRICHMENT
(Against All Defendants)

47. Plaintiffs incorporate each of the above allegations by reference as if fully rewritten herein.

48. Defendants have obtained a benefit that in equity and good conscience they should not have obtained or possessed because the benefits rightfully belong to Plaintiffs and the Plaintiff Class Members.

49. Defendants are liable to Plaintiffs and the Plaintiff Class Members under the doctrine of unjust enrichment for the full amount of taxes collected, plus interest, plus interest and penalties.

COUNT III: MONEY HAD AND RECEIVED
(Against All Defendants)

50. Plaintiffs incorporate each of the above allegations by reference as if fully rewritten herein.

51. Defendants have received money belonging to Plaintiffs and the Plaintiff Class Members.

52. Defendant have benefitted from the receipt of this money.

53. Under principles of good conscience, Defendants should not be allowed to retain the money.

54. Defendants are liable to Plaintiffs and the Plaintiff Class Members under the doctrine of money had and received for the full amount of the taxes collected, plus interest and penalties.

At all times alleged herein, Plaintiffs and Plaintiff Class Members were, and are, the sole rightful owners of the taxes due and owing to them.

COUNT IV: CONVERSION
(Against All Defendants)

55. Plaintiffs incorporates each of the above allegations by reference as if fully rewritten herein.

56. At all times alleged herein, Plaintiffs and Plaintiff Class Members were, and are, the sole rightful owners of the taxes due and owing to them.

57. At all times alleged herein, the monies due and owing to Plaintiffs and Plaintiff Class Members were in the possession and under the control of Defendants. Defendants have taken these monies for their own use and benefit, thereby permanently depriving Plaintiffs and Plaintiff Class Members of the use and benefit thereof.

58. At all times alleged herein, Defendants acted willfully, wantonly, with oppression, and with a conscious disregard of the rights of Plaintiffs and Plaintiff Class Members, such that Plaintiffs request that the trier of fact, in the exercise of sound discretion, award Plaintiffs and Plaintiff Class Members additional damages for the sake of example and in sufficient amount to punish defendants for their conduct.

59. As a direct and proximate result of defendants' conduct, Plaintiffs and Plaintiff Class Members have, and will continue to, suffer damage in an amount to be determined according to proof at the time of trial.

COUNT V: IMPOSITION OF A CONSTRUCTIVE TRUST
(Against All Defendants)

60. Plaintiffs incorporate each of the above allegations by reference as if fully rewritten herein.

61. At all times alleged herein, the Plaintiffs' and Plaintiff Class Members' monies were in the possession and under the control of Defendants. Defendants have taken this property for their own use and benefit, thereby depriving the Plaintiffs and Plaintiff Class Members of the use and benefit thereof. The Plaintiffs and Plaintiff Class Members have been damaged by their failure to receive the monies.

62. By virtue of Defendants' actions, Defendants hold these funds as constructive trustee for the benefit of the Plaintiffs and Plaintiff Class Members. The Plaintiffs request an order that Defendants be directed to give possession thereof to the Plaintiffs and Plaintiff Class Members.

COUNT VI: DECLARATORY JUDGMENT
(Against All Defendants)

63. Plaintiffs incorporates each of the above allegations by reference as if fully rewritten herein.

64. Defendants have engaged in deceptive, unlawful, and fraudulent business acts and practices as follows: Defendants failed to remit taxes to the Plaintiffs and the Plaintiff Class Members, which taxes are due and owing to the Plaintiffs and the Plaintiff Class Members.

65. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition.

66. Plaintiffs, on behalf of the Class, seek a declaratory judgment against all Defendants finding Defendants, business practices unlawful, deceptive and illegal.

COUNT VII: DAMAGES
(Against All Defendants)

67. Plaintiffs request the Court order Defendants to provide restitution to Plaintiff Class Members and to disgorge the monies due and owing to Plaintiffs and Plaintiff Class Members.

68. Plaintiffs request, on their behalf and on behalf of Plaintiff Class Members, that they recover all penalties, interest, and reasonable and necessary attorneys' fees they are entitled to under the law.

69. Plaintiffs and Plaintiff Class Members request both prejudgment and post-judgment interest at the maximum rate allowed by law.

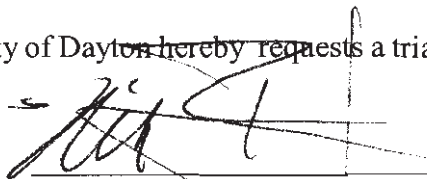
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following judgment in their favor against Defendants:

- i. An order certifying this case as a class action against Defendants and appointing Plaintiffs and their counsel as Representatives of the Plaintiff Class;
- ii. For judgment against Defendants and in favor of Plaintiffs and the Plaintiff Class on all claims asserted in this Complaint;
- iii. For disgorgement and restitution plus interest due thereon at the greater of the legal rate or the rate as established by each of the Plaintiff Class Members' transient occupancy tax ordinance;
- iv. For costs of suit incurred herein;
- v. For prejudgment interest to the extent allowed by law;
- vi. For penalties as allowed by law;
- vii. For declaratory judgment determining Defendants' business practices to be illegal, deceptive, unfair; and,
- viii. For such other and further relief as this Court may deem appropriate.

JURY DEMAND

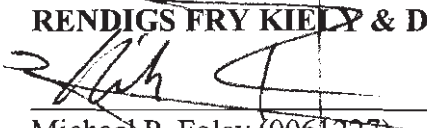
Plaintiffs City of Columbus and City of Dayton hereby requests a trial by jury regarding all issues in the above-captioned matter.



Michael P. Foley

Respectfully submitted,

RENDIGS FRY KIELY & DENNIS, LLP



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