

Competition Bureau Cracks Down on Misleading Advertising in the Digital Economy

31 octobre 2019

Commissioner of Competition, Matthew Boswell, (the Commissioner) has been vocal about his desire to crack down on misleading advertising in the digital economy using the false and misleading representations provisions of the Competition Act (the Act). Recent actions by the Competition Bureau (the Bureau) suggest that it is following through on the Commissioner's plan.

On October 28, 2019, the Bureau announced that it had entered into a temporary consent agreement with FlightHub Group Inc. (FlightHub), an online travel agency business that sells flights and flight-related services, prohibiting it from using false or misleading marketing practices on its website. This follows the execution of search warrants and seizure of relevant records from FlightHub's headquarters earlier this year.

The Bureau alleges that FlightHub has generated millions of dollars in revenue from fees that are incurred by customers on the basis of materially false or misleading general impressions created on FlightHub's websites, which the Bureau contends are not cured by contradictory disclaimers and fine print in the websites' terms and conditions. This demonstrates the Bureau's clear position that it will not allow parties who advertise online to escape misleading general impressions based on disclaimers and fine print that realistically are not read by many customers.

FlightHub's primary conduct at issue, which the Bureau says it has received thousands of complaints about, is:

1. Representations creating the general impression that customers can select a seat on a flight in advance for no additional fee, and/or that customers' seating choice would be provided to the airline by FlightHub;
2. Representations creating the general impression that customers can cancel and/or rebook their flights without paying any additional fees and/or that FlightHub's cancellation and rebooking options provide customers with cancellation and rebooking flexibility beyond that offered by the airline on which they purchased a ticket; and
3. Representations creating the general impression that customers can book flights for tax and fee-included prices, when in fact the flights cost a higher price with these charges added.

FlightHub's agreement to a pre-judgement consent agreement suggests that they concluded that they would be unlikely to defeat a motion for a temporary order that could have been brought by the Bureau to force FlightHub to implement these changes prior to a trial. Such an order would have required the Bureau to show that the representations at issue would lead to "serious harm" while a trial is pending.

The FlightHub investigation comes on the heels of another notable settlement in the digital economy by the Bureau over the summer, with Ticketmaster. In June, Ticketmaster and related companies agreed to pay a \$4 million penalty and \$500,000 in costs to resolve a proceeding involving misleading pricing claims in online ticket sales. The Bureau's investigation into Ticketmaster concluded that Ticketmaster's advertised prices were not actually attainable because they added mandatory fees during the later stages of the purchasing process. The online purchasing process shielded non-optional fees, such as "service fees" in fine print, or only revealed the total amount in the last steps of the purchasing process, after customers had invested time and effort to select seats and input purchasing information. As a result, this "drip pricing" resulted in consumers paying more than 20 per cent, and in some cases, 65 per cent more than the advertised price.

Both of these cases demonstrate the Bureau's increasingly stringent enforcement efforts regarding misleading advertising in online formats across multiple industries. In order to ensure compliance with the Act, and to avoid costly investigations and onerous fines, advertisers should be sure to implement the following practices:

- Prices should be advertised inclusive of all fees and taxes at the outset of the purchasing process. Non-optional fees should be clearly disclosed to customers prior to allowing the consumer to reach the 'check-out' page;
- Terms and Conditions, and disclaimers on website should be clear and easy to access on websites for consumers. It is important to remember that in determining whether a representation made to the public is misleading, the Bureau looks at the overall general impression conveyed by a representation, and that fine print disclaimers or reliance on literal meanings that are not likely to be understood by average consumers are not sufficient; and
- A corporate compliance program should be implemented in order to review advertising, and to ensure that any advertising of prices does not conflict with the Competition Act.

If you have any questions regarding the above, please feel free to contact us.

Par

[Denes A. Rothschild, Danielle Ridout](#)

Services

[Aviation](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000, rue De La Gauchetière Ouest
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir sopesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.