

Shaw v. Marriott International, Inc.:
The Dismissal of a Consumer Class Action for
Alleged Hotel Reservations Website Fraud, and Its
Implications for Operators, Franchisors and Guests

Fall 2008

Last year, the **Stroock Hospitality Industry Practice Group** reported on *Shaw v. Hyatt International Corporation* and *Bykov v. Radisson Hotels International, Inc.*,¹ in which two federal courts dismissed class actions where the plaintiffs alleged that a hotel chain doing business in Russia had violated state consumer protection laws by quoting a room rate in U.S. dollars on its website and then, at checkout, charging a higher ruble-denominated room rate through the use of a “house exchange rate” that exceeded the Russian Central Bank Rate. In that **Special Bulletin**,² we stated that although state consumer fraud and deceptive trade practices statutes differ, many courts would likely agree that the conduct alleged in *Shaw* and *Bykov* is not a consumer fraud or unfair business practice under the local statute.

In mid-August 2008, the U.S. District Court for the District of Columbia decided the third (and last remaining) case in the “exchange rate” trilogy – *Shaw v. Marriott International, Inc.*³ – granting summary judgment in favor of the hotel chain. With plaintiffs now having failed three times to base class action claims on hotels’ use of house exchange rates, future claimants will have to overcome a well-established body of law in which such claims have been denied.

The Plaintiffs’ Allegations of Website Consumer Fraud in *Shaw v. Marriott*

Attorney Britt A. Shaw was the lead plaintiff in both *Shaw v. Hyatt* (in federal district court in Illinois) and *Shaw v. Marriott* (in federal court in the District of Columbia). Three other named plaintiffs joined Shaw in the action against Marriott: the non-profit think-tank Center for Strategic & International Studies (“CSIS”); its employee Dr. Sarah A. Mendelson (“Mendelson”); and an individual named Neal M. Charness (“Charness”). The factual allegations of Marriott’s alleged wrongdoing were substantially the same as those made against Hyatt and Radisson in the earlier cases. Noting that all four plaintiffs had “similar experiences,” the District of Columbia court described Shaw’s representative allegations this way:

Putative class representative Britt A. Shaw made a reservation on the Marriott website on April 14, 2005 to stay at the Renaissance Moscow Hotel (a Marriott hotel) on April 19, 2005. He received a confirmation with a quoted room rate of U.S. \$425 per night. The currency calculator on Marriott’s website indicated an exchange rate of 27.78 Russian rubles per one U.S. dollar.

When he checked out of the Renaissance Moscow Hotel, his bill was reflected in undefined units entitled “UNT”s. The bill showed the room rate of 425.00, along with other hotel expenses, for a total of “658.70 UNT.” The bill indicated an exchange rate of 32 Russian rubles per UNT, for a total charge of 21078.40 rubles. He paid his bill with his American Express card. When he received his American Express statement, his hotel bill was charged at U.S. \$775.69, which reflects the credit card’s conversion of the 21078.40 rubles into U.S. dollars at the official exchange rate of 27 rubles per dollar.⁴

In other words, the plaintiffs alleged that, because Marriott used a hotel exchange rate that exceeded the Russian Central Bank Rate, “hotel guests pa[id] a final price approximately 18 percent higher than the original price Marriott quoted” on its website and in reservations confirmations to guests.⁵ According to the plaintiffs, this conduct violated the District of Columbia’s Consumer Protection Procedures Act (“CPPA”)⁶ and also caused Marriott to receive “unjust enrichment” at the plaintiffs’ expense. The plaintiffs sought recognition for a worldwide class comprised of every guest who had received a room rate quote from Marriott’s reservations system and paid a different price at checkout.⁷ They also sought an award under the CPPA of treble damages or \$1500 per violation, whichever was greater.⁸ Given the size of the proposed class, the plaintiffs sought hundreds of millions of dollars in damages from Marriott.

The Court’s Reasoning in Granting Summary Judgment in Favor of Marriott

In autumn 2007 and spring 2008, the plaintiffs moved for class certification and affirmative sum-

mary judgment on the issue of Marriott’s liability, and Marriott moved for summary judgment dismissing all of the plaintiffs’ claims. While acknowledging that courts generally wait until after class certification to decide motions for summary judgment, the court nevertheless addressed Marriott’s summary judgment motion directly, because it disposed of all the plaintiffs’ claims. Like the courts in *Bykov* and the first *Shaw* case, the court dismissed the plaintiffs’ suit entirely without ever reaching the question of class certification.

In the first *Shaw* case, the Seventh Circuit Court of Appeals ruled that the allegations against Hyatt, even if true, would not violate the Illinois consumer protection law. However, the D.C. court did not make a parallel ruling under the CPPA regarding Marriott’s alleged conduct.⁹ Rather, like the Eighth Circuit Court of Appeals in *Bykov*, the D.C. court simply held that, under the facts of the case, these particular plaintiffs could not bring suit under the statute.¹⁰ According to the D.C. court, three of the plaintiffs – CSIS, Mendelson, and Shaw – were not “consumers” under the CPPA, because their transactions with Marriott were not “primarily for personal, household, or family use,” as required by the statute.¹¹ The court held that CSIS was not a “consumer” because, as a “nonprofit ‘think-tank’ which develops policy initiatives with respect to defense and security policy, global challenges, and regional transformation,” its employees’ “purchase of Russian hotel rooms was made in connection with its operation as a business entity, *albeit* a nonprofit one, and in furtherance of its regular business operations. Therefore that purchase falls outside the scope of the CPPA.”¹² As for Mendelson and Shaw, the court found that because they had traveled to Russia on business, and their employers paid for their stays, their purchases of hotel rooms were also outside the scope of the CPPA. The court noted that, “But for the business they were con-

ducting in Russia, they would not have been ‘consuming’ (*i.e.*, using) Marriott’s hotel rooms.”¹³

Having disposed of the claims of Mendelson and CSIS – the only plaintiffs with a connection to the District of Columbia – the court dismissed the claims of the last remaining plaintiff, Neal Charness, because it found that the link between his claims and D.C. was too attenuated for D.C. law to apply to them. Charness was a resident of Michigan when he made his hotel reservations. Marriott was incorporated in Delaware, had its principal place of business in Maryland, had no computer servers in D.C., and took no action in D.C. that led to Charness’ alleged injury. The court rejected the plaintiffs’ contention that D.C. consumer protection law should apply to the case simply because Marriott maintained a mailing address in D.C. Because the court found an insufficient connection between the District of Columbia and Charness’ alleged injury, it refused to apply the CPPA to his claims and dismissed them as well.¹⁴

Finally, the court granted summary judgment to Marriott on the plaintiffs’ cause of action for restitution of the “unjust enrichment” Marriott allegedly received at the plaintiffs’ expense due to the difference between the room rates quoted by the reservations system and the room rates ultimately paid at checkout. Like the court in *Bykov*, the D.C. court found that the reservations constituted contracts between the plaintiffs and Marriott, which negated the plaintiffs’ claims for unjust enrichment, because that cause of action can only be pursued when no contract exists.¹⁵

Implications for Franchisors, Operators and Guests

Shaw and his co-plaintiffs brought “hotel exchange rate” cases in three different federal courts under the law of three different states. With the decision in *Shaw v. Marriott*, they have now lost all three cases without making it to the class certification stage, arguably reducing the likelihood that

other plaintiffs will attempt to bring such class actions in the future.

Despite the plaintiffs’ loss, franchisors and operators should interpret and apply *Shaw v. Marriott* with caution. State consumer protection laws are drafted and applied differently, and a court applying the consumer protection law of a jurisdiction other than the District of Columbia, Illinois, or Minnesota conceivably could find that a material discrepancy between the room rate quoted by a hotel’s reservations system and the actual rate paid by a guest at checkout is actionable. Indeed, although the Seventh Circuit held in *Shaw v. Hyatt* that Marriott’s alleged conduct did not fall within the Illinois consumer fraud statute, the courts in both *Shaw v. Marriott* and *Bykov v. Radisson* simply held that the particular plaintiffs were disqualified from pursuing claims under the Minnesota and District of Columbia statutes, not that those statutes precluded such claims from qualified plaintiffs. Nevertheless, taken together the three decisions suggest that guests attempting to bring “hotel exchange rate” claims in the future will face significant obstacles in convincing courts that their claims are viable.

In any event, the decisions in the “hotel exchange rate” trilogy carry important lessons for hotel operators and franchisors, not the least of which is to take steps to ensure that their reservations systems accurately reflect the room rates that guests pay at checkout and adequately disclose any uncommon pricing or checkout practices. Not only should hotel websites and automatically-generated reservation confirmations contain this information, but live operators and front-desk staff who take reservations should be trained to provide this information to guests when they make their reservations.

In addition to applying these “best practices” to reservations systems that they control, third-party operators should seek to limit their potential exposure

to claims by franchisors, owners, and guests that they are liable for room-rate representations in reservations systems because they set those rates, even when the reservations systems are controlled by others. The best means of doing so is to ensure that operating and franchise agreements (1) disclaim the third-party operator's liability for claims based on representations made by other parties' reservations systems and (2) provide indemnification and a defense for the third-party operator against these types of claims.

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1. *Shaw v. Hyatt Int'l Corp.*, No. 5 C 5022, 2005 WL 3088438 (N.D. Ill. Nov. 15, 2005), *affirmed*, 461 F.3d 899 (7th Cir. 2006); and *Bykov v. Radisson Hotels Int'l, Inc.*, No. Civ. 05-1280 ADM/JSM, 2006 WL 752942 (D. Minn. Mar. 22, 2006), *affirmed*, No. 06-2102, 2007 WL 444956 (8th Cir. Feb. 12, 2007).
2. *Federal Courts Dismiss Class Actions and Hold that a Discrepancy Between the Room Rate Quoted on a Hotel Chain's Reservations Website and the Room Rate Charged at the Hotel Does Not Constitute Consumer Fraud*, Stroock Hospitality Industry Practice Group Newsletter, Fall 2007 (available for download at <http://www.stroock.com/SiteFiles/Pub561.pdf> or by searching the authors' names at www.stroock.com).
3. ___ F. Supp.2d ___, 2008 WL 3319037 (D.D.C. Aug. 12, 2008).
4. 2007 WL 3319037 at *1.
5. *Id.*
6. D.C. Code §§ 28-3901, *et seq.*
7. 2008 WL 3319037 at *1 n.2.
8. *Id.* at *2.
9. In *Shaw v. Hyatt*, the Seventh Circuit held that Shaw's claim of "deception" was nothing more than a claim that Hyatt had not fulfilled a contractual promise to provide a hotel room at the promised rate, and as a result, the claim did not state a cause of action under the Illinois Consumer Fraud Act. *Shaw v. Hyatt Int'l Corp.*, 461 F.3d 899, 901-902 (7th Cir. 2006).
10. In *Bykov*, the court granted summary judgment to Radisson because its website actually described the hotel exchange rate system as it was implemented at the Russian hotels. *Bykov v. Radisson Hotels Int'l, Inc.*, No. Civ. 05-1280 ADM/JSM, 2006 WL 752942, at *6 (D. Minn. Mar. 22, 2006).
11. *Id.* at *4 (*quoting* D.C. Code, § 28-3904(a)(2)).
12. *Id.* at *5.
13. *Id.* at *5-*6.
14. *Id.* at *6-*8. Although this reasoning applies equally to Britt Shaw, who never resided in Washington, D.C. (*see id.* at *2), the court did not address this ground as an additional basis for dismissing his claims.
15. *Id.* at *9.

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