

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

STATE OF FLORIDA,  
OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No. 2009 CA \_\_\_\_\_

EXPEDIA, INC.,  
ORBITZ, LLC, and  
ORBITZ, INC.,

Defendants.

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**COMPLAINT**

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs (the "Attorney General"), sues Defendants, Expedia, Inc., Orbitz, LLC, and Orbitz, Inc. (collectively, "Defendants"), and alleges as follows:

**I. JURISDICTION AND VENUE**

1. The Court has subject matter jurisdiction pursuant to section 26.012, Fla. Stat.
2. The Court has personal jurisdiction over Defendants pursuant to section 48.193(2), Fla. Stat., because each of them is engaged in substantial and not isolated activity within the State of Florida.
3. Venue is proper because the cause of action accrued in Leon County.

**II. PARTIES**

4. The Attorney General is the chief legal officer of the State of Florida and the enforcing authority for Chapter 501, Part II, Florida Statutes (2009).

5. Expedia, Inc. is a foreign corporation authorized to transact business in Florida and transacting business in the State of Florida. Orbitz, LLC and Orbitz, Inc. are foreign corporations transacting business in the State of Florida.

#### **IV. BACKGROUND**

6. By some estimates, more than half of all hotel bookings in the United States are made online, many through internet travel companies owned by the Defendants. Through their websites, Defendants rent hotel rooms to consumers in many different hotels in both large and small cities throughout the State of Florida and elsewhere. Internet travel companies generally offer their services to hotels and consumers along two different business models: The “Agency Model” and the “Merchant Model.”

##### **A. The “Agency Model”**

7. Under the Agency Model, Defendants charge a “service fee” to hotel operators on a transaction basis for booking consumers into rooms at a given hotel. Recently, the Defendants have also charged a “booking fee” of approximately \$5.00 per transaction directly to the consumers involved. Under the Agency Model, the hotel itself sets the price of its rooms and is the merchant of record for the transaction. The consumer pays the hotel directly for the room. Defendants do not maintain any inventory of rooms, do not set the cancellation policies, and do not have any financial responsibility or liability to the consumer for dissatisfaction with or mistakes in booking under this model.

8. Under the Agency Model, Defendants do not pay any occupancy taxes on the fees they receive from the hotels or the consumers related to making the hotel reservations.

##### **B. The “Merchant Model”**

9. Under the Merchant Model, Defendants do not function merely as a service provider collecting a fixed transaction fee. Rather, the Merchant Model consists of two independent but related transactions whereby each Defendant: (i) purchases and receives inventories of hotel rooms at negotiated rates from the hotels (“Wholesale” rates); and, (ii) resells the rooms to consumers at rates determined by that particular Defendant (“Retail” rates), keeping the difference as profit. Each Defendant purchases blocks of rooms from the hotel at the Wholesale rate. The consumer then purchases the room from the Defendant at the significantly higher Retail rate (plus taxes) in a credit card transaction in which the Defendant is the merchant of record.

10. As Defendants have admitted in their certified public filings and elsewhere, they rent, lease, and let hotel accommodations for consideration and they charge and collect hotel rental room and tax charges from consumers in connection with each room rented. As set forth above, Defendants do so by entering into standardized agreements with hotel chains referred to generically as “merchant agreements” or “net rate agreements.” Under these agreements an “inventory” of hotel rooms is made available to Defendants for sale by them to consumers.

11. A Defendant may have multiple websites, *i.e.*, orbitz.com, expedia.com, and a hotel chain may have multiple brands, *i.e.*, Ramada, Super 8, Holiday Inn, and Westin. The merchant agreements use different titles, *e.g.*: Orbitz, “Hotel Participation Agreements” and Expedia, “Corporate Property Participation Agreements,” but all of the agreements have common characteristics, including:

(a) Wholesale rates are negotiated between the Defendants and the hotel chains, which rate is: (i) below the rate generally offered to the public; and, (ii) the rate Defendants pay the hotel for the rooms after they are “consumed” by the guest;

(b) Defendants mark up the Wholesale rates at their discretion and charge the consumer the higher Retail rates;

(c) during the internet transaction between the consumer and a Defendant, the hotel room is booked, the consumer's credit card is charged the Retail rate (plus taxes and fees), and the reservation is confirmed;

(d) because these are credit card transactions between the consumer and a Defendant – not the consumer and the hotel, Defendant is the “merchant of record” in the transaction and is credited with the Retail rate (plus taxes and fees) by the consumer's bank; and,

(e) after the consumer checks out of the room (which may occur days, weeks or months later), the Defendant pays the hotel the Wholesale rate together with a “tax recovery charge” calculated by the Defendant only upon that Wholesale rate.

12. Defendants employ the Merchant Model for the majority of their room rentals. By using this method of business to acquire room stays in large blocks, Defendants are able to negotiate a lower, Wholesale rate from the hotels. This purchase and resale Merchant Model is far more profitable for the Defendants than the Agency Model and has become the dominant business paradigm in recent years.

13. Defendants all admit through their public filings with the SEC and in their merchant agreements with hotels that they do not correctly charge the consumer the hotel tax based upon the amount charged for the hotel room, but rather calculate and remit a lower amount determined from the Wholesale rate that the Defendants themselves pay the hotels, thereby denying the State of Florida the millions of dollars in taxes to which it is entitled.

14. Section 212.03 governs the tax owed to the Florida Department of Revenue for the “renting, leasing, letting, or granting a license to use any living quarters or sleeping or

housekeeping accommodations in...any hotel” in the State of Florida. Fla. Stat. § 212.03(1). The tax is called the “transient rentals tax” and is 6 percent (6%) levied on the “**total** rental charged” for the hotel room. Id. (emphasis added). Indeed, it is “the legislative intent that...the end consumer, or last retail sale, be the sale intended to be taxed...” Fla. Stat. § 212.12(12).

15. The person or entity receiving the consumer’s consideration for the hotel room owes the tax and is responsible for remitting it to the Florida Department of Revenue. See Fla. Stat. § 212.03(2). Under the Merchant Model, Defendants receive the consumer’s consideration and thus are responsible for remitting the taxes on the total rent charged for the hotel room.

### COUNT I

16. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-15.

17. This is an action pursuant to Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act (the “Act”). Section 501.204(1) of the Act provides that “unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

18. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

19. Pursuant to § 501.207(1)(a), Fla. Stat., the Attorney General is authorized to bring an action to obtain a declaratory judgment that an act or practice violates the Act.

20. Defendants’ transactions with consumers to rent, lease, let or otherwise grant a license for use of hotel rooms involves the conduct of trade or commerce as defined in § 501.203(8), Fla. Stat.

21. As set forth in paragraphs 1- 15, *supra*, Defendants have willfully engaged in unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to governmental entities, in violation of § 501.204(1), Fla. Stat. The aforesaid acts and practices of the Defendants were to the injury and prejudice of the public.

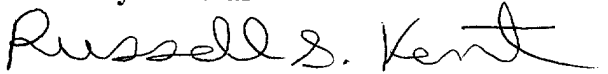
**WHEREFORE**, the Attorney General prays for judgment, in accordance with section 501.207(1)(a), Fla. Stat. (2009), declaring that Defendants' renting, leasing, letting or granting a license for the use of hotel rooms in the State of Florida under the Merchant Model without remitting the applicable taxes violates the Act and awarding such other and further relief as the Court deems just and proper, including relief pursuant to section 501.207(3), Fla. Stat. (2009).

**Demand for Jury Trial**

The Attorney General hereby demands a trial by jury on all issues so triable.

**Respectfully submitted,**

**BILL McCOLLUM**  
**Attorney General**



RUSSELL S. KENT  
Special Counsel for Litigation  
Florida Bar No. 20257  
ASHLEY E. DAVIS  
Assistant Attorney General  
Florida Bar No. 48032  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
Telephone: (850) 414-3300  
Facsimile: (850) 488-9134

Counsel for Plaintiff