

Amended pursuant to Rule 6-1(1)a
Notice of Civil Claim filed on June 9, 2022

No. S224700
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

XAVIERA TAM

PLAINTIFF

and

HOTWIRE INC; EXPEDIA GROUP INC;
BENJAMIN & BROTHERS LLC d/b/a RESERVATIONS.COM;
ACCOR SA; and ACCOR CANADA HOLDINGS INC

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. The Defendants lure Canadians into purchasing accommodations through their reservation services by representing a low price that is, unbeknownst to consumers, unattainable, and thereafter increasing the price to use the reservation services at the latest possible moment. This systemic deception of the consumer marketplace is unfair, improper and in violation of Canadian law.

2. The Defendants offer hotel reservation services through their websites that advertise an initial price for a transaction, but subsequently charge a higher price during the transaction contrary to the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**") and the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BPCPA**") in British Columbia and related enactments in other common law provinces. Through this suit, Canadians who were subjected to this deceptive practice seek to hold the Defendants accountable.

The Parties

3. The Plaintiff, Xaviera Tam, is a resident of British Columbia. The Plaintiff used the hotwire.com to book a stay at the Shangri-La Hotel in Vancouver, British Columbia between the dates of August 27, 2021 and August 29, 2021 for personal use. The Plaintiff chose the hotel and room because of the advertised price of USD \$286.00 per

night. However, on checkout additional taxes and fees of USD \$169.00 were added to her bill, an additional charge of 30%.

4. The Plaintiff brings this action on their own behalf and on behalf of:

all individuals and legal persons in Canada, excluding Quebec, the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Newfoundland & Labrador, who have booked one or more accommodations with the Defendants over the internet through the Booking Platforms, and who have paid a higher price than the price initially advertised during a transaction, between the date when each Defendant started offering Reservation Services in Canada and the date this action is certified as a class proceeding, including a subclass of consumers who booked one or more accommodations with the Defendants over the internet for primarily personal, family or household purposes (the “Personal Use Subclass” and “Personal Use Subclass Members”).

(the “Class”, “Class Members” and the “Class Period”).

5. The Defendant Hotwire Inc (“Hotwire”) is an online hotel reservation booking company which primarily does business through its website at www.hotwire.com. ~~The Defendant Hotwire Inc~~ is a subsidiary of the ~~Defendant~~ Expedia Group Inc and both companies are incorporated in Delaware with an address for service at 1209 Orange Street, Wilmington, DE, 19801. Hotwire carries on business in British Columbia and throughout Canada by offering Reservation Services to Canadians via its website. www.hotwire.com is the platform through which Hotwire offers and supplies accommodation booking services.

6. The Defendant Benjamin & Brothers LLC d/b/a Reservations.com (“Reservations.com”) is an online hotel reservation booking company which primarily does business through its website at www.reservations.com. Reservations.com is incorporated in Florida, with a principal address at 390 N Orange Avenue, Suite 1605, Orlando, FL, 32801 and a registered agent WHWW Inc at 329 Park Avenue North,

Second Floor, Winter Park, FL, 32789. Reservations.com carries on business in British Columbia and throughout Canada by offering Reservation Services to Canadians via its website. www.reservations.com is the platform through which Reservations.com offers and supplies accommodation booking services.

7. The Defendants Accor SA and ~~Accor Canada Holdings Inc~~ (together “**Accor**”) are is a French multinational hospitality company that owns, manages, and franchises hotels worldwide, and which offers ~~includes~~ online hotel reservation booking services through its website at all.accor.com. Accor SA is incorporated in France, with an address for service at 82, rue Henri Farman, CS20077, 92445 Issy-les-Moulineaux, France. ~~Accor Canada Holdings Inc is federally incorporated in Canada, with a registered office at 3300 155 Wellington Street West, Toronto, ON, M5V 0C3.~~ Accor carries on business in British Columbia and throughout Canada by offering Reservation Services to Canadians via its website. all.accor.com is the platform through which Accor offers and supplies accommodation booking services.

8. www.hotwire.com, www.reservations.com and all.accor.com are collectively the “**Booking Platforms**”.

9. The access to and use of each of the Booking Platforms constitutes the “Reservation Services”.

Defendants and Their Hotel Reservation Websites

10. The Defendant websites Reservation Services and the Booking Platforms all function in a substantially similar fashion.

11. Each of the Defendants’ websites The Reservation Services allow consumers to book and pay for hotel or other accommodations online through the Booking Platforms (the “**Reservation Services**”). Each of the Defendants’ websites represents the price of accommodations on the basis of individual units which can be purchased individually or in multiples, each representing one night’s stay at the desired location (the “**Room Night**”).

12. The supply of the Reservation Services lasts from when consumers enter the Booking Platforms until consumers depart the Booking Platforms.

13. ~~Each of the Defendant websites~~ The Booking Platforms aggregate together the prices for various ~~hotels and accommodations~~ into a single, searchable website.

14. Consumers enter a ~~the~~ city or other location ~~that they plan to visit~~ and the dates on which they will require accommodation ~~during their stay~~, and the Booking Platforms ~~Defendant websites~~ list available ~~hotels or other accommodations~~, along with a selection of prices for each ~~hotel or other accommodation~~. Typically, the best prices for each ~~hotel or other accommodation~~ are the ones listed.

15. Through the supply of the Reservation Services, the Defendants initially represent the price per night to book an accommodation (the “First Price”). The First Price is displayed at the “Results Stage”.

11. ~~Prices on the Defendant websites are listed for each Room Night of stay. In some cases, the total price is also listed, but this is given less prominence than the Room Night price.~~

16. Once a consumer has selected an hotel or other accommodation for and dates the duration of their stay, they are taken to a page on the Booking Platform to process payment for their booking (the “Purchase Stage”). It is only at this ~~end~~ final stage of the Booking Platform that the consumer is finally advised of the taxes and additional fees associated with the cost of their stay and how much their stay will actually cost. ~~,which are in excess of the basic Room Night price multiplied by the number of nights of the stay.~~ The price represented at the Purchase Stage and actually charged by the Defendants is the “Total Price”.

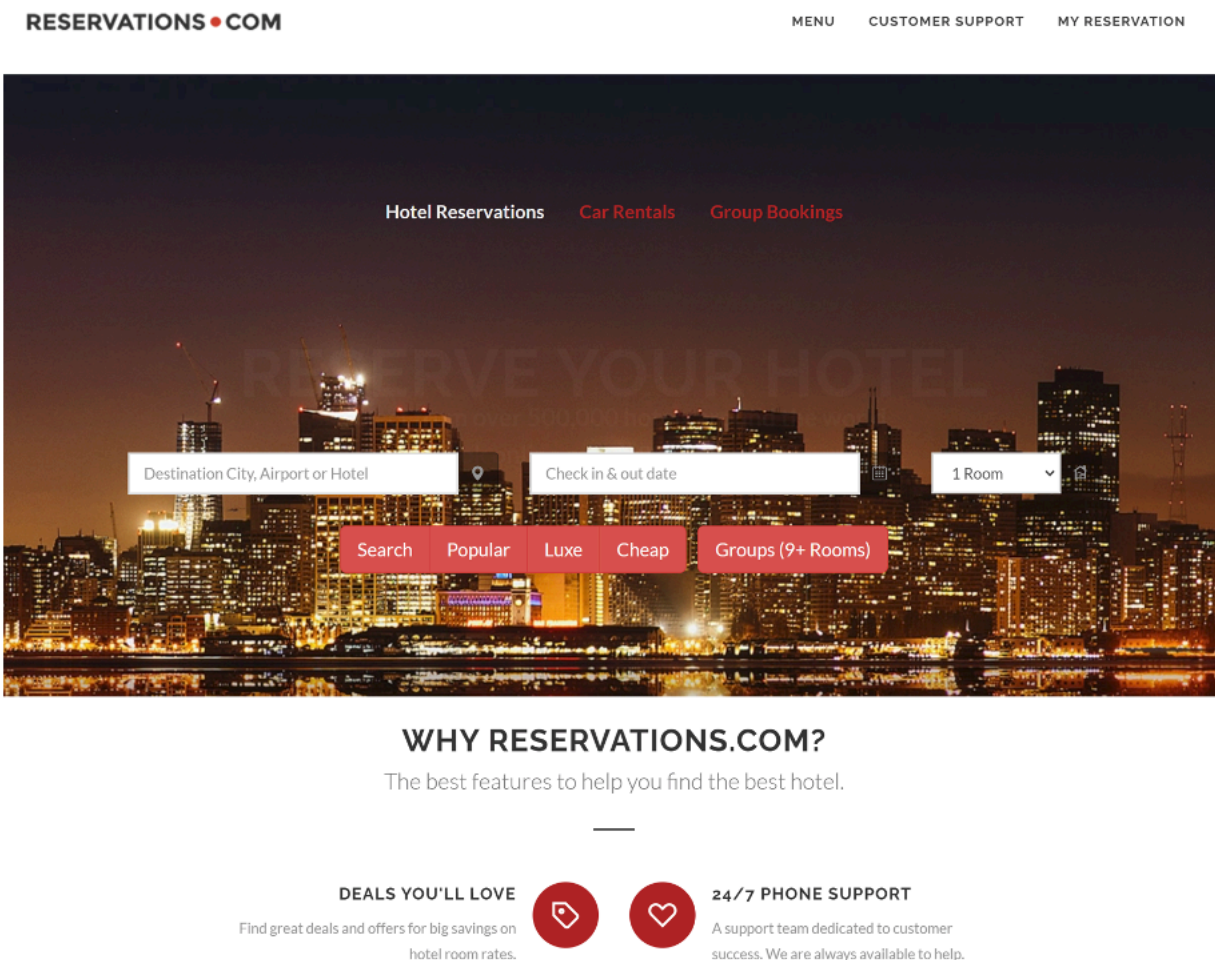
17. The difference between: i) the Total Price; and ii) the First Price (multiplied by the number of nights for which the accommodation is being booked) less lawful taxes, constitutes the “Service Fees”.

18. The Service Fees were not represented to the consumer when the First Price was represented.

19. The Service Fees and the Total Price are both represented at the final stage (the Purchase Stage) of the Booking Platform, the access to and use of which constitutes the Reservation Services.

20. Each of the Reservation Services remains the same product, regardless of which stage of the Booking Platform consumers are at.

21. When searching for a single night stay on the Reservations.com website at www.reservations.com the consumer is presented with the following procedure.



22. ~~As a first step~~ At the first stage (the Results Stage) of the Booking Platform, the consumer ~~customer~~ enters the location and dates of the intended stay into the website. The consumer is then taken to the Results Stage, which returns ~~displays~~ a list of available hotels and other accommodations and the accompanying First Price ~~with a price per Room Night displayed~~. The consumer is free to select any accommodation ~~whichever hotel they prefer~~ from the list:

RESERVATIONS.COM RESERVATIONS | 855-516-1090

WE CURRENTLY HAVE **78** HOTELS FOR **4/27/2022 - 4/28/2022** IN **VANCOUVER, BC, CANADA**

Vancouver, BC, Canada | April 27, 2022-April 28, 2022 | 1 Room | [SEARCH HOTELS](#)

VIEW MAP	Distance	Star Rating	Price	Promo
10 OF 78		THE SUTTON PLACE HOTEL - VANCOUVER ★★★★★ 845 Burrard St, Vancouver, BC V6Z2K6 - 0.091 miles Call 855-516-1090	\$234 / night	RESERVE
TOP RATING ★★★★★		ROSEWOOD HOTEL GEORGIA ★★★★★ 801 W Georgia St, Vancouver, BC V6C1P7 - 0.099 miles Call 855-516-1090	\$327 / night	RESERVE
PRICE 85 - 515		WEDGEWOOD HOTEL & SPA - RELAIS & CHATEAUX ★★★★★ 845 Hornby St, Vancouver, BC V6Z1V1 - 0.099 miles Call 855-516-1090	\$219 / night	RESERVE PROMO: Save 20%
PROPERTY NAME April 27, 2022-April 28, 2022		METROPOLITAN HOTEL VANCOUVER ★★★★★ 645 Howe St., Vancouver, BC V6C 2Y9 - 0.16 miles	\$311 / night	RESERVE
NEARBY LANDMARKS				

The first page of the Results Stage on Reservations.com

23. When the consumer selects an accommodation, as a second step they are then taken to a second page at the Results Stage where they may select the type of room they wish to reserve at that establishment. The initially advertised price on the previous page represents just one of the rooms available to the consumer. The consumer must click on the “Reserve” button next to their choice of room in order to go on to the next step and Purchase Stage to finalize the transaction:

RESERVATIONS • COM RESERVATIONS | 855-516-1090

THE SUTTON PLACE HOTEL VANCOUVER ★★★★★
 845 BURRARD ST., VANCOUVER, BRITISH COLUMBIA V6Z2K6 ☎ 855-516-1090

[f](#) [t](#) [p](#) **RESERVE**

⚡ Alert: Limited availability for your dates.

PHOTOS & OVERVIEW ROOM RATES AMENITIES MAP & LOCATION GUEST REVIEWS

EXCELLENT ⓘ

4.5

★★★★★

2,813 verified reviews

TRUSTYOU™

from **\$234** per night

SEE ROOMS & RATES

ROOM TYPES & RATES
 Check In: Wednesday, 4/27/2022 | Check Out: Thursday, 4/28/2022
 Rooms: 1 | Adults: 2 | Kids: 0 **SEE NEW DATES**

	<p>DELUXE ROOM, 1 KING BED (CLASSIC)</p> <p>★ Jackpot! One of the best rates available for the dates you selected.</p> <p>View room details, amenities & policies</p>	<p>\$234 / night</p>	<p>RESERVE</p> <p>⊖ Just 8 rooms left at this low rate!</p>
	<p>DELUXE ROOM, 2 QUEEN BEDS (CLASSIC)</p> <p>View room details, amenities & policies</p>	<p>\$248 / night</p>	<p>RESERVE</p> <p>⊖ Just 9 rooms left at this low rate!</p>
	<p>ROOM, 2 QUEEN BEDS (SUTTON)</p> <p>View room details, amenities & policies</p>	<p>\$303 / night</p>	<p>RESERVE</p> <p>⊖ Just 8 rooms left</p>

The second page of the Results Stage on Reservations.com

24. As a final step, the consumer is prompted to enter their personal and banking information at the Purchase Stage to complete the reservation. Only at this final stage of the Booking Platform are the Service Fees and the Total Price is the actual price for the transaction displayed:-

RESERVATIONS • COM
RESERVATIONS | 855-516-1090

SECURE CHECKOUT

▲ ACT FAST! Rates and availability change quickly.
This great deal may only be available for the next **14:55** minutes.

1. GUEST DETAILS

ROOM 1 GUEST

EMAIL ADDRESS

PHONE NUMBER

2. BILLING ADDRESS

COUNTRY

STATE / PROVINCE

STREET ADDRESS

CITY

ZIP CODE

3. PAYMENT DETAILS

It's almost yours! We just need a few more details.

CARDHOLDER'S NAME
(Exactly As It Appears On The Card)

CREDIT/DEBIT CARD NUMBER
(Without Any Spaces Or Dashes)

EXPIRATION DATE

CARD SECURITY CODE [What's this?](#)

Your information is protected and SSL encrypted secure. By clicking the "Complete Reservation" button you agree to our [Terms of Service](#), [Privacy Policy](#) and [hotel room cancellation policy](#).

COMPLETE RESERVATION

RESERVATIONS
Call Us: 855-516-1090

THE SUTTON PLACE HOTEL VANCOUVER

Check In: Wed, Apr 27, 2022
Check Out: Thu, Apr 28, 2022

Rooms: 1
Adults: 2
Kids: 0

RATES FOR DELUXE ROOM, 1 KING BED (CLASSIC)

Wed, Apr 27	\$234.19
Subtotal for 1 Rooms:	\$234.19
Tax, Recovery Charges & Fees	
Sales Tax:	\$71.83
Service Fee:	\$19.99
TOTAL:	\$326.01

[Apply Coupon](#)

[Room cancellation policy, hotel information and fees](#)

Special CheckIn Instructions
To make arrangements for check-in please contact the property at least 72 hours before arrival using [more...](#)

Full payment will be charged to your credit card when you book this hotel. All charges in USD.

Need help with your reservation?
Call us anytime
855-516-1090

The Purchase Stage on Reservations.com

25. The First Price price for the Room Nights as selected is displayed only at this final step as a subtotal, while the Service Fees and taxes and service fees are added to generate the Total Price: on to the total at this time.

RESERVATIONS
Call Us: 855-516-1090



**THE SUTTON PLACE HOTEL
VANCOUVER**

Check In: Wed, Apr 27, 2022
Check Out: Thu, Apr 28, 2022
Rooms: 1
Adults: 2
Kids: 0

**RATES FOR DELUXE ROOM, 1
KING BED (CLASSIC)**

Wed, Apr 27	\$234.19
Subtotal for 1 Rooms:	\$234.19
<u>Tax Recovery Charges & Fees</u>	
Sales Tax:	\$71.83
<u>Service Fee</u>	\$19.99
TOTAL:	\$326.01

[Apply Coupon](#)

[Room cancellation policy, hotel information and fees](#)

26. Once the transaction is complete, the consumer receives a confirmation email that includes the details of the reservation, including the Total Price total price paid.

Defendants' Misconduct

27. The dates that the Defendants supplied the Reservation Services by offering access to and use of the Booking Platforms is well known to the Defendants, and occurred ~~engaged in the business of offering the Reservation Services~~ from:

- a. ~~at least as early as the year 2000~~ February 22, 2017 in the case of the Defendant Hotwire (website domain created September 29, 1994);
- b. ~~at least as early as the year 2014~~ February 22, 2017 in the case of the Defendant Reservations.com (website domain created July 23, 1996); and
- c. ~~at least as early as the year 2000~~ February 22, 2017 in the case of the Defendant Accor (website domain accor.com created February 22, 1998), previously under the website domain accorhotels.com, now redirecting to all.accor.com.

~~20. At all times the Defendants represented the price of a Room Night for the various hotels and other accommodations available on their websites as lower at the start of a transaction than the final price actually charged for those goods or services.~~

28. At all material times, the Defendants represented and clearly expressed that the Reservation Services were available at the First Price. The First Price was represented and clearly expressed at the Results Stage, which is a point-of-purchase display on the Booking Platform.

29. At all material times, the Defendants represented and clearly expressed that the Reservation Services were available at the Total Price. The Total Price was represented and clearly expressed at the Purchase Stage, which is a point-of-purchase display on the Booking Platform.

30. At all material times, the Defendants therefore represented two different prices for the service of offering access to and use of the Booking Platforms (with the service being the Reservation Services).

31. At all material times, the Total Price exceeded the First Price due to the addition of the Service Fees and taxes at the Purchase Stage.

32. At all material times, the Defendants charged, and consumers paid, the Total Price, which was the higher of the two prices represented.

33. At all material times, the Total Price was neither represented nor expressed at the Results Stage.

~~21. The Defendants' practice of adding on fees and charges at the end of the transaction, after a consumer has already selected a location and a room to stay in, amounts to fragmented pricing that contravenes the *Business Practices and Consumer Protection Act*, s 4(c)(ii).~~

34. The Defendants knew or ought to have known that representing the First Price price of a Room Night in this manner would deceive Class Members about the Total Price total price of the transaction because the total price was not given the same prominence as the unit price.

~~23. Class Members, including the Plaintiff, suffered harms and losses in the form of the difference between the initial price displayed and the total price paid (exclusive of taxes) as a result of the Defendants' deceptive acts or practices.~~

~~24. Pleas of the deceptive acts and practices of each Defendant with respect to their provision of Reservation Services are included as Schedule A to this Notice of Civil Claim.~~

~~Breaches of the *Business Practices and Consumer Protection Act*~~

~~25. The *BPCPA* s 4(3)(c)(ii) prohibits a supplier of goods or services from making representations about the total price of goods or services if the price of a unit or installment is given in the representation, and the total price of the goods or services is not given the same prominence. The Defendants deceived Class Members by listing a unit price for Room Nights which was not inclusive of the total price, and only at the end~~

of a multi-stage process did the Defendants reveal the actual price of the goods or services.

Harm to the Plaintiff and Class Members

35. As a result of the Defendants' breaches of the *Competition Act*, the Plaintiff and Class Members acquired less value through the supply of the Reservation Services than they expected and suffered loss and/or damages in an amount equal to the Service Fees paid to the Defendants by the Plaintiff and Class Members during the Class Period.

36. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff and Personal Use Subclass Members in British Columbia acquired less value through the supply of the Reservation Services than they expected and suffered loss and/or damages in an amount equal to the Service Fees paid to the Defendants by the Plaintiff and Personal Use Subclass Members in British Columbia during the Class Period.

37. The damages suffered by the Plaintiff and Class Members arising from the Defendants' breaches of the *Competition Act* and the *BPCPA* and related provincial consumer protection legislation are capable of being quantified on an aggregate basis in the quantity of the payments made by the Class Members for the Service Fees during the Class Period. All amounts payable to the Class should be calculated on an aggregate basis pursuant to s 29 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "***Class Proceedings Act***"), or otherwise.

38. The Defendants acquired the Service Fees as a result of the Defendants' breaches of the *BPCPA*.

39. The Plaintiff and Personal Use Subclass Members in British Columbia were the sources of the money, in the form and quantity of the Service Fees, acquired by the Defendants during the Class Period.

40. The Plaintiff and Personal Use Subclass Members in British Columbia each have an interest in the Service Fees received from them by the Defendants during the Class Period.

~~26. Class Members are entitled to the difference between the initially advertised price and the final invoiced price for each transaction, less lawful taxes and duties applied to the transactions.~~

Part 2: RELIEF SOUGHT

41. The Plaintiffs claims, on their own behalf and on behalf of the Class Members:
- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*;
 - b. a declaration that the Defendants have engaged in conduct contrary to Part VI of the *Competition Act*;
 - c. damages under section 36 of the *Competition Act* in the amount of the Service Fees paid by the Plaintiff and Class Members to the Defendants during the Class Period;
 - d. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
 - e. a declaration under section 172(1)(a) of the *BPCPA* that the Defendants have breached sections 4-5 of the *BPCPA*;
 - f. an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring that the Defendants represent the Total Price at the Results Stage, to the extent that they still engage in this conduct;
 - g. a restoration order under section 172(3)(a) of the *BPCPA* in the amount of the Service Fees paid by the Plaintiff and Personal Use Subclass Members in British Columbia to the Defendants during the Class Period;
 - h. in the alternative to a restoration order under section 172(3)(a), damages under section 171 of the *BPCPA* in an amount equaling the Service Fees

paid by the Plaintiff and Personal Use Subclass Members in British Columbia to the Defendants during the Class Period;

- i. relief for contraventions of equivalent extra-provincial consumer protection legislation, as follows:
 - i. restitution of the Service Fees paid by the Personal Use Subclass Members in Alberta to the Defendants during the Class Period, or in the alternative damages in that amount, pursuant to sections 7(3), 13(2) and/or 142.1(2) of the Alberta *Consumer Protection Act*, RSA 2000, c. C-26.3;
 - ii. restitution of the Service Fees paid by the Personal Use Subclass Members in Saskatchewan to the Defendants during the Class Period, or in the alternative damages in that amount, pursuant to section 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2;
 - iii. repayment of the Service Fees paid by the Personal Use Subclass Members in Manitoba to the Defendants during the Class Period, or in the alternative damages in that amount, or in the further alternative any other relief that the court deems just, pursuant to section 23(2) of the Manitoba *Business Practices Act*, CCSM, c. B120;
 - iv. damages equal to the Service Fees paid by the Personal Use Subclass Members in Ontario to the Defendants during the Class Period pursuant to section 18(2) of the Ontario *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch. A;
 - v. repayment of the Service Fees paid by the Personal Use Subclass Members in Newfoundland and Labrador to the Defendants during the Class Period, or in the alternative damages in that amount, pursuant to section 10(2) of the Newfoundland and Labrador

Consumer Protection and Business Practices Act, SNL 2009, c. C-31.1; and

vi. damages equal to the Service Fees paid by the Personal Use Subclass Members in Prince Edward Island to the Defendants during the Class Period pursuant to s 4(1) of the Prince Edward Island Business Practices Act, RSPEI 1988, c. B-7.

~~a. damages or a restoration order under the *BPCPA*, s 172, on behalf of the Plaintiffs and Class Members and related enactments from other provinces;~~

~~b. punitive damages;~~

j. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and

k. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

42. The Plaintiff and Class Members plead and rely on the *BPCPA* and related enactments in Alberta, Saskatchewan, Manitoba, Ontario, Prince Edward Island and Newfoundland and Labrador the common law provinces, the *Competition Act*, RSC 1985, c C-34, the *Class Proceedings Act*, 1985, c. C-34, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the *Supreme Court Civil Rules*, and related enactments.

Competition Act

43. The Defendants have breached the *Competition Act*.

44. The *Competition Act* applies to business transacted in Canada.

45. The Defendants have breached sections 52 and 54 of the *Competition Act*, as amended from time to time.

46. The Reservation Services offered and supplied by each of the Defendants through the Booking Platforms each constitute a “product” within the meaning of sections 2(1), 52(1) and 54(1) of the Competition Act.

Competition Act – Section 52

47. Section 52 of the Competition Act prohibits false or misleading representations.

48. Section 52(1.3) of the Competition Act prescribes that making a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation. This conduct is referred to as drip pricing.

49. As set out above, the Defendants represented the First Price at the Results Stage even though that price was not attainable due to the addition of the Service Fees and taxes, which constitute fixed obligatory charges, at the Purchase Stage. The Defendants knowingly or recklessly represented the First Price to the public. The Defendants’ representations were for the purpose of promoting, directly or indirectly, the supply of the Reservation Services and for the purpose of promoting, directly or indirectly, the Defendants’ business interests. The Defendants have therefore breached section 52 of the Competition Act. The Defendants’ representations consisted of representations expressed on a point-of-purchase display, under section 52(2) of the Competition Act, whether from Canada or from outside Canada under section 52(2.1) of the Competition Act.

50. As a result of the Defendants’ breaches of section 52 of the Competition Act, the Plaintiff and Class Members acquired less value than they expected and suffered loss and/or damages equal to the Service Fees paid by them during the Class Period. The Plaintiff and Class Members are entitled to damages in that amount under section 36 of the Competition Act.

Competition Act – Section 54

51. Section 54 of the Competition Act prohibits the supply of a product at a price that exceeds the lowest of two or more prices which are clearly expressed on, *inter alia*, a point-of-purchase display. This conduct is referred to as double ticketing.

52. As set out above, the Defendants represented two different prices for the Reservation Services: the First Price and the Total Price. Both the First Price and the Total Price are clearly expressed on the point-of-purchase displays on the Booking Platforms. The Reservation Services were supplied at the Total Price, which exceeds the First Price. The Defendants have therefore breached section 54 of the Competition Act.

53. The Plaintiff and Class Members were entitled to pay the Defendants only the First Price, plus lawful taxes, for each night of their respective reservation(s).

54. As a result of the Defendants' breaches of section 54 of the Competition Act, the Plaintiff and Class Members suffered loss and/or damages equal to the Service Fees paid by them to the Defendants during the Class Period. The Plaintiff and Class Members are entitled to damages in that amount under section 36 of the Competition Act.

Business Practices and Consumer Protection Act

55. The Defendants have breached the *BPCPA*.

56. The Plaintiff and Personal Use Subclass Class-Members in British Columbia ~~who purchased or used~~ the Reservation Services for purposes that are primarily personal, family or household and are “consumers” within the meaning of section 1 of the *BPCPA*, s 1.

57. The Reservation Services are “products” or “services” within the meaning of the *BPCPA*, s 1.

58. The Defendants are “suppliers” within the meaning of section 1 of the *BPCPA*, s 1. ~~The *BPCPA* does not require privity of contract between suppliers and consumers.~~

59. The ~~sale and~~ supply of the Reservation Services is a “consumer transaction” within the meaning of section 1 of the BPCPA, s-1. A deceptive act or practice can occur before, during or after a consumer transaction.

60. Sections 4-5 of the BPCPA prohibit deceptive acts and practices.

61. By the conduct set out above, the Defendants have breached sections 4 and 5 of the BPCPA. The Defendants’ actions constitute deceptive acts or practices. The Defendants knew or ought to have known that their conduct was deceptive.

62. The BPCPA, section 4 prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

63. In particular, in their ~~marketing and sale~~ supply of the Reservation Services, the Defendants engaged in conduct contrary to have breached *inter alia* section 4(3)(c)(ii) by: because the Defendants failed to give the Total Price at least the same prominence as the First Price by representing only the First Price, and not the Total Price, at the Results Stage.

- a. ~~engaging in “price fracturing” whereby the price represented to Class Members omits fees and other charges which should be included in the represented price of the goods or services provided; and~~
- b. ~~representing the price of a unit (the Room Nights) for the goods or services offered, but failing to give the total price of the goods or services with at least the same prominence.~~

64. Through their conduct, the Defendants have committed a deceptive act or practice irrespective of whether it is contrary to section 4(3)(c)(ii) as it had the capability, tendency or effect of deceiving or misleading consumers.

65. The Plaintiff and Personal Use Subclass Glass-Members in British Columbia have an interest in, and were the source of, the funds Service Fees obtained by the

Defendants as a result of the deceptive acts and practices described herein. The Plaintiff and Personal Use Subclass Class Members in British Columbia have an interest in, and were the source of, the funds Service Fees obtained by the Defendants as a result of the deceptive acts and practices described herein. The Plaintiff and Personal Use Subclass Members in British Columbia have an interest in the Service Fees as a result of their right to recover damages under section 171 of the BPCPA and under section 36 of the Competition Act. The Plaintiff and Class Members are entitled to a restoration of those funds under the BPCPA s 172. In particular, the Plaintiff Tam and Class Members would have a right to make a claim for damages under the BPCPA, s 171.

66. As a result of the Defendants' breaches of the BPCPA, the Plaintiff and Personal Use Subclass Members in British Columbia have suffered loss and/or damages and are entitled to:

- a. an injunction under section 172(1)(b) of the BPCPA to restrain further breaches of the BPCPA in the supply of the Reservation Services by requiring that the Defendants represent the Total Price at the Results Stage, to the extent that they still engage in this conduct;
- b. a declaratory order under section 172(1)(a) that the Defendants have breached sections 4-5 of the BPCPA;
- c. a restoration order under section 172(3)(a) for the Service Fees paid by the Plaintiff and Personal Use Subclass Members in British Columbia to the Defendants during the Class Period; and
- d. in the alternative to restoration under section 172(3)(a), damages under section 171 in the amount of the Service Fees paid by the Plaintiff and Personal Use Subclass Members to the Defendants during the Class Period.

67. Class Members resident outside of British Columbia plead and rely on the equivalent provisions of related consumer protection legislation, namely *inter alia*:

Consumer Protection Act, RSA 2000, c C-26.3 (“*Alberta CPA*”); *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (“*Saskatchewan CPABPA*”); *The Business Practices Act*, CCSM c B120 (“*Manitoba BPA*”); *Consumer Protection Act*, 2002, SO, c 30, Sch A (“*Ontario CPA*”); *Business Practices Act*, RSPEI 1988, c. B-7 (“*PEI BPA*”); *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (“*Newfoundland CPABPA*”); each as amended from time to time and with regulations in force at material times, as set out at Schedule B to this Amended Notice of Civil Claim.

Joint and Several Liability

~~39.— Hotwire Inc and Expedia Group Inc are each jointly and severally liable for the actions and damages allocable to any of them.~~

~~40.— Accor SA and Accor Canada Holdings Inc are each jointly and severally liable for the actions and damages allocable to any of them.~~

Limitation Periods

68. The Plaintiff ~~or~~ and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until English-language publicity related to the Quebec class action filed in 2020 against Priceline.com and the Defendants in this action began to circulate in January of 2022.¹

69. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v Godfrey* to postpone the running of the limitation period until January 1, 2024.

70. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266.

¹ <https://ca.topclassactions.com/lawsuit-settlements/fees/class-action-claims-priceline-others-fail-to-properly-include-taxes-fees-in-advertised-price-of-hotel-rooms/>

Service

71. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

72. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

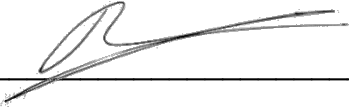
Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: June 9, 2022



Signature of lawyer for plaintiff for

Anthony A Vecchio, KC	and	Mat Good
Saro J Turner		
Sam J Jaworski		Mathew P Good Law
Slater Vecchio LLP		Corporation

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the defendants HOTWIRE INC; EXPEDIA GROUP INC; BENJAMIN & BROTHERS LLC d/b/a RESERVATIONS.COM; ACCOR SA; and ACCOR CANADA HOLDINGS INC outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding deceptive price representations by hotel reservation websites.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Limitation Act, SBC 2012, c 13, Court Order Interest Act, RSBC 1996, c 79

SCHEDULE A - Particulars of the Misconduct of the Defendants

Hotwire

1. ~~Hotwire owns and operates a website providing offers and supplies Reservation Services at through its Booking Platform www.hotwire.com.~~

2. ~~Hotwire does not reveal the names of the hotels or other accommodations listed on their service, but rather provides locations, ratings, and prices for various reservation options. The advertised best price for a Room Night in the downtown core of Vancouver, British Columbia from April 27, 2022 until April 28, 2022 was listed as 43% off from \$279 per night on April 27, 2022.~~

2. Hotwire displays the First Price of various accommodations at the Results Stage:

The screenshot displays the Hotwire search results interface. At the top, there are filters for 'All Hotels', 'Hot Rate' (Avg. \$159), and 'Standard Rate Hotels' (Avg. \$216). Below the filters, there are dropdown menus for 'Sort by' (Best match), 'Price range' (Any), 'Hotel class' (Any), 'Amenities' (Any), 'Areas' (Any), 'Guest ratings' (Any), and 'Health and safety' (Any). A 'More' button is also present.

The main content area shows three hotel listings:

- Deal of the day:** TRENDY Hot Rate 4.5-star Hotel in Downtown - Coal Harbour, Convention Cen... 1.9 miles from search. 4.6/5 Wonderful! (1,000 Expedia reviews). \$279 per night. 43% off.
- UNIQUE:** Hot Rate 3.5-star Hotel in Burnaby - Metrotown, Parks area 1.6 miles from search. 4.0/5 Very good! (1,251 Expedia reviews). \$152 per night. 46% off.
- UNIQUE:** Hot Rate 3.5-star Hotel in Downtown - Shopping, Dining, & Entertainm... 1.5 miles from search. 4.2/5 Very good! (1,450 Expedia reviews). \$217 per night. 36% off.

Each listing includes a 'What hotel will I get?' link and a 'Save more when you sign in!' button. To the right of the listings is a map of Vancouver with a search area highlighted in green. The map includes labels for various neighborhoods like Kitsilano, Granville Island, and Burnaby.


3. ~~When the hotel listed as 43% off from \$279 per night is selected, a new price of \$159 per night is presented to the consumer.~~

3. In this scenario, the First Price has been lowered due to a discount. The updated First Price (\$159 per night) is represented below at the Results Stage:


The screenshot displays a hotel listing for a 4.5-star hotel in the Downtown - Coal Harbour, Convention Center, & Stanley Park area. The listing features a 'Hot Rate' badge, a 'TRENDY' tag, and a 4.6/5 rating from 1,000 Expedia reviews. A 'Free internet' icon is also present. The hotel name is hidden, with a prompt asking 'What's the name of the hotel?'. Below this, logos for Meridien, Intercontinental Hotels & Resorts, The Luxury Collection, and Sofitel are shown. A 'Price checker' section highlights a 'Hot Rate' of \$159 per night, saving \$120 from the retail price of \$279. A 'Reserve' button is prominently displayed, with a note that it only takes 2 minutes. A 'Book soon!' warning indicates that only 1 room is left.

4. ~~However, when the consumer attempts to complete the reservation, they are presented with a total price significantly in excess of the advertised price. In the case of the reservation above, the consumer is initially presented with a price of \$159 per night (43% off from \$279 per night), but the total cost of the room is \$206.47 due to \$47.47 in undisclosed taxes and fees. This is a premium of approximately 30% above the advertised price of the room.~~


4. Once a consumer proceeds to the Purchase Stage, the Total Price is displayed (\$206.47). The Total Price is approximately 30% greater than the First Price. The Service Fess equal \$47.47, less taxes.

 **Low price guarantee**


Price summary

 **Hot Rate Savings** 43% off

Average room price per night	\$279.41*
Your room price per night	\$159.00

1 room x 1 night	\$159.00
Taxes & fees 	\$47.47

The taxes are tax recovery charges Hotwire pays to its vendors (e.g. hotels); for details, please see our Terms of Use. We retain our service fees as compensation in servicing your travel reservation.

Enter coupon code 

Due now (USD)	\$206.47
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Reservations.com

5. Reservations.com ~~owns and operates a website providing~~ offers and supplies Reservation Services at through its Booking Platform www.reservations.com.

6. ~~The advertised best price for a Room Night at the Sutton Place Hotel Vancouver in Vancouver, British Columbia from April 27, 2022 until April 28, 2022 was listed as \$234 per night on April 27, 2022.~~

6. Reservations.com displays the First Price of various accommodations at the Results Stage:

The screenshot shows a search results page for 'Vancouver, BC, Canada' from 'April 27, 2022-April 28, 2022' for '1 Room'. The results are sorted by 'Distance'. The top result is 'THE SUTTON PLACE HOTEL - VANCOUVER', a 5-star hotel with a 4.5 'Excellent' rating based on 2,813 reviews. The price is listed as '\$234 / night'. A 'RESERVE' button is visible. The hotel address is '845 Burrard St, Vancouver, BC V6Z2K6 - 0.091 miles' and the phone number is 'Call 855-516-1090'. A 'VIEW MAP' button and a 'TOP RATING' section with five stars are also present.

7. When the Sutton Place Hotel Vancouver was selected from the list of available hotels, the First Price of a Deluxe Room, 1 King Bed (Classic) was listed as ~~a room option for \$234 per night at this location.~~

The screenshot shows the 'ROOM TYPES & RATES' section. The search criteria are 'Check In: Wednesday, 4/27/2022 | Check Out: Thursday, 4/28/2022' and 'Rooms: 1 | Adults: 2 | Kids: 0'. A 'SEE NEW DATES' button is available. The selected room is 'DELUXE ROOM, 1 KING BED (CLASSIC)'. The price is '\$234 / night'. A 'RESERVE' button is present, along with a warning: 'Just 8 rooms left at this low rate!'. A 'Jackpot!' badge indicates 'One of the best rates available for the dates you selected.' and a link to 'View room details, amenities & policies' is provided. An image of the room is shown on the left.

8. ~~However, when the consumer attempts to complete the reservation, they are presented with a total price significantly in excess of the advertised price. In the case of the Sutton Place Hotel in Vancouver, the one night stay listed as \$234 per night has a final price of \$326.01, which includes a \$71.83 (30.5%) “Sales Tax”, and a \$19.99 “Service Fee”. This is a premium of approximately 40% above the advertised price of the room.~~

8. Once a consumer proceeds to the Purchase Stage, the Total Price is displayed (\$326.01). The Total Price is approximately 40% greater than the First Price. The Service Fees equal \$19.99.

RESERVATIONS
Call Us: 855-516-1090



**THE SUTTON PLACE HOTEL
VANCOUVER**

Check In: Wed, Apr 27, 2022
Check Out: Thu, Apr 28, 2022
Rooms: 1
Adults: 2
Kids: 0

**RATES FOR DELUXE ROOM, 1
KING BED (CLASSIC)**

Wed, Apr 27	\$234.19
Subtotal for 1 Rooms:	\$234.19
<u>Tax Recovery Charges & Fees</u>	
Sales Tax:	\$71.83
Service Fee	\$19.99
TOTAL:	\$326.01

Accor

9. ~~Accor owns and operates a website providing offers and supplies Reservation Services at through its Booking Platform all.accor.com.~~

10. ~~The advertised best price for a Room Night at the Fairmont Pacific Rim in Vancouver, British Columbia from April 27, 2022 until April 28, 2022 was listed as \$449 per night on April 27, 2022.~~

10. Accor displays the First Price of various accommodations at the Results Stage:

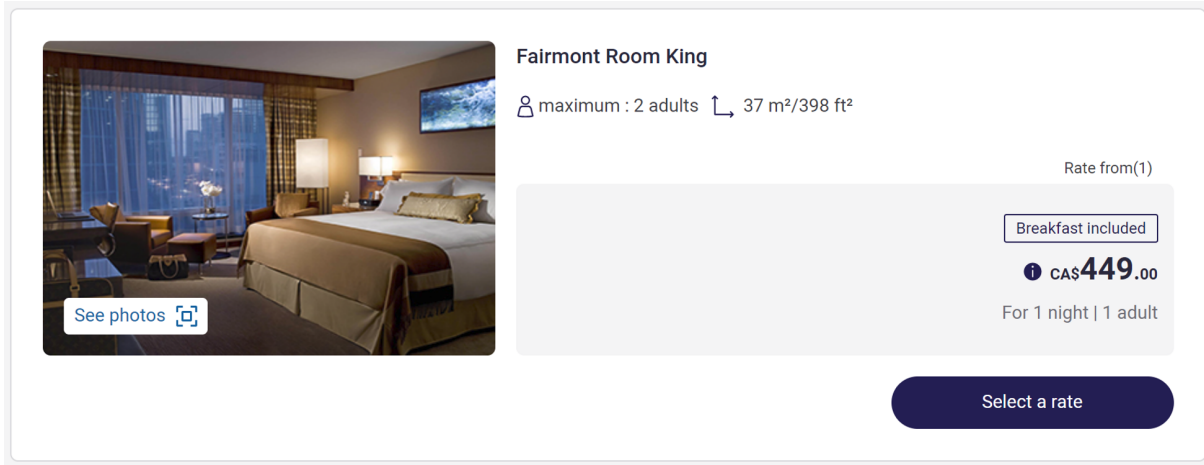
The screenshot shows the Accor booking platform interface. At the top, the Accor logo is displayed with the tagline "ACCOR LIVE LIMITLESS". Below the logo, search filters are visible: "Vancouver, BC, Canada", "April 27, 2022 - April 28...", "1 Room - 1 adult", and "Special rates".

The main content area is titled "5 PROPERTIES CLOSE TO YOUR SEARCH". It lists three properties:

- Hotel Belmont Vancouver MGallery ******: Located 0.4 km from the search location. The rate is CA\$199 for 1 night for 1 adult.
- Fairmont Pacific Rim *******: Located 0.7 km from the search location. The rate is CA\$449 for 1 night for 1 adult, with breakfast included.
- Fairmont Waterfront ******: Located 0.7 km from the search location. The rate is CA\$315 for 1 night for 1 adult.

Each property listing includes a photo, a "See photos" button, an "Open rate calendar" link, and a "Choose a room" button. The left sidebar contains filters for Price range (min. Price: 199, max. Price: 450), Our brands (Fairmont, MGallery), Guest rating (5/5 only, From 4/5, From 3/5, From 2/5), Star rating (5 stars property, 4 stars property), and Access to property.

11. When the Fairmont Pacific Rim was selected from the list of available hotels, the First Price of a Fairmont Room King was listed as a room option for \$449 per night at this location.



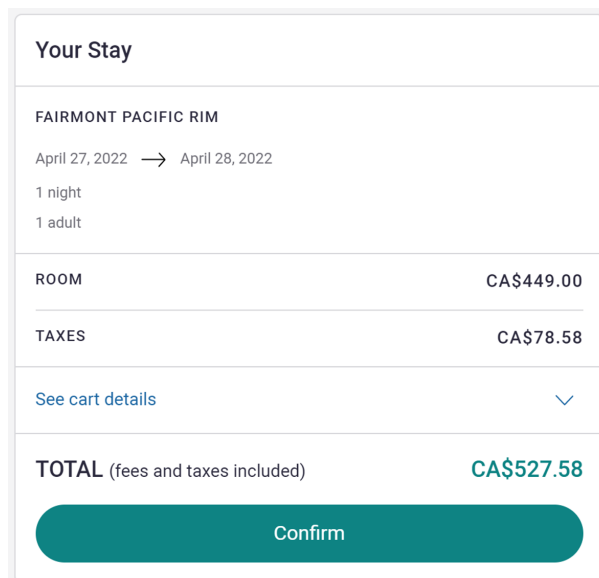
Fairmont Room King
maximum : 2 adults 37 m²/398 ft²

Rate from(1)
Breakfast included
CA\$449.00
For 1 night | 1 adult

Select a rate

~~12. However, when the consumer attempts to complete the reservation, they are presented with a total price significantly in excess of the advertised price. In the case of the Fairmont Pacific Rim, the one night stay listed as \$449 per night has a final price of \$527.58, which includes a \$71.83 (16%) listed as “taxes” and a \$6.74 listed as “fees”. This is a premium of approximately 17% above the advertised price of the room.~~

12. Once a consumer proceeds to the Purchase Stage, the Total Price is displayed (\$527.58). The Total Price is approximately 17% greater than the First Price. The Service Fees equal \$78.58 less lawful taxes.



Your Stay

FAIRMONT PACIFIC RIM

April 27, 2022 → April 28, 2022

1 night
1 adult

ROOM	CA\$449.00
TAXES	CA\$78.58

[See cart details](#)

TOTAL (fees and taxes included) CA\$527.58

Confirm

SCHEDULE B – Related Provincial Enactments

Alberta

1. The Defendants have breached the Consumer Protection Act, RSA 2000, c C-26.3 ("Alberta CPA"). ~~The Class Members~~ Personal Use Subclass Members in Alberta are "consumers" within the meaning of the *Alberta CPA*, s 1. The ~~hotel reservations~~ Reservation Services are "goods" or "services" within the meaning of section 1 of the *Alberta CPA*. The Defendants are each a "supplier" within the meaning of section 1 of the *Alberta CPA*. The ~~online reservation of hotels or other accommodation~~ supply of the Reservation Services is a "consumer transaction" within the meaning of section 1 of the *Alberta CPA*.

2. By reason of the Defendants' conduct, the Defendants have breached the *Alberta CPA*, ss 5-6. The Defendants' actions violate section 6(4)(s)(ii) of the Alberta CPA and constitute "unfair practices". As a result of the Defendants' breaches of the *Alberta CPA* the Personal Use Subclass ~~Class~~ Members in Alberta are entitled to restitution of the Service Fees paid by them to the Defendants during the Class Period under the Alberta CPA, ss 13(2)(d)(ii), and/or s 142.1(2)(c)(ii), or alternatively damages in that amount under the Alberta CPA, ss 7(3), 13(2)(b), and/or 142.1(2)(a). ~~an award of damages including those provided for under the Alberta CPA, s 7(1), or alternatively, restitution under the Alberta CPA, s 7(3).~~

3. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to the *Alberta CPA* s 16, which invalidates any such clause between a "supplier" and a "consumer" in respect of a "consumer transaction", rendering it void and unenforceable.

Saskatchewan

4. The Defendants have breached the Consumer Protection and Business Practices Act, SS 2013, c C-30.2 ("Saskatchewan CPABPA"). ~~The Class Members~~ Personal Use Subclass Members in Saskatchewan are "consumers" within the meaning of the *Saskatchewan CPABPA*, s 2. The Reservation Services ~~hotel reservations~~ are

"goods" or "services" within the meaning of s 2 of the *Saskatchewan CPABPA*. The Defendants are each a "supplier" within the meaning of s 2 of the *Saskatchewan CPABPA*. The supply of the Reservation Services are "transactions involving goods and services" within the meaning of ss 2 and 5 of the *Saskatchewan CPABPA*.

5. By reason of the Defendants' conduct, the Defendants have breached the *Saskatchewan CPABPA*, ss 6-9. The Defendants' actions constitute "unfair practices" under sections 6(a) and/or 7(l) of the *Saskatchewan CPABPA*. As a result of the Defendants' breaches of the *Saskatchewan CPABPA* the ~~Class~~ Personal Use Subclass Members in Saskatchewan are entitled to restitution of the Service Fees paid by them to the Defendants during the Class Period under the *Saskatchewan CPABPA* s 93(1)(a), or in the alternative an award of damages in that amount under s 93(1)(b). ~~an award of damages, including those provided for under s 28 of the *Saskatchewan CPABPA*, or alternatively, restitution under the *Saskatchewan CPABPA*, s 93.~~

6. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to the *Saskatchewan CPABPA* s 101, which invalidates any such clause or waiver rendering it void.

Manitoba

7. The Defendants have breached the *Business Practices Act CCSM c. B120* ("*Manitoba BPA*"). ~~The Class Members~~ Personal Use Subclass Members in Manitoba are "consumers" within the meaning of the *Manitoba BPA*, s 1. The Reservation Services ~~hotel reservations~~ are "goods" within the meaning of the *Manitoba BPA*. The Defendants are each a "supplier" within the meaning of the *Manitoba BPA*. The supply of the Reservation Services are "consumer transactions" within the meaning of the *Manitoba BPA*, s 1. ~~The Defendants engaged in "unfair business practices" within the meaning of the *Manitoba BPA*.~~

8. By reason of the Defendants' conduct, the Defendants have breached the *Manitoba BPA*, ss 2-8. The Defendants' actions constitute "unfair business practices" as they violate, *inter alia*, sections 2(1)(a) and 2(3)(r). Through their conduct, the Defendants have committed a deceptive act or practice irrespective of whether it is

contrary to section 2(3)(r) as this conduct may reasonably deceive or mislead consumers. As a result of the Defendants' breaches of the *Manitoba BPA* the Class Personal Use Subclass Members in Manitoba are entitled to repayment of the Service Fees paid by them to the Defendants during the Class Period under section 23(2)(d), or in the alternative damages in that amount under section 23(2)(a), or any other relief that the court deems proper, pursuant to section 23(2)(f) of the Manitoba BPA. ~~an award of damages, including those provided for under the Manitoba BPA, ss 23 and 24.~~

9. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to the *Manitoba BPA* s 28, which invalidates any such clause or waiver rendering it void.

Ontario

10. The Defendants have breached the *Ontario Consumer Protection Act, 2002, SO 2002, c 30, Sched A ("Ontario CPA")*. ~~Class Members Personal Use Subclass Members~~ in Ontario are "consumers" within the meaning of the *Ontario CPA*, s 1. The Reservation Services ~~hotel reservations~~ are "goods" or "services" within the meaning of the *Ontario CPA*, s 1. The Defendants are each a "supplier" within the meaning of the *Ontario CPA*. The supply of the Reservation Services are ~~The online reservation of hotels or other accommodation is~~ a "consumer transaction", and involves a "consumer agreement" within the meaning of the *Ontario CPA* in the form of the booking. The Defendants made "representations" about the price of hotel reservations within the meaning of the *Ontario CPA*.

11. By reason of the Defendants' conduct, the Defendants have breached the *Ontario CPA*, ss 14 and 17. The Defendants made false, misleading and deceptive misrepresentations under section 14 of the Ontario CPA. The Defendants' actions therefore constitute "unfair business practices" and are prohibited under the *Ontario CPA*, s 17. As a result of the Defendants' breaches of the *Ontario CPA* the Class Personal Use Subclass Members in Ontario are entitled to an award of damages equal to the amount of the Service Fees paid by them to the Defendants during the Class

Period pursuant to section 18(2), including those provided for under the Ontario CPA, s 18 or alternatively, restitution under the Ontario CPA, s 117.

12. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to the *Ontario CPA* ss 7 and 8, which provides the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

13. The Plaintiff further pleads that the notice requirements pursuant to the Ontario CPA, s 18(3) are fulfilled by the filing of the original Notice of Civil Claim pursuant to the Ontario CPA, s 18(3) – (5) which allows the consumer to express notice in any way, and to deliver notice by any means. In the alternative, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to the Ontario CPA, s 18(15).

Newfoundland and Labrador

14. The Defendants have breached the Consumer Protection and Business Practices Act, SNL 2009, c C-31.1 (“Newfoundland CPABPA”). ~~The Class Members~~ Personal Use Subclass Members in Newfoundland are "consumers" within the meaning of the *Newfoundland CPABPA*, s 2. The Reservation Services ~~hotel reservations are~~ "goods" or are "services" within the meaning of section 2 of the Newfoundland CPABPA. The Defendants are "suppliers" within the meaning of section 2 of the Newfoundland CPABPA. ~~The online reservation of hotels and other accommodation is~~ The supply of the Reservation Services are a "consumer transaction" within the meaning of section 2 of the Newfoundland CPABPA.

15. By reason of the Defendants' conduct, the Defendants have breached the *Newfoundland CPABPA*, ss 7 and 9. The Defendants' actions constitute “unfair business practices” due to breaches of, inter alia, section 7(1)(t). Through their conduct, the Defendants have engaged in unfair consumer practices irrespective of whether it is contrary to section 7(1)(t) as it had the effect, or might reasonably have had the effect, of deceiving or misleading a consumer. As a result of the Defendants' breaches of the *Newfoundland CPABPA*, the ~~Class~~ Personal Use Subclass Members in Newfoundland are entitled to a refund of the price paid to the Defendants for the Service Fees during

the Class Period under the Newfoundland CPABPA s 10(2)(f), or in the alternative an award of damages, including those provided for in that amount under the Newfoundland CPABPA, s 10(2)(b).

16. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to the *Newfoundland CPABPA* s 3, which invalidates any such clause or waiver rendering it void.

Prince Edward Island

17. The Defendants have breached the Business Practices Act, RSPEI 1988, c B-7 (“PEI BPA”). Personal Use Subclass Members in Prince Edward Island are “consumers” within the meaning of section 1 of the PEI BPA. The Reservation Services are “services” within the meaning of section 1 of the PEI BPA. The Defendants made “consumer representations” within the meaning of section 1 of the PEI BPA.

18. By reason of the Defendants’ conduct, the Defendants have made false, misleading and deceptive misrepresentations under section 2(a) of the PEI BPA and the Defendants’ actions therefore constitute “unfair practices” in violation of section 3.

19. As a result of the Defendants’ breaches of the PEI BPA, the Personal Use Subclass Members in Prince Edward Island are entitled to damages in the amount of the Service Fees paid by them to the Defendants during the Class Period pursuant to section 4(1) of the PEI BPA.