

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA)

a municipal corporation)

441 4th Street, N.W.)

Washington, D.C. 20001,)

Plaintiff,)

v.)

MARRIOTT INTERNATIONAL, INC.)

10400 Fernwood Road)

Bethesda, MD 20817,)

Defendant.)

Civil Action No. _____

**COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT**

The District of Columbia (“District”), by the Office of the Attorney General, brings this action pursuant to D.C. Code § 28-3909 for injunctive relief, consumer restitution, costs, and civil penalties against Defendant Marriott International, Inc. (“Marriott”) for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.* In support of its claims, the District states as follows:

INTRODUCTION

1. This is a straight-forward price deception case. For at least the last decade, Marriott has used an unlawful trade practice called “drip pricing” in advertising its hotel rooms whereby Marriott initially hides a portion of a hotel room’s daily rate from consumers. Marriott calls this hidden portion of the room rate a number of terms, including a “resort fee,” “amenity fee” and a “destination fee.” One key effect of this price deception is that consumers shopping for a hotel room on either Marriott’s website, or an online travel agency site (“OTA”) like

Priceline or Expedia, are misled into believing a Marriott hotel room is cheaper than it actually is. Marriott's motive in continuing this deceptive practice is pure profit. It has reaped hundreds of millions of dollars over the last decade from this deceptive "drip pricing." The District brings this action to force Marriott to advertise up-front to consumers the true prices of its hotel rooms.

2. Marriott is a hotel and lodging corporation with its headquarters in Bethesda, Maryland. Marriott owns, franchises, and manages hotels throughout the United States, including at least 29 hotel properties located in the District. Marriott conducts its hotel business through various corporate entities operating under numerous trade names.¹ It offers lodging at its hotels to District residents, including through its online reservation website and through the websites hosted by OTAs, such as Priceline and Expedia. These websites allow consumers to obtain information about Marriott's hotel rooms and allow consumers to compare Marriott's hotel room prices to that of other hotels as well as make hotel reservations.

3. Marriott advertises and promotes its hotel rooms by advertising daily room rates on its own website and the websites operated by OTAs. Marriott's official website and the websites operated by the OTAs enable consumers to search for and sort prospective hotel accommodations by price according to the daily room rate. These search and sorting functions

¹ Marriott hotels operate under at least the following trade names" Starwood, St. Regis, The Luxury Collection, W, Westin, Le Méridien, Sheraton, Tribute Portfolio, Four Points by Sheraton, Aloft, Element, The Ritz-Carlton, Design Hotels, Bvlgari Hotels & Resorts, Edition, JW Marriott, Autograph Collection Hotels, Renaissance Hotels, Marriott Hotels, Delta Hotels and Resorts, Gaylord Hotels, AC Hotels by Marriott, Courtyard by Marriott, Residence Inn by Marriott, Springhill Suites by Marriott, Fairfield Inn & Suites, TownePlace Suites by Marriott, and Moxy Hotels.

allow consumers, including consumers residing in the District, to compare prices among various hotels. Many consumers, including those residing in the District, use the websites operated by Marriott and the OTAs to compare the price of hotel rooms offered by Marriott and other hotels and to select and book a hotel room online.

4. Marriott charges additional mandatory fees that it refers to as “resort fees,” “destination amenity fees,” or “amenity fees” (referred to collectively hereafter as “resort fees”) on a daily basis for a room at many of its hotels. However, Marriott does not include these daily, mandatory fees in the room rate it advertises on its website and does not include them in the room rate advertised by the OTAs, thereby depriving consumers of the ability to readily ascertain and compare the actual price of a room at a Marriott hotel to the price of the hotel rooms offered by Marriott’s competitors and at other Marriott hotels.

5. Beyond this initial price deception, when consumers select a room rate and provide their credit card and other personal information in order to book a room, Marriott also represents that the daily room rate at the hotel is less than it actually is because it does not include the mandatory resort fee that Marriott adds to the daily room charge. In many instances, Marriott includes the resort fee as part of a total charge called “Taxes and Fees,” thereby misleading consumers to believe the additional fees they are paying are government-imposed, rather than a separate daily charge imposed by and paid to Marriott. In some instances, Marriott also represents that these resort fees cover the costs of amenities, such as parking, that Marriott either provides as complimentary or, alternatively, requires hotel guests to pay for separately, even though Marriott has required them to pay the resort fee.

6. The District institutes this proceeding to stop Marriott from engaging in the unlawful trade practices set forth more fully below in connection with its offer and sale of hotel rooms to consumers, including its practices of (1) misleading consumers concerning the amounts they must pay for rooms at their hotels, and (2) advertising hotel rooms without the intent to supply them at advertised prices. The District seeks injunctive relief to prevent Defendant from engaging in these and similar unlawful trade practices, civil penalties to deter Defendant and others similarly situated from engaging in these and similar unlawful trade practices, and the payment of costs, attorney's fees, and restitution based on the harm consumers have experienced due to Defendant's conduct.

JURISDICTION

7. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code § 11-921 and D.C. Code § 28-3909.

8. This Court has personal jurisdiction over the Defendant pursuant to D.C. Code § 13-423(a).

PARTIES

9. Plaintiff the District of Columbia ("District") is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District brings this case through the Attorney General for the District of Columbia, who is the chief legal officer for the District. The Attorney General is responsible for upholding the public interest and is also specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

10. Defendant Marriott is a multinational hospitality company that owns, manages and franchises a broad portfolio of hotels and lodging facilities throughout the United States and abroad, including at least 29 facilities located in the District. It is a Delaware corporation and is headquartered at 10400 Fernwood Road, Bethesda, MD 20817.

11. Marriott has, at all relevant times, engaged in trade or commerce in the District by advertising and offering hotel lodging to District consumers.

MARRIOTT'S DECEPTIVE ADVERTISING PRACTICES

Defendant's Practice of Charging Resort Fees

12. The instant action was commenced following an investigation by the Attorneys General in all 50 states and the District of Columbia regarding the pricing practices of the hotel industry. The hotel industry has become highly price competitive, particularly with the increased use by consumers of OTAs, like Priceline and Expedia, that permit consumers to comparison shop across hotel brands. The Internet websites of hotels and OTAs allow consumers to review large numbers of rooms offered by hotels at the same time and to compare their prices, which the hotels typically advertise using a daily room rate.

13. At issue in this case is the growing and continued practice of hotels advertising daily room rates online but not including any mandatory resort fee charged in the initially advertised room rate. For instance, Marriott's practice is to initially advertise a room rate that does not include the resort fee, but then to include it in the final charges a consumer is required to pay. Marriott charges these additional mandatory resort fees, which can amount to as much as \$95 a day at Marriott's properties, to increase its revenues without appearing to raise the room rate at its hotels. Marriott does not include these resort fees in the room rate because doing so

would effectively increase the price of a hotel room and consequently make its hotels less price competitive to consumers when compared with other hotels.

14. Marriott’s practice of initially advertising only part of a price and then later revealing other charges as the consumer completes the buying process has been labeled “drip pricing” by the Federal Trade Commission (“FTC”). In November 2012, the FTC warned the hotel industry that drip pricing as it pertains to charging resort fees may violate federal consumer protection law by misrepresenting the price consumers can expect to pay for their hotel rooms. The FTC specifically warned the hotels that the largest and most prominent price for a hotel room should include the resort fee, and should be provided to the consumer up front, and not later in the checkout process, in order to avoid being deceptive drip pricing. Marriott received one of the FTC’s warning letters.

15. The FTC’s Bureau of Economics then issued a report in 2017 confirming its concerns about this practice of drip pricing. That report concluded:

In sum, the literature suggests that separating mandatory resort fees from posted room rates without first disclosing the total price is likely to harm consumers by artificially increasing the search costs and the cognitive costs of finding and booking hotel accommodations. Unless the total price is disclosed up front, separating resort fees from the room rate is unlikely to result in benefits that offset the likely harm to consumers.²

² Mary W. Sullivan, Fed. Trade Comm’n, Economic Analysis of Hotel Resort Fees 37 (Jan. 2017). The report and the FTC’s summary can be viewed at the following link: https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf

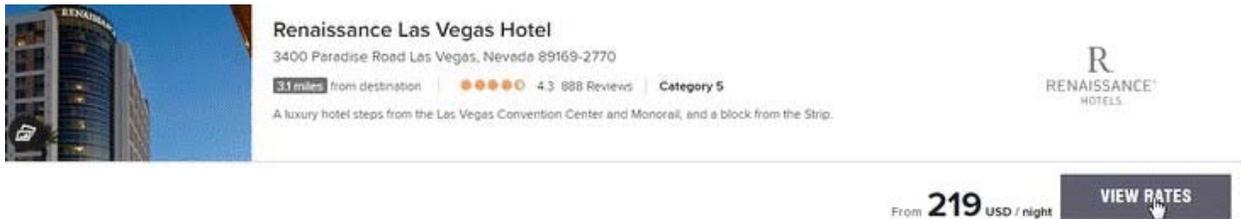
16. Notwithstanding these warnings from the FTC, Marriott continues to advertise room prices that do not include its resort fees, both on its own website and the websites operated by OTAs. Marriott has continued this deceptive practice because it has become a key profit center for the company, as it has reaped hundreds of millions of dollars from expanding its use of resort fees over the past decade.

17. Marriott owns, manages or franchises at least 189 properties worldwide that charge consumers resort fees ranging from \$9 to as much as \$95 per day. By charging consumers resort fees in addition to the daily amounts consumers must pay for their rooms, Marriott makes hundreds of millions of additional dollars in revenue without appearing to increase the price for which it initially offers its rooms. Marriott's unlawful trade practice has affected District consumers, as Marriott has charged resort fees to tens of thousands of District consumers over the years, charging those consumers well in excess of a million dollars.

18. Marriott also exercises control over the resort fees its hotels charge. Marriott's resort fee policies forbid hotels it owns, manages or franchises from charging resort fees unless the property submits a formal request to charge the fees and obtains Marriott's approval to charge the fees. Although Marriott's Franchise Agreements typically allow its franchisees to set their own rates for guest room charges, these franchisees must still comply with Marriott's resort fee policy, which requires them to obtain Marriott's approval before they are permitted to charge a resort fee. Moreover, Marriott's Franchise Agreements prohibit charges or billing practices that Marriott determines are misleading or detrimental, including incremental fees or services that guests would normally expect to be included in the hotel room charge.

Defendant’s Misleading Advertising Practices Concerning Resort Fees

19. When consumers search for and seek to book a hotel using Marriott’s online reservation system, Marriott provides the consumers with a quoted room rate. For example, the following information appeared on Marriott’s website for a room at its Renaissance Las Vegas Hotel in June of 2019:

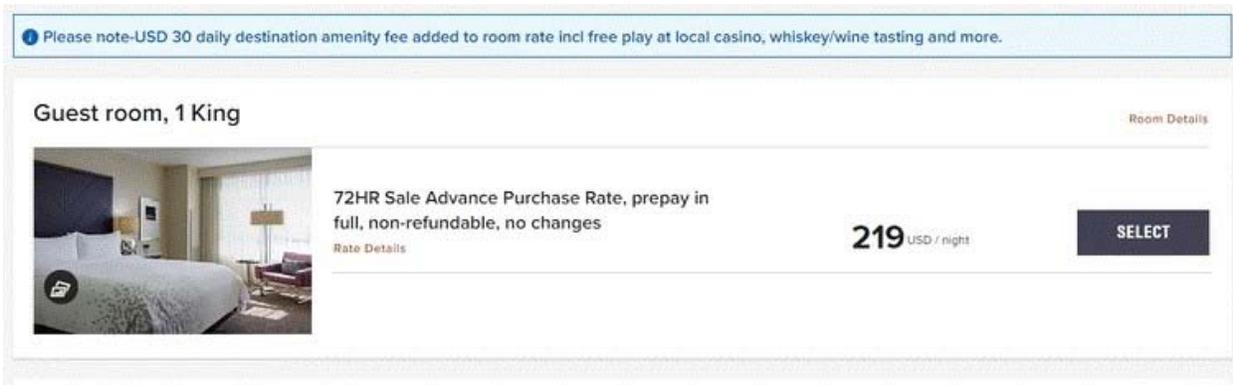


20. At this initial stage in the process of booking a reservation online, where the hotel appears on a page with rooms at other properties, the quoted daily room rate does not include or even mention the mandatory resort fee the consumer will be required to pay. Similarly, when consumers searched at the same time for a hotel room using the reservation system operated by Expedia or another OTA, they received a similar quoted room rate that also did not include or mention the resort fee:



21. If consumers selected the quoted rate for a room at the Renaissance Las Vegas

on Marriott's online reservation system, as set forth in paragraph 19 above, they were directed to another page that provided the following information:



22. Only at this point in the booking process does an obscure box first appear at the top of the page that stated: “USD 30 daily destination amenity fee added to room rate incl free play at local casino, whiskey/wine tasting and more.” This statement appeared in small typeface in a shaded light blue box and was displayed less prominently than the quoted room rate of “219,” which appeared in a larger bolded typeface and still did not include the resort fee. Moreover, as Marriott’s top management admitted during an investigative interview, the statement “daily destination fee added to room rate” is ambiguous and confusing to consumers because it may be understood either as indicating that the daily destination fee *has already been* “added” to the room rate quoted on the page, or that it *will be* “added” to the quoted rate at a later time.

23. Confusion about the total room rate charged was further fostered even at this point in the booking process by the fact that Marriott stated, beneath the quoted room charge, a “total” price that also did not include the daily resort fee. In the example shown in paragraph 21

above, the website stated a total of \$219 – an amount that did not include the mandatory resort fee charged by Marriott for the room.

24. Adding to consumers’ confusion about the resort fee is Marriott’s practice of hiding the resort fee in a larger total of charges ambiguously labeled “Taxes and fees.” By combining the amounts that consumers were asked to pay for resort fees with their tax payments under a generic heading of “taxes and fees,” Marriott led consumers to believe the resort fees were government-imposed charges. For example, after selecting the room from the screen in paragraph 21, a screen appeared that showed the “USD subtotal” of \$282.32, consisting of the \$219 rate for “USD/Night” plus \$63.32 “USD Taxes and Fees”

Stay Dates
Fri, Jul 12, 2019 - Sat, Jul 13, 2019

Total for Stay
282.32 USD

Room(s) held for: 14:40

CONTINUE

Review Reservation Details



Guest room, 1 King
ROOM DETAILS

Check in: Friday, July 12, 2019
Check out: Saturday, July 13, 2019

Room(s): 1
Guest(s) per room: 1

EDIT

∨ Choose Room Features

∨ Summary of Charges

219 USD / night	+	63.32 USD Taxes and fees	=	282.32 USD Subtotal
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25. The screen shown above in paragraph 24 still does not display the resort fee. For consumers to find out that they are actually being charged a daily resort fee in addition to the

quoted room rate, they are required to click on the label “Summary of Charges” in the screen shown above in paragraph 24, which expands and details the charges, including the “Destination Amenity Fee” of \$30, and “Estimated government taxes and fees” of \$33.32:

Stay Dates: Fri, Jul 12, 2019 - Sat, Jul 13, 2019

Total for Stay: 282.32 USD

Room(s) held for: 14:15

CONTINUE

Check out: Saturday, July 13, 2019

Room(s): 1

Guest(s) per room: 1

EDIT

Choose Room Features

Summary of Charges

219	+	63.32	=	282.32
USD / night		USD Taxes and fees		USD Subtotal

72HR Sale Advance Purchase Rate

RATE DETAILS

1 room(s) for 1 night(s)

Prices in USD

Friday, July 12, 2019	219.00
Total cash rate	219.00
Destination Amenity Fee	30.00
Estimated government taxes and fees	33.32
Total for stay in hotel's currency	282.32 USD

Additional Charges

On-site parking, fee: 17 USD daily
 Valet parking, fee: 22 USD daily
 Changes in taxes or fees implemented after booking will affect the total room price.

Get the Marriott Bonvoy Boundless™ Credit Card and receive

282.32 USD

26. During the reservation process, Marriott’s ambiguous “added to room rate” statement regarding the resort fee, as set forth in paragraph 22 above, has often included representations to consumers about the amenities that the resort fee covers. However, Marriott

further adds to consumers' confusion by stating later in the reservation process that it charges for certain amenities separately or simply provides them on a complimentary basis to its hotel guests.

27. The inconsistency and inaccuracy with which Marriott has provided information to consumers on its websites about what is covered by the resort fee, combined with the lack of proximity of the resort fee to the quoted room rate, the smaller and lighter shaded typeface used when referring to the resort fee, the ambiguous language regarding whether the resort fee has been or will be added to the room rate, the confusing representations about what amenities are covered by the fees, and the inclusion of the resort fee with charges for taxes make it even harder for consumers to comprehend they are being charged a resort fee on top of their quoted room rate.

28. Defendant's practices of advertising room rates that do not include mandatory daily resort fees, including the resort fee in "taxes and fees" when the resort fee is not imposed by any government agency, and representing that resort fees include amenities or services that are either provided at no cost or that the consumer must still pay for separately, are misrepresentations of material fact capable of misleading consumers.

29. Marriott's practices of advertising room rates for lodging at its hotels without including other daily charges required by the hotel constitutes the advertisement or offer of good or services without the intent to sell them as advertised or offered.

COUNT I
(Violations of the Consumer Protection Procedures Act)

30. The allegations of paragraphs 1 through 29 are re-alleged as if fully set forth here.

31. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

32. The hotel rooms Marriott offers to consumers are leased or sold for personal, household, or family purposes and, therefore, are consumer goods or services.

33. Marriott, in the ordinary course of business, offers to lease or supply consumer goods and services and, therefore, is a merchant.

34. The CPPA prohibits unlawful trade practices in connection with the offer, sale, and supply of consumer goods and services.

35. Marriott's (a) advertisement of prices or room rates for their hotels that do not include mandatory daily resort fees, (b) representation that the resort fee is a "fee or tax," and (c) representation that the payment of resort fees entitled the consumer to amenities that they still were required to pay for or were ordinarily provided at no cost, are each misrepresentations of material fact that have a tendency to mislead consumers and are unlawful trade practices that violate the CPPA, D.C. Code §28-3904(e).

36. Defendant's advertising of prices and room rates for lodging in their hotels that do not include daily resort fees constitutes an advertisement or offer without the intent to sell the lodging as advertised, which is an unlawful trade practice that violates the CPPA, D.C. Code

§ 28-3904(h).

Prayer for Relief

WHEREFORE, the District respectfully requests this Court enter a judgment in its favor and grant relief against Defendant, as follows:

- (a) Permanently enjoin and restrain Defendant, pursuant to D.C. Code § 28-3909(a), from engaging in conduct determined to be in violation of the CPPA;
- (b) Permanently enjoin Defendant from advertising daily hotel room rates that do not include mandatory resort fees in the price advertised for rooms at its hotels;
- (b) Order the Defendant to pay restitution pursuant to D.C. Code § 28-3909(a), for amounts collected from District of Columbia consumers in violation of the CPPA;
- (c) Order the Defendant to pay statutory civil penalties in an amount to be determined at trial, pursuant to D.C. Code § 28-3909(b), for each and every violation of the CPPA;
- (d) Award the District the costs and reasonable attorney's fees for its investigation and this action, pursuant to D.C. Code § 28-3909(b); and
- (e) Grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: July 9, 2019

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

ROBYN BENDER
Deputy Attorney General
Public Advocacy Division



JIMMY R. ROCK (D.C. Bar # 493521)
Assistant Deputy Attorney General
Public Advocacy Division



BENJAMIN WISEMAN (D.C. Bar # 1005442)
Director, Office of Consumer Protection
Public Advocacy Division



MATT JAMES (D.C. Bar # 1632202)
Assistant Attorney General
Office of Consumer Protection
Office of the Attorney General

441 4th Street, N.W., Suite 600 South
Washington, DC 20001
Telephone: (202) 724-5558
Email: matthew.james2@dc.gov

Attorneys for the District of Columbia