

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

DISTRICT OF COLUMBIA,  
a municipal corporation,  
441 Fourth Street, N.W.  
Washington, D.C. 20001,

Plaintiff,

v.

EXPEDIA, INC.,  
a Delaware corporation,  
333 108<sup>th</sup> Avenue NE  
Bellevue, WA 98005,

EXPEDIA, INC. (a Washington corporation),  
a Washington corporation,  
333 108<sup>th</sup> Avenue NE  
Bellevue, WA 98005,

HOTELS.COM, L.P.,  
10440 N. Central Expressway, Suite 400  
Dallas, TX 75231,

HOTWIRE, INC.,  
a Delaware corporation,  
333 Market Street, Suite 100  
San Francisco, CA 94105,

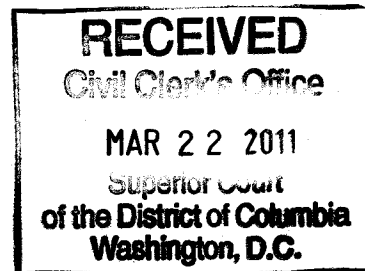
ORBITZ, LLC,  
a Delaware corporation,  
500 W. Madison Street, Suite 1000  
Chicago, IL 60661,

ORBITZ WORLDWIDE, INC.,  
a Delaware corporation,  
500 W. Madison Street, Suite 1000  
Chicago, IL 60661,

PRICELINE.COM INC.,  
a Delaware corporation,  
800 Connecticut Avenue  
Norwalk, CT 06854,

Civil Action No. 0002117-11

COMPLAINT FOR DECLARATORY  
AND EQUITABLE RELIEF AND  
FOR COLLECTION OF TAXES,  
INTEREST, AND PENALTIES



TRAVELOCITY.COM LP, )  
3150 Sabre Drive )  
Southlake, TX 76092, )  
)  
TRAVELSCAPE, LLC, )  
a Nevada corporation, )  
10190 Covington Cross Drive, Suite 300 )  
Las Vegas, NV 89144, )  
)  
Defendants. )  
\_\_\_\_\_ )

Plaintiff, the District of Columbia (the “District”), by its Acting Attorney General, alleges as follows:

1. The District files this Complaint (i) to determine Defendants’ obligations to collect and pay District sales taxes on their sales of rooms, lodgings, and accommodations (hereinafter referred to collectively as “hotel rooms”); (ii) to obtain monetary judgments against Defendants for sales taxes owed, as well as additional amounts based on Defendants’ negligence or fraud and their failures to file required returns, plus statutorily-prescribed interest; and (iii) to secure injunctive and other equitable relief from Defendants’ violations of the District’s sales tax law.

2. Defendants are online travel companies that have been selling hotel rooms in the District of Columbia at retail prices, while paying District sales taxes based on the hotels’ discounted wholesale prices, thereby depriving the District of millions of dollars of annual sales tax revenue. Through their industry association, Defendants have collaborated for years on website disclaimers that deliberately obscure Defendants’ responsibility, as sellers of hotel rooms, for collecting District sales taxes based on the retail prices charged.

### **Jurisdiction**

3. The Court has jurisdiction over the subject matter of this case pursuant to D.C. Official Code § 11-921(a)(6) and § 47-4301(d)(1). The Court has personal jurisdiction over Defendants pursuant to D.C. Official Code § 13-423(a)(1) and (a)(2) based on Defendants' sales of hotel rooms located in the District of Columbia.

### **Parties**

4. The District, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District brings this action, through its Acting Attorney General, pursuant to the District's authority to levy and collect taxes, including its authority to commence a proceeding in court for the collection of tax, without assessment, when a taxpayer has failed to file a required return. D.C. Official Code § 47-4301(d)(1).

5. Defendant Expedia, Inc. ("Expedia") is a Delaware corporation headquartered in Bellevue, Washington. Defendant Expedia, Inc. (a Washington corporation), a subsidiary of Expedia, is a Washington corporation with the same name and is also headquartered in Bellevue, Washington. Defendant Travelscape, LLC, a Nevada corporation headquartered in Las Vegas, Nevada, is a subsidiary of Expedia and does business as Expedia Travel. These Defendants are online travel companies that have used the Expedia.com website to offer and sell travel services, including, since at least 2000, hotel rooms in the District of Columbia.

6. Defendant Hotels.com, L.P., a limited partnership headquartered in Dallas, Texas, is a subsidiary of Expedia and has used the Hotels.com website to offer and sell travel services, including, since at least 2002, hotel rooms in the District of Columbia.

7. Defendant Hotwire, Inc., a Delaware corporation headquartered in San Francisco, California, is a subsidiary of Expedia and has used the Hotwire.com website to offer and sell travel services, including, since at least 2000, hotel rooms in the District of Columbia.

8. Defendant Orbitz Worldwide, Inc., and its subsidiary Defendant Orbitz, LLC, are Delaware corporations headquartered in Chicago, Illinois. They are online travel companies that have used the Orbitz.com website to offer and sell travel services, including, since at least 2003, hotel rooms in the District of Columbia.

9. Defendant priceline.com Incorporated (“priceline.com”) is a Delaware corporation headquartered in Norwalk, Connecticut. Priceline.com is an online travel company that has used the priceline.com website to offer and sell travel services, including, since at least 1998, hotel rooms in the District of Columbia.

10. Defendant Travelocity.com LP (“Travelocity”) is headquartered in Southlake, Texas. Travelocity is an online travel company that has used the Travelocity.com website to offer and sell travel services, including, since at least 2000, hotel rooms in the District of Columbia.

#### **Defendants’ Sales Tax Violations**

11. Since they began using websites to sell hotel rooms in the District of Columbia, Defendants have regularly paid discounted wholesale prices for hotel rooms in the District of Columbia and have sold the hotel rooms to website customers at retail prices set by Defendants. The discounted wholesale prices that Defendants have paid for the hotel rooms have been 15% or more below the retail prices that Defendants have charged their website customers for the hotel rooms.

12. Defendants' payments for these hotel rooms have included amounts for District sales taxes. These sales tax amounts have been based on the discounted wholesale prices paid by Defendants, not the higher retail prices charged by Defendants. Under their contracts with the hotels, Defendants have been obligated to collect from their customers the applicable sales taxes for these hotel rooms.

13. When selling these hotel rooms to website customers, Defendants have collected charges that purport to combine taxes and service fees. Defendants have not disclosed to their customers what portions of these charges are for taxes and what portions of these charges are for service fees. These combined charges, which are about equal to what the tax charges alone would be if based on the retail prices charged by Defendants, have substantially exceeded the amounts that Defendants have paid to the hotels for District sales taxes.

14. Defendants have placed statements on their websites affirmatively denying or obscuring the fact that they are selling hotel rooms and are responsible for collecting the applicable sales taxes. Since at least 2005, Defendants have collaborated through their industry association, the Interactive Travel Services Association, on the development of contract phraseology and "terms of use," including statements appearing on Defendants' websites, that deny or obscure the fact that Defendants, as sellers of hotel rooms, are responsible under the laws of many, if not most, jurisdictions for collecting applicable sales taxes based on the retail selling prices charged by Defendants.

15. When selling hotel rooms in the District of Columbia to website customers, Defendants have been required, as "vendors," to pay District sales taxes "for the privilege of selling . . . services" that are included within the statutory definition of "retail sale" and "sale at retail." D.C. Official Code § 47-2002(2) and § 47-2002.02(1). This statutory definition includes

“[t]he sale or charge for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.” D.C. Official Code § 47-2001(n)(1)(C).

16. District law imposes sales taxes totaling 14.5% on Defendants’ “gross receipts” from selling these hotel rooms to website customers. These sales taxes include (i) a 10.05% sales tax on “the gross receipts from the sale of or charges for any room or rooms, lodgings, or accommodations furnished to a transient by any hotel [or] other place in which rooms, lodgings, or accommodations are regularly furnished to transients,” D.C. Official Code § 47-2002(2); and (ii) a “separate” 4.45% sales tax on “the gross receipts for the sale or charges for any room or rooms, lodgings, or accommodations furnished to a transient by any hotel [or] other place in which rooms, lodgings, or accommodations are regularly furnished to transients,” D.C. Official Code § 47-2002.02(1).

17. For purposes of calculating these sales taxes, Defendants’ “gross receipts” from selling these hotel rooms to website customers are equal to “the total amount of the sales prices of the retail sales.” D.C. Official Code § 47-2001(h).

18. District law requires that these sales taxes be “stated and charged” to Defendants’ website customers “separately from the sales price[s]” for the hotel rooms. D.C. Official Code § 47-2009. However, when selling these hotel rooms to website customers, Defendants have not presented the customers with separate charges for these sales taxes.

19. Defendants have not made any payments directly to the District to cover these sales taxes, even though District law requires Defendants to make monthly payments to the District of any sales taxes due. D.C. Official Code §§ 47-2015(a) and 47-2016(b). The only

portions of these sales taxes that Defendants have paid have been the portions that Defendants have paid to hotels, based on the discounted wholesale prices paid by Defendants.

20. The sales taxes that District law imposes on Defendants as vendors of these hotel rooms are based on the retail prices charged by Defendants. However, as a result of Defendants' practices, the sales tax payments received by the District for sales of these hotel rooms have been based on the discounted wholesale prices paid by Defendants.

21. District law requires that Defendants file monthly returns with the District showing their "gross receipts" from their sales of these hotel rooms and their resulting sales tax liabilities. D.C. Official Code § 47-2015(a). However, Defendants have not filed these required monthly returns.

22. District law requires that Defendants file annual returns with the District for the tax years in which they have been required to pay sales taxes based on their gross receipts from their sales of these hotel rooms. D.C. Official Code § 47-2017. However, Defendants have not filed these required annual returns.

23. As a result of Defendants' failures to file monthly and annual returns showing their sales tax liabilities from their sales of these hotel rooms, as well as their failures to state and charge sales taxes separately from sale prices, the District does not have the information required to accurately determine the amounts that Defendants owe the District for sales taxes imposed by District law. On information and belief, Defendants collectively owe the District tens of millions of dollars, plus interest, for unpaid sales taxes since 1998.

**Count I**

(Failure to Pay Taxes Due)

24. The District repeats and realleges Paragraphs 1 through 23 as if set forth fully in this paragraph.

25. Defendants have failed to pay sales taxes due, in violation of D.C. Official Code § 47-2016.

**Count II**

(Tax Penalties)

26. The District repeats and realleges Paragraphs 1 through 25 as if set forth fully in this paragraph.

27. Defendants have failed to make reasonable attempts to comply with the District's sales tax law and have taken affirmative positions with respect to the District's sales tax law that have lacked a reasonable basis.

28. Defendants' failures to pay sales taxes due have been attributable either to negligence, as defined by D.C. Official Code § 47-4211(a), or to fraud, as defined by D.C. Official Code § 47-4212(d), depending on whether fraud "is indicated" within the meaning of D.C. Official Code § 47-4212(d).

**Count III**

(Failure to File Monthly Returns)

29. The District repeats and realleges Paragraphs 1 through 28 as if set forth fully in this paragraph.

30. Defendants have failed to file required monthly returns, in violation of D.C. Official Code § 47-2015.



**Count IV**

(Failure to File Annual Returns)

31. The District repeats and realleges Paragraphs 1 through 30 as if set forth fully in this paragraph.

32. Defendants have failed to file required annual returns, in violation of D.C. Official Code § 47-2017.

**Count V**

(Failure to State Tax Separately)

33. The District repeats and realleges Paragraphs 1 through 32 as if set forth fully in this paragraph.

34. Defendants have failed to state and charge sales taxes separately from sales prices, in violation of D.C. Official Code § 47-2009.

**Prayer for Relief**

WHEREFORE, the District requests that this Court:

- a. Declare that each Defendant is required by District law to collect and remit sales taxes based on the retail prices that the Defendant charges website customers for hotel rooms in the District of Columbia;
- b. Order each Defendant to produce all books, records, or other data needed to determine each Defendant's unpaid sales tax liability;
- c. Order each Defendant to make a full accounting of (i) its gross receipts from sales of hotel rooms in the District of Columbia and (ii) its payments of sales tax charges;
- d. Order each Defendant to cooperate with discovery for the purpose of ascertaining whether the Defendant's failure to pay sales tax due is attributable to fraud;

e. Enter judgment for the District and against Defendants in amounts equal to each Defendant's unpaid sales tax liability to the District, plus (i) amounts to be added pursuant to D.C. Official Code §§ 47-4211 and 47-4212 based on each Defendant's negligence or fraud, (ii) amounts to be added pursuant to D.C. Official Code § 47-4213 for each Defendant's failure to file returns, and (iii) interest on each Defendant's underpayments pursuant D.C. Official Code § 47-4201.


f. Permanently enjoin each Defendant from failing to state and charge sales taxes separately from sales prices, in violation of D.C. Official Code § 47-2009.

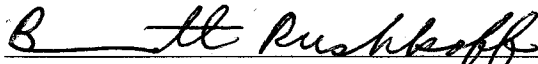
g. Order such other relief as the Court determines to be just and proper.

Respectfully submitted,

IRVIN B. NATHAN  
Acting Attorney General for the  
District of Columbia

GEORGE C. VALENTINE  
Deputy Attorney General  
Civil Litigation Division

  
ELLEN A. EFBOS (Bar #250746)  
Assistant Deputy Attorney General  
Civil Litigation Division

  
BENNETT RUSHKOFF (Bar #386925)  
Chief, Public Advocacy Section  
JIMMY R. ROCK (Bar #493521)  
Assistant Attorney General  
Office of the Attorney General  
441 Fourth Street, N.W., Suite 600-S  
Washington, DC 20001  
(202) 727-5173  
[bennett.rushkoff@dc.gov](mailto:bennett.rushkoff@dc.gov)

Date: March 22, 2011

Attorneys for the District of Columbia