



# Jurisdictional Issues with Virtual Tour Ops and OTAs

# Presenters



- Prof. Dr. Vogel
- Partner with Beiten Burkhardt
- Teaches Travel and Tourism Law at the IUBH Bad Honnef
- Counsel of the German Internet Travel Association

# Definitions

- (Virtual) Tour Operator
- Intermediary
- Package Travel
- EU-Package Travel Directive
- Rome Regulations
- Conflict of laws

# What is the problem



- By now an old saying:
- The Web changed things
- Bookings beyond borders are possible

# Some trends



- The market is less clear
- Consumer expectations in travel law are shifting
- Access to inventory is easier and faster

# Some general rules



- Basic rule for conflict of laws in contracts: the contract is governed by the law at the seat of party that renders the characteristic performance
- Very simple principle
- Unless – within EU – the other party is a consumer: that trumps all- if the offer of the company is directed towards the country of the consumer

# Some general rules



- Problems are caused, if systems fail to match
  - EU Intermediary sells ex EU packages – liability
  - Can customer force a company into a contract?

# Recent cases

- Mr. Pammer
  - Booked a trip aboard a freight ship
  - Mr Pammer: an Austrian citizen
  - Booked the trip through a German intermediary
  - The freight ship is run by Schlüter, a German company
  - Due to discrepancies in description and reality, Pammer rescinds the contract and requests repayment



# Pammer



- Schlüter pays back part and finds itself at an Austrian court

# Pammer

- What is Schlüters argument?
  - No Package Travel
  - He never did anything in Austria
- Court
  - Package Travel it is, a consumer contract it is, and the intermediary advertised through the website that was reachable in Austria
- Appeals Court:
  - No...not a Package

# Pammer

- Federal Court
  - Who knows: the ECJ!
  - Is a freight ship trip package travel?
  - Is a website enough to establish jurisdiction?

# Heller

- Mr Heller, a German citizen, found the Austrian hotel Alpenhof on the web and booked several rooms
- Booking and confirmation through exchange of emails; hotels email was on website
- Mr Heller was unhappy with the the service provided and, despite being offered a reduction, left without payment

# Heller



- Alpenhof sues Heller in Austria, for payment.
- Heller`s argument: he is a consumer, thus only the German courts are competent

# Heller

- What did the courts say?
- Heller is right...but still: let`s ask the ECJ to be sure

- Freight ship trips are package travel
  - Consequence:
  - Operator must provide bond for travel price
  - Operator must deal with claims for defects and the whole mandatory EU package travel regime

# ECJ

- What does „directed“ mean – what is required
- ECJ: directed means that the company has to establish prior to the contract that it wishes to enter into contracts with consumers residing in other countries



- How to decide this question?
  - Some indications on a website:
    - Int`l character of the business
    - Travel direction from third countries
    - Use of foreign languages on a website
    - International phone numbers listed
    - SEO/SEM for third markets
    - Use of top level domain different from own ccTLD
    - Mentioning int`l customers

- Not sufficient:
  - Mere accessibility of website
- Not required:
  - Lockout (potentially a violation of EU laws)
  - Explicit declarations

# Other current issues



- Liability of the Virtual Tour Operator
  - Caught between airline rules and package travel laws
  - Risk of liability for hotels
- Differentiation between TO-TA
  - Cross-sell
    - ECJ: Cross sell on one website does not lead to TO
    - May be different after revision of EU Package Travel laws

# Other current issues



- Liability of TA for Non-EU TO
  - Required information?
  - Governing law?