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Booking.com B.V.

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal)	Case No. 1CTX-21-0001613
)	
of	)	TAXPAYER-APPELLANT
	)	BOOKING.COM B.V.'S
Booking.com B.V.	)	MEMORANDUM IN OPPOSITION TO
	)	MOVANT PUBLIC FIRST LAW
Taxpayer-Appellant	)	CENTER'S MOTION TO UNSEAL
	)	COURT RECORDS; DECLARATION
	)	OF NATHANIEL A. HIGA; EXHIBITS
	)	"A" – "B"; CERTIFICATE OF
	)	SERVICE
)	
	)	(No trial date has been set.)
)	
	)	Judge: The Honorable Kevin T. Morikone
)	
)	

**TAXPAYER-APPELLANT BOOKING.COM B.V.’S
MEMORANDUM IN OPPOSITION TO MOVANT
PUBLIC FIRST LAW CENTER’S MOTION TO UNSEAL COURT RECORDS**

Taxpayer-Appellant, BOOKING.COM B.V. (“**Taxpayer**”), asks the Court to deny Public First Law Center’s (the “**Movant**”) Motion to Unseal Court Records (the “**Motion**”) filed herein on September 18, 2024.

I. INTRODUCTION

The Movant seeks the unsealing of certain documents on the sole basis that the Stipulated Protective Order (the “**SPO**”) – entered into between Taxpayer and Appellee DIRECTOR OF TAXATION, STATE OF HAWAII (the “**Director**”), and approved and ordered by this Court on January 4, 2023 [Dkt. 88] – “is not sufficient grounds to override the public’s constitutional and common law rights to access court records”. Motion at p. 1. However, in so seeking, the Movant ignores two realities that show its request must be denied.

First, certain sealed documents contained in filings by both Taxpayer and the Director (collectively referred to herein as the “**Subject Records**”) were designated as “Confidential” by Taxpayer pursuant to the terms of the SPO, which narrowly defined “Confidential Information” and “Confidential Material” in a manner that complies with the substantive legal standard for confidentiality and nondisclosure. SPO, attached hereto as Exhibit “A”, at p. 3, ¶ 2. The Director did not challenge those designations, as he could have under the terms of the SPO if he believed the designations were improper or overbroad. As such, the fact that the Subject Records were designated as “Confidential” (based on the legal criteria for confidentiality) itself establishes that there is a compelling interest in their nondisclosure to the public. This is especially true because the SPO expressly requires all material designated “Confidential” to be filed under seal, and

provides that no further order of this Court is required to permit the filing of material designated as “Confidential” under seal. Exhibit “A”, at ¶ 7.

Second, the Parties did not file the Subject Records under seal in a vacuum, but rather in keeping with the longtime practice in Tax Appeal Court of utilizing SPOs to efficiently litigate and resolve tax appeals between taxpayers and the Director, and in reliance on this Court’s approval and entry of the SPO, which expressly provided that such filings under seal could be done without further order of this Court. Accordingly, the Motion should be denied.

Moreover, even if the Court determines that the SPO negotiated by the parties in good faith and at arm’s length and entered by the Court in this case is “not sufficient” as argued in the Motion, the Court’s order should be limited to vacating the SPO and allowing Taxpayer and the Director to cure any defect therein. In light of the fact that Taxpayer relied in good faith on an order of the Court in filing the Subject Records under seal, Taxpayer should be afforded an opportunity to maintain protection of its confidential business records through a separate motion to seal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Stipulated Protective Order

On December 28, 2022 – following weeks of negotiations with counsel for the Director – Taxpayer and the Director jointly filed their proposed SPO. [Dkt. 86] A week later and after due consideration by the Honorable Gary W.B. Chang (Ret.), this Court entered the SPO without revisions to the terms outlined by Taxpayer and the Director therein. See generally, Exhibit “A”.

Pursuant to the SPO, certain of Taxpayer’s

materials, items, testimony, and/or information may contain or be comprised of information that is confidential, commercially sensitive, subject to protection under Hawaii law, including the Hawaii Uniform Trade Secrets Act; confidential pursuant to contract or agreement; or otherwise deserving of protection from public

disclosure and/or is nonpublic information (the “Confidential Information”).

Id., at p. 3. Moreover, the Confidential Information could include

Confidential commercial and/or proprietary business information of [Taxpayer] including but not limited to, financial records; contracts and contract negotiation; documents relating to business operations, commissions, finances, sales, marketing and/or strategic planning.

Id. The SPO permits Taxpayer to designate any “document[], material[], item[], testimony, and/or information, or portion thereof” produced in discovery as “Confidential” when it “in good faith believe[]s that the information therein is or contains Confidential Information.” Id., at ¶ 1. Such designated “Confidential” information or material(s), “or extracts therefrom or compilations or summaries thereof”, fall within the definition “Confidential Material”. Id., at ¶ 2. The SPO provides the Director with the opportunity to challenge any designation of material as “Confidential,” and specifies the timing and process for any such challenge. Id., at ¶ 8.

Additionally, pursuant to the SPO, if either Taxpayer or the Director “intends to attach or include any Confidential Material in any pleading, motion, memorandum, or other document filed in the Action, the party shall make such filing under seal.” Id., at ¶ 7. Either party could take this step with “[n]o further order of this Court”. Id.

B. The Documents Sought by Movant to be Unsealed in Its Motion

On September 18, 2024, the Movant filed the present Motion, asking that this Court unseal the Subject Records which range in dates from March 2023 to April 2024 as follows:

1. The Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment [Dkt. 108], including Exhibits A [Dkt. 109] and B [Dkt. 110, 111] thereto, filed on March 28, 2023 (the “**Director’s 2nd Supp Memo in Opp Records**”);

2. Taxpayer’s Memorandum in Opposition to the Director’s Cross Motion for Partial Summary Judgment [Dkt. 166], including Exhibit 2 [Dkt. 167], filed March 8, 2024 (“**Taxpayer’s Memo in Opp Records**”)¹;
3. The Director’s Reply in Support of Its Cross Motion for Partial Summary Judgment [Dkt. 183], including the declaration of Deputy Attorney General Mary Bahng Yokota [Dkt. 186] and Exhibits 12 [Dkt. 187] and 13 [Dkt. 188], filed on March 13, 2024 (the “**Director’s Reply Records**”)²;
4. The Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment [Dkt. 202], including Exhibits 18 to 29 [Dkt. 203-208, 210-215], filed on April 5, 2024 (the “**Director’s Supp Memo Records**”)³;
5. Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum [Dkt. 224-225], filed on April 17, 2024 (“**Taxpayer’s Supp Memo Records**”); and
6. The Director’s Supplemental Reply Memorandum in Response to Taxpayer’s Supplemental Memorandum [Dkt. 228], filed on April 26, 2024 (the “**Director’s Supp Reply Memo Records**”).

As discussed more fully in Section III.A *infra*, all of these documents contain Confidential Material, either in whole or in part, as defined on page 3 and in paragraph 2 of the SPO and were marked as “Confidential” in good faith and in reliance on the SPO. Declaration of Nathaniel A. Higa, dated November 15, 2024 (“**Higa Decl.**”), at ¶¶ 4-8.

¹ Exhibits 1 and 3 to 8 were not filed under seal. [Dkt. 168]

² The Declaration of Randy Rivera and Exhibits 14 to 17 were not filed under seal. [Dkt. 184, 189-192]

³ Exhibits 30 to 34 were not filed under seal. [Dkt. 216-220]

III. LEGAL ARGUMENT

A. **The Confidential Material Contained in the Subject Records Were Properly Designated as “Confidential” and Should Remain Sealed**

None of the Subject Records should be unsealed because they were properly designated as “Confidential” pursuant to the terms of the SPO⁴ and in compliance with the legal authority justifying their confidential nature. While there is a strong presumption in favor of the public’s right to access judicial records, the public’s “right of access ... is not absolute and can be overridden given sufficiently compelling reasons for doing so.” See, OAHU Publs., Inc. v. Ahn, 133 Haw. 482, 496, 331 P.3d 460, 474 (2014), quoting Globe Newspaper Co. v. Superior Court for Norfolk Cty., 457 U.S. 596, 606, 102 S.Ct. 2613 (1982) (“the public’s constitutional right of access ... is not absolute”); Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 598 (1978) (“[T]he right to inspect and copy judicial records is not absolute.”).

The SPO provides that material be designated “Confidential” only where Taxpayer “in good faith believe[s]” that the information contained therein is “confidential, commercially sensitive, ... confidential pursuant to contract or agreement ... and/or is nonpublic information.” Exhibit “A”, at p. 3. Furthermore, the SPO outlines the narrowly tailored documents that fall within the definition of “Confidential Information”, specifically “...confidential commercial and/or proprietary business information ... including ... financial records; contracts and contract negotiation; [and] documents relating to business operations, commissions, finances, sales, marketing and/or strategic planning.” Id. These definitions align with the scope of protection provided under Hawaii and Ninth Circuit law.⁵ Thus, the SPO contemplates providing protection

⁴ Dkt. 223 was inadvertently filed under seal and should not have been as it was a “Fly Sheet”. Higa Decl. at ¶ 10.

⁵ Among compelling reasons that justify sealing judicial records is the improper use of court files to “release trade secrets” (Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1179 (9th Cir.

for only the narrow class of material that is protected under Hawaii law. Accordingly, the SPO does not operate to keep documents private that otherwise would be subject to public view under Hawaii law. Rather, the SPO merely streamlines the process of keeping qualified information confidential such that Taxpayer's appeal could proceed efficiently before this Court.

Here, all of the Subject Records contain material that was designated "Confidential" in accord with the SPO, and which fall within the scope of documents that are confidential and not open to public disclosure. Higa Decl. at ¶¶ 8-9. Taxpayer's financial records, business model documentation, commercial contracts⁶ and accommodation provider private contact information – all of which are contained in the Subject Records – fall squarely within the purview of trade secrets⁷ and/or business information⁸ that enjoy the protection of confidentiality. These records were properly sealed pursuant to the SPO, including meeting the definitions of Confidential Information and Confidential Material and comporting with the legal authority underlying

2006)) or "sources of business information that might harm a litigant's competitive standing" (Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1097 (2016)).

⁶ The Ninth Circuit has recognized that confidential business information contained in a party's commercial contracts is sufficient to meet the compelling reasons standard. See e.g., In re Elec. Arts, Inc., 298 F. App'x 568, 569 (9th Cir. 2008) (threatened disclosure of "pricing terms, royalty rates and guaranteed minimum payment terms" in licensing agreement satisfied the "compelling reasons" standard necessary to seal records).

⁷ A trade secret is "information, including a formula, pattern, compilation, program device, method, technique, or process that: (1) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that area reasonable under the circumstances to maintain its secrecy." Haw. Rev. Stat. § 482B-2; see also, In re Elec. Arts, 298 F. App'x at 569 (trade secrets consist of "any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.").

⁸ Courts "routinely permit the sealing of records containing business information which competitors could potentially misuse if disclosed." McCurley v. Royal Seas Cruises, Inc., 2018 WL 3629945, at *1 (S.D. Cal. July 31, 2018).

confidentiality and nondisclosure of records, and should remain sealed. Simply, Taxpayer judiciously designated material “Confidential” in accord with the terms of the SPO approved and ordered by this Court and pursuant to the legal definitions of confidential documents that can remain outside the view of the public. Accordingly, the Motion should be denied.

B. Taxpayer Reasonably Relied on the Court’s Entry of the SPO When It Designated Documents as “Confidential” That Were Later Sealed

Movant takes issue with the fact that the Subject Records were sealed pursuant to the SPO, a document whose terms were carefully negotiated between Taxpayer and the Director and entered by this Court after due consideration of its terms. Contrary to Movant’s assertions, Taxpayer’s designation of the Subject Records as “Confidential”, warranting sealing under the SPO as Confidential Material, was not “self-serving” or to “preserv[e] the comfort or official reputation[]” of Taxpayer. Motion at pp. 6-7. Rather, making these “Confidential” designations, which lead to the need to seal the Subject Records, was done in good faith and in reasonable reliance on the Court’s entry of the SPO, after analysis of the confidential nature of the Subject Records, and because Taxpayer had a compelling interest in protecting the same from disclosure to the public. See, Section III.A. *supra*. Given this reality, it is not surprising that the Director did not challenge any of Taxpayer’s “Confidential” designations as being improper.⁹ The judiciousness of the designations is further evidenced by the fact that much of the docket in this case has not been sealed, including certain documents relating to and filed with the Subject Records. See e.g., Dkt. 168, 184, 189-192, 216-220. The Subject Records themselves indicate the needs for protection,

⁹ It bears noting that this matter, as is the case with all tax appeals, is not between private parties. The Director, a government employee and representative of the State of Hawaii, is the opposing party in this appeal. The Director had every opportunity to object to any of Taxpayer’s designations of documents as “Confidential” or to object to the sealing of the same. As such, any concerns that the parties to the case made self-serving agreements as to confidentiality are unfounded.

as they are of the type that require sealing and nondisclosure to the public, and which were properly and narrowly defined in the SPO as Confidential Material. See, Section III.A *supra*.

Moreover, an SPO in a tax appeal is common-place, including provisions permitting the sealing of specific documents, due to the nature of a tax appeal where confidential financial and business information and documents are disclosed in discovery and ultimately included as part of motion practice.¹⁰ Taxpayer's reliance, not only on this Court's entry of the SPO without revisions or concerns regarding the parameters for sealing of documents, but on the pattern and practice of tax litigation in Hawai'i was reasonable and understandable. Additionally, SPOs permitting the sealing of narrowly defined documents promote judicial economy and efficiency that helps ensure that the Tax Appeal Court's resources are used efficiently and are not bogged down with additional motion practice. To do it otherwise would require the Tax Appeal Court to hear two motions – one to seal documents and one that include the sealed documents – which will lengthen motion practice and prolong resolution of matters to the detriment of taxpayers appealing assessments. Therefore, Movant's attacks on Taxpayer's SPO, the reasoning behind it and the sealing of the Subject Records are without merit; the Motion should be denied.

¹⁰ For example, in In the Matter of the Appeal of Priceline.com, Inc., et al., the Tax Appeal Court entered a stipulated protective order which defined "Protected Materials" as "certain documents, data, and information produced" which included "confidential, proprietary, personal and/or protected information that should not be disclosed except in a restricted fashion" ("**Priceline SPO**"). Priceline SPO, case no. T.A. No. 13-1-0269, entered June 28, 2016, attached hereto as Exhibit "B", at p. 1. The Priceline SPO provided the parties to the Priceline.com action to file under seal any such "Protected Materials" if attached to briefing and makes no reference to further action by the Tax Appeal Court in order to do so. Id., at ¶ 16. Based on review of this consolidated tax appeal's docket, no party (to the matter or otherwise) challenged the designation or sealing of "Protected Materials", including up through the appeal to the Hawaii Supreme Court. Higa Decl. at ¶¶ 11-13. This is true even though the Priceline SPO is much broader in its categorization and definition of "Protected Materials" than that for the Confidential Material in the present matter's SPO.

Finally, to the extent this Court disagrees with Taxpayer’s position herein and determines that the SPO is impaired or otherwise invalid, the Motion should be treated as a motion to vacate the SPO only. Due to Taxpayer’s reliance on the SPO, Taxpayer respectfully requests a delay in implementing any potential unsealing of the Subject Records so that the Court can rule upon Taxpayer’s forthcoming motion to seal. See, Roy v. Gov’t Empls. Ins. Co., 152 Haw. 225, 235, 524 P.3d 1249, 1259 (2023) (holding that the Circuit Court “did not err in ordering the case file unsealed and delaying implementation of the unsealing for a period of time, thereby allowing GEICO to file a motion to reseal specific portions of the record.”). A reasonable delay would provide the Court with the opportunity to review and rule upon Taxpayer’s motion to seal which will outline in detail the reasoning behind the need to reseal and/or provide proposed redactions for each of the Subject Records. Higa Decl. at ¶ 14. A motion to seal by Taxpayer would allow the Court to review the substantive issue of the confidentiality of the Subject Records, as the pending Motion is based entirely on an attack on the validity of the SPO. Taxpayer is, in an abundance of caution and to ensure that Taxpayer’s commercially sensitive, confidential information is not made public, filing a motion to seal notwithstanding the SPO. Id. at ¶ 15.

IV. CONCLUSION

For the foregoing reasons, Taxpayer respectfully requests that this Court deny the Motion and keep the Subject Records sealed.

DATED: Honolulu, Hawaii, November 15, 2024.

/s/ Michelle K. Correia
NATHANIEL A. HIGA
MICHELLE K. CORREIA

of CHUN KERR LLP
a Limited Liability Law Partnership
and
DANIEL M. RYGORSKY
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IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal)	Case No. 1CTX-21-0001613
)	
of)	DECLARATION OF NATHANIEL A.
)	HIGA
Booking.com B.V.)	
)	
Taxpayer-Appellant)	
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DECLARATION OF NATHANIEL A. HIGA

1. I am NATHANIEL A. HIGA, a partner in the law firm of Chun Kerr LLP, a Limited Liability Law Partnership, one of the counsel for Taxpayer-Appellant, Booking.com B.V. (“**Taxpayer**”) in the above-captioned action. I am duly licensed to practice law before this Court, and I make this declaration based on personal knowledge.

2. I am fully familiar with the facts of this matter. In connection with my representation, I have reviewed the pertinent documents, including all of the exhibits attached hereto.

3. Unless indicated otherwise, all terms herein have the same meaning as set forth in the instant memorandum in opposition.

4. From approximately January 2022 through December 2022, I participated in drafting the subject SPO. During this time, I negotiated in good faith and at arm’s length with counsel for the Director to finalize the terms of the SPO.

5. Once the terms of the SPO were finalized, on December 28, 2022 and with approval from counsel for the Director, I caused my office to file the proposed SPO [Dkt.86] via the Hawaii Judiciary Electronic Filing and Service System (“**JEFS**”). See, [Dkt. 86].

6. On January 4, 2023, the SPO was entered by the Honorable Gary W.B. Chang (Ret.) [Dkt. 88], and I received notice of said entry via JEFS. For the Court's convenience, a true copy of the SPO is attached hereto as Exhibit "A".

7. During the course of my representation of Taxpayer, I prepared or assisted in the preparation of various memoranda, including the Taxpayer's Memo in Opp Records [Dkt. 166, 167] and Taxpayer's Supplemental Memo Records [Dkt. 224-225], which Movant is seeking to unseal.

8. In preparing these memoranda, it was determined that certain records contained either Confidential Information or Confidential Material as defined in the SPO. The Subject Records were designated "Confidential" in good faith and in reliance on the SPO and, therefore, filed under seal. The Subject Records include Confidential Information and/or Confidential Material such as Taxpayer's financial records, business model documentation, commercial contracts and accommodation provider private contact information that should not be available for public disclosure.

9. During the course of my representation of Taxpayer, I have reviewed the Director's various filings including the Director's 2nd Supp Memo in Opp Records [Dkt. 108-111], Director's Reply Records [Dkt. 186-188], Director's Supp Memo Records [Dkt. 203, 208, 210-215], and Director's Supp Reply Memo Records [Dkt. 228], which Movant is seeking to unseal. After review, certain of the records fall within the definition of Confidential Information and/or Confidential Material as set forth in the SPO and should remain sealed.

10. On April 17, 2024, my office inadvertently filed Dkt. 223 under seal. This document is a "Fly Sheet" related to Taxpayer's Supp Memo Records and does not contain Confidential Information and/or Confidential Material as defined in the SPO.

11. In September 2024, I instructed my office to research and obtain dockets and stipulated protective order(s) related to the Priceline.com action, which was obtained via our firm's document subscription to JEFS.

12. Based on review of the dockets and stipulated protective order, and to the best of my knowledge, no party challenged the designation or sealing of "Protected Material", as defined in the Priceline SPO.

13. Attached hereto as Exhibit "B" is a true copy of the Priceline SPO, which my office obtained via our firm's document subscription to JEFS.

14. In the event the Court disagrees with the Taxpayer's position herein, I respectfully request a reasonable delay in any potential unsealing of the Subject Records, so that the Court can rule upon Taxpayer's forthcoming motion to seal. A reasonable delay would provide the Court with the opportunity to review and rule upon Taxpayer's motion to seal which will outline in detail the reasoning behind the need to reseal and/or provide proposed redactions for each of the Subject Records.

15. In order to ensure that Taxpayer's commercially sensitive, confidential information is not made public, Taxpayer will be filing a motion to seal notwithstanding the SPO.

I, Nathaniel A. Higa, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, November 15, 2024.

/s/ Nathaniel A. Higa
NATHANIEL A. HIGA

CHUN KERR LLP
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Attorneys for Taxpayer-Appellant
Booking.com B.V.

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal) CASE NO. 1CTX-21-0001613
)
of) STIPULATED PROTECTIVE ORDER;
) EXHIBIT A
Booking.com B.V.)
)
Taxpayer-Appellant.)
)
) JUDGE: Honorable Gary W.B. Chang
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STIPULATED PROTECTIVE ORDER

WHEREAS the Appellee Director of Taxation, State of Hawaii (“the Director”) has requested and may request the production of documents, materials, items, testimony, and/or information from Taxpayer-Appellant Booking.com B.V., a Netherlands corporation (“Booking.com”);

WHEREAS, some of Booking.com's materials, items, testimony, and/or information may contain or be comprised of information that is confidential, commercially sensitive, subject to protection under Hawaii law, including the Hawaii Uniform Trade Secrets Act; confidential pursuant to contract or agreement; or otherwise deserving of protection from public disclosure and/or is nonpublic information ("the Confidential Information");

WHEREAS, the Confidential Information may include, but is not limited to: confidential commercial and/or proprietary business information of Booking.com including but not limited to financial records; contracts and contract negotiation; documents relating to business operations, commissions, finances, sales, marketing and/or strategic planning.

WHEREAS the Director and Booking.com intend that this Stipulated Protective Order shall govern the production of Confidential Information in the above captioned case (collectively "the Action").

THEREFORE, pursuant to Hawaii Rules of Civil Procedure Rule 29, the Director and Booking.com hereby stipulate and agree to entry of the following Stipulated Protective Order:

1. Any documents, materials, items, testimony, and/or information, or portion thereof, produced by Booking.com as part of discovery in the above-captioned Action may be designated by Booking.com as "Confidential," under the terms of this Stipulated Protective Order, where Booking.com in good faith believe that the information therein is or contains Confidential Information.

2. Information or material(s) designated as "Confidential," or extracts therefrom or compilations or summaries thereof (hereinafter "Confidential Material"), shall be used, disclosed, summarized, described, characterized, or otherwise communicated or made

available in whole or in part only to counsel and their support staff for the receiving party, except as otherwise provided hereinafter, solely in connection with the Action, and not for any other purpose, including without limitation, any business or competitive or regulatory purpose or function.

3. In no instance shall counsel for the receiving party allow any third party to see or possess any copy of any of the Confidential Material, or inform any third party of any of the information contained therein, unless (a) the third party first acknowledges and agrees to be bound by this Stipulated Protective Order by signing the acknowledgment form attached hereto as *Exhibit A* (an executed copy of which shall be provided to counsel for the producing party); or (b) so ordered by the Court herein. Any person receiving such items shall not disclose the Confidential Material therein to any person who is not entitled to such information and shall not retain copies thereof, or extracts therefrom or compilations or summaries thereof.

4. The designation of documents, materials, items, testimony, and/or information, or portion thereof, as “Confidential” for purposes of this Stipulated Protective Order shall be made in the following manner by the party seeking protection:

a. In the case of documents, exhibits, briefs, memoranda, interrogatory responses, responses to requests for admission, or other materials (apart from deposition or hearing testimony): by affixing the legend “CONFIDENTIAL - SUBJECT TO STIPULATED PROTECTIVE ORDER” to each page containing any Confidential Material, at the time such item is produced or disclosed, or within ten (10) days of production or disclosure of such item in the event the party seeking protection becomes aware of the confidential nature of the item subsequent to the date the item was disclosed or produced; in no event shall the confidentiality legend interfere with the legibility of information contained in an item.

b. In the case of deposition or hearing testimony, by written notice of such designation sent by counsel to all parties within ten (10) days after the delivery to counsel of the transcript of the deposition or hearing. However, during a deposition or hearing, the deponent or his or her counsel, or any other counsel of record present, may invoke the provisions of this Stipulated Protective Order in a timely manner, giving adequate warning to counsel for the party or parties that testimony about to be given or just given is deemed “Confidential.” The court reporter shall mark the cover of the original and all copies of the transcript or the portion of the transcript containing testimony designated as “Confidential-Subject to Stipulated Protective Order” as requested by the designating party, and it shall be treated in accordance with the terms of this Stipulated Protective Order. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding, or otherwise by written stipulation, without further order by this Court. The invoking of this provision may require exclusion of certain persons from the deposition or hearing as appropriate.

5. Any person who is a party to the above-captioned action intends to examine as a witness -- being identified in the party’s respective pre-trial statement and/or disclosure of lay witnesses -- shall have access to Confidential Material or the person may be examined, at hearing or deposition, concerning such Confidential Material under the following circumstances:

a. Any person may be examined as a witness, at hearing or deposition, concerning Confidential Material which that person had lawfully received or authored prior to and apart from the Action. During examination, any such witness may be shown Confidential Material if it appears on its face, or from other documents or testimony, to have been received, authored, or communicated to such person during the relevant time frame.

b. Any witness or potential witness may have access to Confidential Material after executing the acknowledgment form attached hereto as *Exhibit A*.

6. This Stipulated Protective Order has no effect upon, and shall not apply to, a party's use or disclosure of its own Confidential Material for any purpose.

7. If a party intends to attach or include any Confidential Material in any pleading, motion, memorandum, or other document filed in the Action, the party shall make such filing under seal. No further order of this Court will be required to permit the filing of any of the Confidential Material or any pleading, motion, memorandum, or other document filed in the Action under seal.

8. Any party objecting to another party's designation of particular information or documents as Confidential Material may move the Court for relief from such designation, subject to the following conditions:

a. Before seeking any relief from the Court under this paragraph, the Parties shall make a good faith effort to resolve any dispute concerning the confidential treatment of any document or portion thereof; and

b. In the event that a motion or application is filed under this paragraph following a good faith meet and confer, the Confidential Material in question shall remain subject to this Stipulated Protective Order until the Court rules on the motion or application.

9. If a party inadvertently produces documents, materials, or information containing Confidential Information not marked as such in accordance with this Stipulated Protective Order, the failure to so mark the documents, materials, or information shall not be deemed to waive its confidentiality. In such an event, the producing party shall promptly, upon

discovery of such inadvertent disclosure, inform the receiving party in writing and the receiving party shall thereafter treat the documents, materials, or information as confidential under this Stipulated Protective Order. To the extent such documents, materials, or information may have been disclosed to persons other than authorized persons described in this Stipulated Protective Order, the receiving party shall make every reasonable effort to retrieve the documents, materials, or information promptly from such persons and to limit any further disclosure to non-authorized persons.

10. If a producing party inadvertently discloses to a receiving party information that is privileged or otherwise immune from discovery, said producing party shall promptly upon discovery of such inadvertent disclosure so advise the receiving party in writing and request that the items or information be returned. It is further agreed that the receiving party will return such inadvertently produced items or information and all copies thereof within ten (10) business days or the earliest of: (a) discovery by the receiving party of its inadvertent production, or (b) receipt of a written request for the return of such items or information.

11. The parties agree and understand that if a party inadvertently produces documents, materials, or information statutorily protected from disclosure, such production shall not in any way constitute a waiver of said statutory protection of the produced documents, materials, or information and/or any non-produced documents, materials, or information.

12. The terms of this Stipulated Protective Order shall apply to all manner and means of discovery, including without limitation entry onto land or premises, and inspection of books, records, documents, and tangible things.

13. This Stipulated Protective Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any party or person, nor obligate any party or person to provide any discovery to which it asserts objections.

14. Each of the parties hereto shall be entitled, for good cause, to seek modification of this Stipulated Protective Order, provided, however, that any such modification shall only be permitted in writing and ordered by this Court after a hearing requesting such modification, or by stipulation executed by both parties.

15. The provisions of this Stipulated Protective Order shall, absent further order of this Court, or by stipulation executed by both parties, continue to be binding until ninety (90) days after the final disposition of this Action. Final disposition shall be deemed to be the later of: (a) dismissal of all the claims and defenses in this Action, with or without prejudice; or (b) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials or any proceedings arising therefrom. Within ninety (90) days after final disposition, all persons having received Confidential Material or documents containing Confidential Material hereunder shall either:

a. return such items, including without limitation all copies thereof as well as any extracts, compilations, summaries, or excerpts thereof, to counsel for the producing party at that party's expense; or

b. destroy such items, including without limitation all copies thereof as well as any extracts, compilations, summaries or excerpts thereof and certify in writing that all such copies have been destroyed.

To the extent that any copy of any of the Confidential Material or documents containing Confidential Material has handwritten or other notations made by counsel, that copy

may be destroyed rather than returned to counsel for the producing party; counsel so destroying any such copies shall certify in writing that all such copies have been destroyed. The above notwithstanding, counsel of record shall be entitled to retain documents filed in the Action, deposition and hearing transcripts, and attorney work product.

16. Nothing herein shall be deemed to be an admission regarding the admissibility into evidence, or lack thereof, of any of the Confidential Material.

17. Nothing herein shall be deemed to affect in any way the production, objection to production, or admissibility into evidence of any other documents requested in discovery in the Action, unless specifically and expressly agreed to herein.

18. Any enforcement of the Stipulated Protective Order shall be the basis for awarding sanctions and reasonable attorneys' fees and costs as this Court shall deem proper. In the event that such a motion for sanctions or other relief against a receiving party is filed, a party may defend against the request for sanctions by challenging whether the information in question was properly designated as confidential, which challenge shall be treated in the same manner as an objection to such designation under Paragraph 8 of this Stipulated Protective Order.

19. Each party acknowledges that a breach of this Stipulated Protective Order may cause irreparable damage to Booking.com for which monetary damages would not be an adequate remedy and agrees that the non-breaching Party will be entitled to see injunctive relief under this Stipulated Protective Order, as well as such further relief as may be granted by a court of competent jurisdiction. The rights and remedies provided to each party herein are cumulative an in addition to any other rights and remedies available to such party at law or in equity; however each party agrees to waive any requirement for securing or posting of any bond in connection with any such remedy.

20. If a party is served with a subpoena or a court order issued in another litigation that compels disclosure of any Confidential Material in this action that party must:

a. promptly notify in writing the producing party. Such notification shall include a copy of the subpoena or order;

b. promptly notify in writing the party who caused the subpoena or order to issue in another litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

c. cooperate with respect to all reasonable procedure sought to be pursued by the producing party whose Confidential Material may be affected.¹

If the producing party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Material before a determination by the court from which the subpoena or order issued, unless the party has obtained the producing party's permission. The producing party shall bear the burden and expense of seeking protection

If the producing party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Material before a determination by the court from which the subpoena or order issued, unless the party has obtained the producing party's permission. The producing party shall bear the burden and expense of seeking protection in that court of its Confidential Material - nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

¹ The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulated Protective Order and afford the producing party in this Action an opportunity to try to protect its confidentiality interest in the court from which the subpoena or order issued.

21. Nothing herein shall prevent the parties to the Action from entering into other confidentiality agreements or obtaining other protective orders by stipulation or other means.

22. This Stipulated Protective Order shall survive entry of final judgment herein unless it is set aside by written order of this Court for good cause upon notice and motion.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

DATED: Honolulu, Hawaii, December 28, 2022.

/s/ Nathaniel A. Higa

RAY K. KAMIKAWA
NATHANIEL A. HIGA
WINSTON I. WONG
of Chun Kerr LLP
a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant
BOOKING.COM B.V.

DATED: Honolulu, Hawaii, /s/ Nathan S. C. Chee

ANNE E. LOPEZ
Attorney General of Hawaii
NATHAN S. C. CHEE
JOSHUA J. MICHAELS
Deputy Attorneys General
Department of the Attorney General

Attorneys for Appellee
DIRECTOR OF TAXATION,
STATE OF HAWAII

APPROVED AND SO ORDERED:

/s/ Gary W. B. Chang



JUDGE OF THE ABOVE-ENTITLED COURT

In the Matter of the Tax Appeal of Booking.com B.V.
Case No. 1CTX-21-0001613; STIPULATED PROTECTIVE ORDER

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order (“Order”) entered in the action entitled In the Matter of the Tax Appeal of Booking.com B.V., Case No. 1CTX-21-0001613, which matter is pending in the Tax Appeal Court of the State of Hawaii.

I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I agree that unauthorized disclosure of Confidential Information constitutes contempt of Court.

I will maintain all such Confidential Information - including copies, notes, or other transcriptions made therefrom - in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information - including copies, notes or other transcriptions made therefrom - to the counsel who provided me with the Confidential Information. I hereby consent to the personal jurisdiction over me by this Court for the purposes of this litigation.

DATED: _____

NAME [Print]

NAME [Signature]

ADDRESS

EXHIBIT A

NOTICE OF ELECTRONIC FILING

**Electronically Filed
FIRST CIRCUIT
1CTX-21-0001613
04-JAN-2023
09:49 AM
Dkt. 89 NEF**

An electronic filing was submitted in Case Number 1CTX-21-0001613. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: 1CTX-21-0001613

Title: In the Matter of the Tax Appeal of Booking.com B.V.

Filing Date / Time: WEDNESDAY, JANUARY 4, 2023 09:49:54 AM

Filing Parties:

Case Type: Tax Appeal

Lead Document(s):

Supporting Document(s): 88-Stipulation to _____

Document Name: 88-STIPULATED PROTECTIVE ORDER

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:

Joshua J. Michaels (*joshua.j.michaels@hawaii.gov*)

Nathan Sau Chung Chee (*nathan.s.chee@hawaii.gov*)

Patrick K. Kelly (*patrick.k.kelly@hawaii.gov*)

Gary Shiro Sukanuma (*Gary.S.Sukanuma@hawaii.gov*)

Winston I. Wong (*wwong@chunkerr.com*)

Nathaniel Atsushi Higa (*nhiga@chunkerr.com*)

Ray K. Kamikawa (*rkamikawa@chunkerr.com*)



ORIGINAL

TAX APPEAL COURT
STATE OF HAWAII
FILED

2016 JUN 28 AM 11:18

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Attorneys for Taxpayers-Appellants

IN THE TAX APPEAL COURT

STATE OF HAWAII

In the Matter of the Appeal of

PRICELINE.COM, INC., *ET AL.*,

Appellants.

T. A. No. 13-1-0269
(Consolidated Cases):
13-1-0262 through 13-1-0270
14-1-0001 through 14-1-0010
14-1-0243 through 14-1-0251

**STIPULATED PROTECTIVE ORDER;
EXHIBIT "A"**

2016 JUN 28 AM 11:18

STIPULATED PROTECTIVE ORDER

In responding to discovery requests in these consolidated tax appeals (“Litigation”), Appellants (i) Expedia, Inc., Hotels.com, L.P., and Hotwire, Inc. (the “Expedia Group”); (ii) priceline.com Incorporated and Travelweb LLC (the “Priceline Group”); (iii) Travelocity.com, L.P., and Site59.com LLC (the “Travelocity Group”); (iv) Orbitz, LLC, Trip Network, Inc. (d/b/a Cheaptickets.com), and Internetwork Publishing Corp. (d/b/a Lodging.com) (the “Orbitz Group”) (collectively, the “OTCs”) and Appellee the DIRECTOR OF TAXATION, STATE OF HAWAII (“Appellee”) (each, a “party” and collectively, the “parties”) may produce documents, data or information that may reveal confidential, proprietary, personal and/or protected information that should not be disclosed except in a restricted fashion.

The parties agree, and the Court hereby orders, that certain documents, data, and information produced in any or all of these consolidated tax appeals (hereinafter referred to as “Protected Materials”), will be subject to the terms of this Stipulated Protective Order (hereinafter referred to as “Order”).

IT IS HEREBY STIPULATED, AGREED, AND ORDERED, that Protected Materials will be subject to the following terms and conditions:

1. Protected Materials and the information they contain shall be used exclusively for pretrial proceedings, preparation for trial, trial, appeal, private mediation, or other proceedings in this Litigation. Protected Materials and the information they contain shall not be communicated in any manner, directly or indirectly, to anyone other than a Qualified Person eligible to receive such materials under the terms of this Order.

2. Protected Materials produced in this action may be designated by any party or parties as “Confidential” or “Attorneys’ Eyes Only” (or “Outside Counsel Only”) information by marking each page of the document(s) so designated with a stamp stating “Confidential” or “Attorneys’ Eyes Only”. In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection. The designation “Attorneys’ Eyes Only” and “Outside Counsel Only” shall be used interchangeably herein and have the same meaning for the purposes of this agreement.

3. Nothing shall be designated or considered as Protected Material unless it contains information which the designating party in good faith believes needs to be protected from disclosure because it consists of:

- (a) Tax returns, information used to prepare those returns (“Return Information”), and related information furnished to the tax authorities of the United States, or furnished to any state or local taxing authority;
- (b) Trade secrets or other confidential research, development or commercial information as set forth in Haw. R. Civ. P. 26(c)(7) and/or H.R.S. Chapter 482B (the Uniform Trade Secrets Act); or
- (c) Documents which provide identifying information about individual customers or employees, including such persons’ social security numbers, credit card numbers, bank account numbers, or other information which if publicly disseminated, could facilitate identity theft or similar difficulties for such individual customers. This includes customer lists and records, including all records containing customers’ names, addresses, telephone numbers, charges incurred, customer complaints, and credit card or payment information.

4. Regardless of designation, nothing shall be regarded as “Confidential” or “Attorneys’ Eyes Only” if it is information that:

- (a) is in the public domain at the time of designation or disclosure, as evidenced by a written document;
- (b) becomes part of the public domain through no fault of the other party, as evidenced by a written document;
- (c) the receiving party can show by written document that the information was already in its rightful and lawful possession at the time of disclosure; or
- (d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

The burden of proving prior possession, prior knowledge, or prior public knowledge of such “Confidential” or “Attorneys’ Eyes Only” information shall be on the receiving party, and the receiving party may not use or disclose the information to any unauthorized persons absent a ruling by the Court permitting such use or disclosure. In addition, information shall not be deemed “Confidential” or “Attorneys’ Eyes Only” if the designating party has previously intentionally withdrawn such designation. This paragraph shall not apply to documents or information which a party contends is subject to any applicable privileges, including the attorney-client privilege and the work product doctrine, and nothing in this paragraph is intended to suggest a waiver of any claims of privilege or work product.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of the Litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as “Confidential” or “Attorneys’ Eyes Only” information by indicating on the record at the deposition that the

testimony is “Confidential” or “Attorneys’ Eyes Only” and is subject to the provisions of this Order. Any party may also designate information disclosed at such deposition as “Confidential” or “Attorneys’ Eyes Only” by notifying all of the parties in writing within thirty (30) days of receipt of the transcript of the specific pages and lines of the transcript which should be treated as “Confidential” or “Attorneys’ Eyes Only” thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as “Attorneys’ Eyes Only” for a period of thirty (30) days after the receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as “Confidential” or “Attorneys’ Eyes Only”, with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing “Confidential” and/or “Attorneys’ Eyes Only” information shall have page numbers that correspond to the blank pages in the main transcript

6. “Qualified Person” as used herein refers to:
 - (a) The OTCs, including those employees of the OTCs to the extent reasonably required to in the performance of their duties related to this Litigation;
 - (b) the attorneys (excluding in-house counsel) appearing in these actions for the parties, and personnel (excluding employees of the OTCs) who are employed by those attorneys and/or firms and are assisting the attorneys working on this action, including outside copying and document production services used by the attorneys;
 - (c) The. Attorney General, Deputy Attorneys General, Special Deputy Attorneys General and paralegal staff of the Department of

Taxation, the Hawai'i Department of the Attorney General; and authorized representatives of the State of Hawai'i, including the Director's counsel and their staff to whom it is necessary that the materials be shown for purposes of the litigation

- (d) videographers and court reporters involved in depositions in this action and their employees;
- (e) the Court and its personnel, including stenographic reporters engaged in such proceedings as are necessarily incident to the preparation or trial of this Litigation;
- (f) those witnesses or potential witnesses, if any, whose assistance is required in the preparation of this Litigation for trial and who must have access to the materials to render such assistance, subject to compliance with paragraph 9 below;
- (g) experts or consultants retained in connection with this action, subject to compliance with paragraph 9 below;
- (h) private mediators retained by the parties to mediate this matter, if any, subject to compliance with paragraph 9 below; and
- (i) such other persons as the parties shall agree to in writing, or such persons as the Court shall specifically identify by written order as Qualified Persons.

7. Each Qualified Person described in the preceding paragraph to whom Protected Materials are disclosed shall be bound by the terms of this Order, and shall not permit disclosure of the documents or the information contained therein other than pursuant to the terms of this Order. Protected Materials shall not be given to any person described in sub-paragraphs 6(f), 6(g), 6(h), or 6(i) above unless and until such person has signed an agreement to be bound by this Order, substantially in the form of Exhibit A attached hereto. The original executed agreement(s) shall be kept by the receiving party's attorneys of record.

8. Information designated as "Confidential" shall not be disclosed or made

available by the receiving party to persons other than Qualified Persons described in Paragraph 6.

9. Information designated as “Attorneys’ Eyes Only” shall be restricted in circulation to Qualified Persons described in Paragraph 6, except “Attorneys’ Eyes Only” information shall not be circulated to persons described in Paragraph 6(a). Furthermore, information designated as “Attorneys’ Eyes Only” may not, without leave of the Court, be shown to any person, including any actual or proposed witness, employed by any hotel, hotel chain or car rental company, or companies or ventures in the business of making hotel rooms or rental cars available online using the same or a substantially similar type of approach or business model as employed by any of the OTCs; provided, however, that this paragraph does not prohibit showing “Attorneys’ Eyes Only” information to any actual or proposed witness whose only relationship to one of the foregoing entities is that of a consultant in pending or contemplated litigation which is unrelated to the business of making hotel rooms or car rentals available online using the same or a substantially similar type of approach or business model as employed by any of the OTCs.

10. A party may in good faith seek appropriate action to challenge a “Confidential” or “Attorneys’ Eyes Only” designation. If a party disputes the designation of particular information as “Confidential” or “Attorneys’ Eyes Only,” that party has the burden to seek relief from the Court, and the party asserting the propriety of any designation has the burden to defend the designation. When seeking relief from the Court, the party disputing the designation of any information shall specifically identify

the particular information that it believes in good faith is not Protected Material and explain the basis for its belief. In defending the designation, the party asserting the propriety of the designation of Protected Material shall have the burden of proving and persuading the Court that the disputed information is “Confidential” or “Attorneys’ Eyes Only.” Prior to bringing any such motion, the parties shall confer in good faith to attempt to resolve the dispute. If the dispute cannot be resolved, there shall be no disclosure of Protected Material inconsistent with the limitations on disclosure provided for under this Order for the designation in dispute absent an express ruling by the Court granting permission for the disclosure. A party shall not be obligated to challenge the propriety of a designation as Protected Materials at the time the material is first produced, and a failure to do so shall not preclude a subsequent challenge thereto.

11. Nothing herein shall prevent any attorney in this matter from utilizing “Confidential” or “Attorney Eyes Only” information in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the “Confidential” or “Attorneys’ Eyes Only” information, irrespective of which party produces such information. Provided, however, that such use shall not in any way affect the designation of the document.

12. During the course of depositions, Protected Materials may be shown to the witness being deposed for the purpose of asking questions about such documents, subject to compliance with Paragraph 7 above and provided that counsel using the document must advise the witness that the document is covered by this Order. The witness shall not be allowed to keep or retain a copy of the Protected Materials except in compliance with

Paragraphs 5 and 7 above. Deposition testimony may be designated “Confidential” or “Attorneys’ Eyes Only” during the course of the deposition or thereafter in accordance with this Order by counsel for the party whose information is disclosed in the testimony, and if so designated, the court reporter shall insert a page break in the written record of the deposition, and make the appropriate legend on each page of the deposition where such designated testimony appears. The cover page of a deposition transcript containing any designated portions shall indicate that it contains portions of testimony subject to this Order.

13. This Order shall apply to all copies and extracts of the Protected Materials; to any summaries or compilations of the information contained in the Protected Materials; and all testimony, conversations, and presentations by the parties or counsel or other settings that might reveal Protected Materials and the information contained therein except in court, during discovery, or any court-ordered mediation.

14. Nothing in this Order shall be deemed to restrict in any manner any party or its attorneys with respect to that party’s use or disclosure of its own documents or information. However, if the designating party chooses to disclose information it has designated as “Confidential” or “Attorneys’ Eyes Only” to a person who is not a Qualified Person and fails to bind the recipient of the Protected Materials to the terms of this Order, that unprotected disclosure by the designating party may subject the designation to challenge pursuant to the terms of this Order.

15. This Order shall not bar any attorney herein in the course of rendering advice to his/her client with respect to this action from conveying to any party client

his/her evaluation in a general way of “Confidential” or “Attorneys’ Eyes Only” information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his/her client, the attorney shall not disclose the specific contents of any “Confidential” or “Attorneys’ Eyes Only” information produced by another party herein, which disclosure would be contrary to the terms of this Order.

16. Counsel for the parties may incorporate any “Confidential” or “Attorneys’ Eyes Only” information into any brief, document, or paper for filing with the Court in this action. If “Confidential” or “Attorneys’ Eyes Only” information is attached to or incorporated into a brief, document, or paper to be filed with the Court in this action, the “Confidential” or “Attorneys’ Eyes Only” information used therein shall be filed under seal with the Court, and a redacted version of the brief, document, or paper shall be publicly filed. The “Confidential” or “Attorneys’ Eyes Only” information shall be submitted for filing in a sealed envelope, labeled on the outside with the case caption, the title of the document contained in the envelope, and a statement substantially equivalent to the following:

THIS ENVELOPE CONTAINS PROTECTED MATERIALS FILED UNDER SEAL BY COURT ORDER. THIS ENVELOPE MAY NOT BE OPENED EXCEPT BY SPECIFIC ORDER OF THE COURT. VIOLATION OF THIS DIRECTIVE MAY BE PUNISHABLE AS CONTEMPT OF COURT.

At trial, or in any pre-trial hearing where exhibits are submitted to the Court, any party may ask the Court to accept Protected Materials as exhibits to be filed under seal.

17. Nothing in this Order shall be deemed a waiver of the right of any party to

oppose production of any information or material on any available grounds or to object to the authenticity or admissibility of any document, testimony or other evidence. Nothing in this Order shall operate as an Admission by any party that any particular “Confidential” or “Attorneys’ Eyes Only” information contains or reflects trade secrets or any other type of confidential information.

18. An inadvertent failure to designate Protected Material as “Confidential” or “Attorneys’ Eyes Only” does not waive the designating party’s right to secure protection under this Order for such material. Provided, however, if material is designated as “Confidential” or “Attorneys’ Eyes Only” after the material was initially produced, the party receiving the information, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order. Where a party to this action changes the designation of confidentiality under this Order, that party shall promptly furnish the information re-designated in accordance with Paragraph 2 above.

19. Similarly, the inadvertent disclosure of information protected by the attorney-client privilege, work product or other applicable law, privilege, doctrine or immunity, does not standing alone, waive the privilege or immunity protecting that information. If protected material is produced, then the receiving party, upon the request from the producing party, shall promptly return to the producing party the protected material and all copies in the receiving party’s possession. The receiving party shall use its best efforts to obtain all copies of the protected material that it may have disseminated to others and return the copies to the producing party. If, after returning the material, the

receiving party moves the Court for an order compelling production of the material, the receiving party shall not assert as a grounds for entering such order the fact or circumstance of the inadvertent production.

20. If any party receiving Protected Materials covered by this Order (a) is subpoenaed in another action or proceeding, (b) is served with a demand in another action or proceeding to which it is a party or is otherwise involved, (c) receives an open records or public information request or (d) is served with any other process by one not a party to this Litigation, seeking Protected Material designated as "Confidential" or "Attorneys' Eyes Only" by a party other than the receiving party, the receiving party shall give written notice, by email, and by hand or facsimile transmission within three (3) business days of receipt of such subpoena, demand or process, to those who designated the material "Confidential" or "Attorneys' Eyes Only". The receiving party shall not produce any of the "Confidential" or "Attorneys' Eyes Only" information for a period of at least ten (10) days, or within such lesser time period as ordered by a court, after providing the required notice to the designating party. The designating party shall be solely responsible for asserting any objection to the requested production.

21. If a third-party produces documents, information or material ("Third Party Material") in this case, that third-party shall have the right to make the designations provided by this Order. If such third-party elects to make such designations, and places the appropriate legends as provided by this Order, and complies with Paragraph 6 above, any information so designated shall be subject to the same restrictions as information designated by a party to this action. Further, if a party's information is disclosed by a

third-party, then the party shall have fifteen (15) business days after that party receives notice of such disclosure by the third-party to designate such information as “Confidential” or “Attorneys’ Eyes Only” in accordance with this Order. During the time period between receiving notice of disclosure and the deadline to designate such Third Party Material, the Third Party Material in its entirety shall be designated and treated as Protected Material.

22. If a party receiving any Protected Materials learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, including specifically identifying who received the Protected Material and what they received; (b) use its best efforts to retrieve all copies of the Protected Material; and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order.

23. After final termination of this action, including the resolution of all appellate proceedings, each counsel of record for each named party may retain one hard copy and electronic copy of transcripts, pleadings and exhibits, subject to the requirement that any confidential materials be maintained as confidential. Otherwise, within one-hundred-twenty (120) days after settlement, final judgment with no appeal having been filed, or other final resolution of this case, all copies of Protected Materials introduced into evidence in this action may be withdrawn from evidence by and at the request of the party from whom they originated. Within one-hundred-twenty (120) days after settlement, final judgment with no appeal having been filed, or other final resolution of

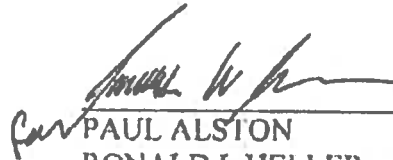
this case, at the request of the producing party, counsel for the receiving party shall either (a) return all "Confidential" or "Attorneys' Eyes Only" information in his/her possession, custody or control or in the custody of any authorized agents, outside experts and consultants retained or utilized by counsel for the receiving party to counsel for the party who has provided such "Confidential" or "Attorneys' Eyes Only" information in discovery or (b) certify destruction thereof to the producing party's counsel. Provided, however, that a party's counsel may retain a copy of all pleadings so long as it takes appropriate measures to assure that those materials are kept confidential.

24. Any party may apply to the Court for a modification of this Order for good cause shown, and nothing in this Order shall be deemed to prejudice any party's rights to seek (or oppose) such modification.

//

25. The Court shall retain jurisdiction for purposes of enforcement of this Order. No citation of contempt or other sanction shall be imposed without a hearing.

DATED: Honolulu, Hawai'i, 31 May, 2016.



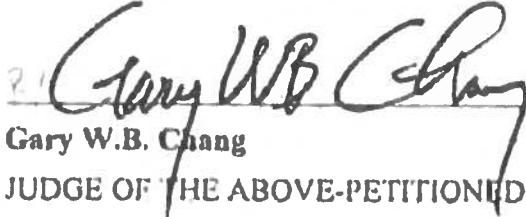
PAUL ALSTON
RONALD L HELLER
Attorneys for Taxpayer-Appellants
Trip Network, Inc., Orbitz, LLC,
Internetwork Publishing Corp.,
Expedia, Inc., Hotwire, Inc., Hotels.com, L.P.,
Travelocity.com LP, Site59.com LLC, priceline.com
Inc., and Travelweb LLC



WARREN PRICE III
KENNETH T. OKAMOTO
ROBERT A. MARKS

Special Deputy Attorneys General
Attorney for Appellee
DIRECTOR OF TAXATION, STATE OF
HAWAII

APPROVED AND SO ORDERED:



Gary W.B. Chang

JUDGE OF THE ABOVE-PETITIONED COURT

Stipulated Protective Order; In the Matter of the Tax Appeal of *Priceline.com, Inc., et al.* and consolidated cases; Hawai'i Tax Appeals Court, T.A. No. 13-1-00269 and consolidated cases

TAX APPEAL COURT
OF THE STATE OF HAWAII

In the Matter of the Appeal of
PRICELINE.COM, INC., *et al*
Taxpayers-Appellants

T.A. No. 13-1-00269 AND
CONSOLIDATED CASES;
13-1-0262 through 13-1-0270
14-1-0001 through 14-1-0010
14-1-0243 through 14-1-0251

Judge: Hon. Gary W.B. Chang

**AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER**

I, _____ hereby confirm that I have received and read
a copy of the Stipulated Protective Order entered in this action on _____, 20___. In
order to be eligible to receive Protected Materials, I agree that I am bound by the terms of the
Stipulated Protective Order.

I further agree that I am subject to the personal jurisdiction of the Tax Appeal Court of
the State of Hawaii for purposes of enforcing the Stipulated Protective Order.

Dated: _____, 20__

Signature

Print name

Exhibit A

DATED: Honolulu, Hawaii, November 15, 2024.

/s/ Michelle K. Correia
NATHANIEL A. HIGA
MICHELLE K. CORREIA

of CHUN KERR LLP
a Limited Liability Law Partnership

and

DANIEL M. RYGORSKY
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