

## THE PERILS OF MANIPULATING TRIPADVISOR REVIEWS

*Anthony J Cordato*

*The long arm of the law has caught and fined Meriton Suites for manipulating reviews posted by its guests on TripAdvisor.*

This is a significant extension of the *Australian Consumer Law* because it prohibits misleading conduct not only for guest testimonials posted on the hospitality provider's own website, but also for guest reviews posted on independent websites such as TripAdvisor, Expedia, Trivago, Hotels.com and Travelocity.

The legal precedent was established on 31 July 2018, in *Australian Competition and Consumer Commission v Meriton Property Services Pty Ltd (No. 2)* [2018] FCA 1125: Justice Moshinsky of the Federal Court of Australia imposed a penalty of \$3 million upon Meriton Properties for misleading the public by filtering, selecting or limiting the guest email addresses it supplied to the TripAdvisor website, by supplying only the email addresses of those guests likely to post favourable reviews.

### **The TripAdvisor Review Express Tool**

Meriton Properties is a hospitality provider. It operates serviced apartments, called Meriton Suites, in 13 properties in Sydney, Brisbane and the Gold Coast. Each has their own TripAdvisor page.

Meriton participated in Review Express, which is a guest review collection tool offered by TripAdvisor free of charge to hospitality businesses.

To use the tool, the accommodation provider creates an email template, and provides TripAdvisor with the email addresses of its guests at regular intervals. TripAdvisor sends the email to the guests to prompt them to write reviews of their stay.

The tool is used to generate more reviews on TripAdvisor, which is the world's largest travel website. It attracts millions of consumers each month who read the reviews posted.

More reviews lead to more bookings. According to the Review Express Guide webpage:

*On average, regular Review Express users see an uplift of 28% in the amount of TripAdvisor Reviews for their property.*

TripAdvisor recommends to the hospitality provider: 'Tell your guests you'll be sending a Review Express email to collect their feedback.'

### **How did Meriton manipulate Review Express?**

Meriton adopted two practices to reduce the number of negative reviews. The first was the MSA-masking practice (MSA is for 'Meriton Serviced Apartments'), which was part of Meriton's standard operating procedure for check out. Check out staff were instructed to ask guests if they enjoyed their stay. If they responded positively they would be passed a Trip advisor feedback card requesting them to post feedback online. However if they responded negatively the guest email would be masked by adding MSA to the beginning of the guest email address.

The staff member who checked out the guest was required to sign the form, indicating that they understood that disciplinary action would occur if they did not follow the standard operating procedure correctly.

The practice of adding MSA to the email address improved the relative number of favourable reviews compared with unfavourable reviews, because the emails that TripAdvisor sent to guests who made complaints or who were unhappy with their experience would not reach them. Alternatively, Meriton did not forward the email addresses of such guests to TripAdvisor at all.

Justice Moshinsky found that: Meriton created an unduly favourable impression about the quality and amenity of Meriton's serviced apartments.

The second practice was their bulk withholding practice, which was to withhold from TripAdvisor the email addresses of all guests who had stayed at a particular property during a period of time when there had been a major service disruption (such as the lifts not working, no hot water, etc).

The practice either eliminated or reduced negative reviews for service disruptions.

Justice Moshinsky found that: Meriton's conduct had the effect of reducing, in the mind of the consumers, awareness of the prevalence of service disruptions at the Meriton properties. In doing so, Meriton created an impression that was incomplete and inaccurate.

Meriton was found guilty because it engaged in conduct that was liable to mislead the public as to the characteristics and suitability for their purpose of the accommodation services it provided, in breach of s 34 of the Australian Consumer Law.

### **What declarations and orders were made by the Court?**

The Court made declarations that during the period November 2014 to October 2015, Meriton misled the public by adopting the two practices outlined.

The Court ordered that Meriton be restrained, for 3 years from the date of order 'from filtering, selecting or limiting the guest email addresses it supplies to TripAdvisor in relation to its use of TripAdvisor's Review Express service, unless a guest consents to Meriton withholding, or requests Meriton to withhold, his or her email address from TripAdvisor, or such conduct accords with TripAdvisor's own published rules or guidelines for the submission of email addresses.'

The Court ordered Meriton to pay a substantial pecuniary penalty of \$3 million, for the primary purpose of deterrence (both specific to this case and generally) because:

'The contravening conduct gave rise to loss and damage, by way of the loss of opportunity for consumers to adequately compare accommodation services and choose between them on a

fully-informed basis, and the loss of opportunity for competitors (who were complying with the law) to gain custom from consumers.'

The Court took into account these factors:

- The scale of the Meriton accommodation business was large: over the relevant period (2015, 2016 & 2017 Financial Years), the gross revenue was approximately \$240 million. In the 2016 Financial Year it made a profit of approximately \$23 million.
- The contravening conduct occurred on a large scale: approximately 14,500 email addresses were masked.
- The TripAdvisor website, where the misleading impression was created, attracted a very large number of consumers.
- Senior management was involved in approving the standard operating procedure. The practice was not the conduct of 'rogue' employees - it was a requirement for frontline staff to mask email addresses.

The calculation of \$3 million was based upon 13 contraventions of s.34 of the *Australian Consumer Law*, one for each Meriton property, for each of which the maximum penalty was \$1.1 million (\$14.3 million in total). The Court rejected both the ACCC proposal of a \$20 million penalty and the Meriton proposal of \$330,000 to \$440,000.

The Court ordered Meriton to establish and maintain a compliance program. Specifically, during the period of 3 years from the date of order, Meriton is required to provide to the ACCC:

- A Compliance Policy;
- A Risk Assessment Report;
- An outline of the Complaints Handling System;
- Staff training materials and induction materials;
- Compliance Reports
- Copies of reports to the Board and senior management.

## Comments

The Court knew of the commercial dimension. 'The very purpose of the contravening conduct was to produce a commercial benefit for Meriton by way of increased sales (with a corresponding detriment, at least in most cases, for Meriton's competitors).'

With an annual profit of approximately \$23 million, Meriton could well consider the penalty of \$3 million to be an inconvenience, as the 'cost of doing business'.

To counter this perception, the Court ordered a restraint on the conduct and a strict Compliance Programme, for the next 3 years.

TripAdvisor also took action. It suspended Meriton properties from its website in the period from 19 December 2015 to 11 March 2016. No reasons are available as to this suspension or why it was lifted, but it is relevant to note that on the Review Express Guide webpage this warning appears:

'TripAdvisor takes fraud and privacy very seriously ... avoid selectively emailing only the guests you believe will write positive reviews. Review Express emails should be consistently sent to all guests.'

*Anthony J Cordato is Senior Partner with Cordato Partners, Sydney  
He can be contacted at: [ajc@businesslawyer.com.au](mailto:ajc@businesslawyer.com.au)*