

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No.

OSVALDO SOTO,

Plaintiff,

v.

BOOKING.COM B.V., AND
BOOKING HOLDINGS INC.,

Defendants.

COMPLAINT FOR DAMAGES

The Soto family¹ owned several business ventures throughout Cuba, including the famous oceanfront Copacabana Hotel² (the “Copacabana”), located at Avenida Primera between 44 and 46 streets, in Havana, Cuba. The Copacabana was inaugurated in 1955, and after Fidel Castro seized power and established a communist government in Cuba in 1959, the Copacabana was confiscated along with the Soto family’s other properties and business ventures in 1961. This forced the Soto family to flee their native country to the United States.

After seizing the Copacabana from the Soto family, the Cuban government, together with Be Live Hotels S.L. and the defendants, exploited and benefitted from the Copacabana for decades without the consent of the Soto family and without paying them any compensation whatsoever. Defendants continue to offer the Copacabana to Floridians³ through their interactive websites, emails directly targeting Floridians, marketing campaigns in Florida, and through work done in their Florida offices. Osvaldo N. Soto now sues to right the defendants’ unlawful trafficking in his property and for just compensation.

THE ACTION

1. Soto sues the defendants under the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021, *et seq.* (the “LIBERTAD Act”), for unlawful trafficking in his confiscated property in Cuba.

THE PARTIES

A. Plaintiff

¹ Plaintiff Osvaldo N. Soto, (“Soto”) is an heir to the Copacabana Hotel.

² The Copacabana Hotel was also known as Hotel Copacabana or the Copacabana Yacht Club.

³ “Floridians” as used in this complaint means any individual who has provided the defendants with a zip code indicating a home or billing address in Florida, or who visited the defendants’ website with an IP address indicating that the individual was located in Florida at the time the website was visited or at the time the IP address was captured, or who defendants were otherwise able to determine was located in Florida.

2. Osvaldo N. Soto has been a United States citizen since September 1967, and is a natural person who resides in Miami, Florida.

B. The Defendants

3. Defendant Booking Holdings Inc. (“Booking Holdings”) is a Delaware corporation with its principal place of business in Norwalk, Connecticut. Booking Holdings owns and controls the entities that operate for its benefit the websites Booking.com, Kayak.com, Agoda, and priceline.com.

4. Defendant Booking.com B.V. is a Dutch limited liability company based in Amsterdam, Netherlands, with its principal place of business in Amsterdam, and with its largest office outside of Amsterdam in Orlando. Booking.com B.V. is a 100% owned and controlled subsidiary of Booking Holdings, which operates at its direction and for its benefit. Booking Holdings maintains day-to-day control of Booking.com B.V. and its basic operations. Booking.com B.V. operates the website Booking.com for the benefit of its 100% owner, Booking Holdings, has no corporate interest of its own and it’s a mere instrumentality of Booking Holdings.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1331 because this action arises under the LIBERTAD Act (22 U.S.C. § 6021 et seq.) and the amount in controversy exceeds \$50,000, excluding interest, costs, and attorneys’ fees.

6. The Court has personal jurisdiction over the defendants under Fla. Stat. §§ 48.193(1)(a)(1), (2) and (6), and Fla. Stat. § 48.193(2) because they maintain and carry on continuous and systematic contacts with Florida; regularly operate, conduct and carry on business in Florida; have offices in Florida; regularly avail themselves of the benefits of their

presence in Florida; committed a tortious act within Florida causing injury to plaintiff who is a Floridian; caused injury within Florida by committing acts outside of Florida while engaging in solicitation within Florida; and are engaged in substantial and not isolated activity within this state by providing an electronic platform for transactions occurring in the state of Florida and having employees and offices in Florida, among other contacts as more fully described below.

7. Moreover, defendant Booking.com B.V. is a partner of the Greater Miami Convention & Visitors Bureau (“GMCVB”) serving as its booking engine, and helping GMCVB achieve record breaking revenues during the first six months of partnership.⁴

8. Defendants’ websites are fully interactive, have robust internet e-business capabilities, and are fully accessible in Florida. Floridians can readily access defendants’ websites and are able to book hotel accommodations in Cuba at more than 6,500 hotels, including the Copacabana. Defendants’ websites allow Floridians to browse hotels by, among other things, geographic location (including Havana), by hotel operator (including Be Live), and by hotel name (including the Copacabana).

9. Having located the Copacabana, or any other hotel in Cuba, on defendants’ websites, a Floridian is readily able to determine whether hotel rooms are available on the preferred dates, at what price and with what features (e.g., types of rooms, beds, views, etc.), and can reserve a room on defendants’ websites using a U.S. credit card. But if a Floridian does not reserve a room after browsing on defendants’ websites, the defendants will target Floridians by sending them emails with other hotel options in Cuba. E.g., on July 19, 2019, after Mr. Manuel Vazquez, a Floridian, searched for hotels in Cienfuegos, Cuba, on Booking.com, the Booking

⁴ See Claudette Covey, *Greater Miami CVB Partners With Booking.com*, Travel Pulse (Aug. 7, 2014), <https://www.travelpulse.com/news/travel-technology/greater-miami-cvb-partners-with-bookingcom.html>.

defendants sent him an email inviting him to look at other hotels in Cienfuegos: “Manuel, Cienfuegos is calling your name.”⁵ On information and belief, the defendants target Floridians by sending them emails enticing them to book rooms at hotels in Cuba, including at the Copacabana.

10. The defendants promote their websites—and their interactive capabilities for the booking of rooms at Cuban hotels, including the Copacabana—on the internet to Floridians in the following ways:

- a. through their search engine optimization (SEO) efforts, including by developing titles and meta description tags to optimize the titles and “snippets” that appear on Google and other search engine results pages;
- b. through emails to Floridians who have searched for accommodations in Cuba, including the Copacabana or other geographically proximate hotels; and
- c. through banner ads promoting popular destinations in Cuba that direct Floridians to additional information and booking of Cuban hotels, including the Copacabana.

11. Defendants’ efforts to promote the hotels, including the Copacabana, to Floridians, include the following:

- a. maintain offices and employees in Miami and Orlando. For example, at least one of the defendants maintains offices in Miami, at 801 Brickell Avenue, and in Orlando at 8529 South Park Circle, where it has customer service centers with Florida employees whose relevant activities include receiving calls from Floridians about the Copacabana.⁶ Furthermore,

⁵ See email dated July 19, 2019 from Booking.com to Manuel Vazquez, a Floridian, offering reservations at various hotels in Cienfuegos, Cuba, attached as **Exhibit A**.

⁶ See Local Business Tax Receipt for Booking.com (USA) Inc., reflecting an office at 801 Brickell Avenue, attached as **Exhibit B**.

“Booking.com’s Orlando office is now the company’s largest office outside of its Amsterdam base;”⁷

b. are registered with the Florida Department of State to do business in Florida and have been so for nearly a decade;⁸

c. are registered with the Florida Department of Agriculture and Consumer Services (FDACS) to do business in Florida;⁹

d. directly target Floridians for advertising using their touted ability to micro-target by geographic area;

e. send communications directly to Floridians, first soliciting stays at resorts in Cuba and, when hotel rooms are booked, later about those reservations, including about cancellations and other issues with the reservations;¹⁰

f. send communications to Floridians who browse hotels in Cuba on defendants’ websites, soliciting and urging them to make a reservation, including, on information and belief, at the Copacabana;

⁷ See Robert Silk, *Booking.com expands its Orlando offices*, *Travel Weekly* (Jan. 13, 2016) <https://www.travelweekly.com/Travel-News/Travel-Technology/Bookingcom-expands-its-Orlando-offices>; see also Anjali Fluker, *Travel firm Booking.com boasts fun, Florida-forward Orlando office*, *Orlando Bus. J.* (Mar. 19, 2018), <https://www.bizjournals.com/orlando/news/2018/03/19/travel-firm-booking-com-boasts-fun-florida-forward.html?ana=emailafriend>.

⁸ See copy of the Florida Department of State, Division of Corporations registration for Booking.com Customer Service Center (U.S.A.) Inc. and Booking.com (U.S.A.) Inc., attached as **Composite Exhibit C**.

⁹ Booking Holdings is registered under No. ST32150. Notably, Booking Holding’s registration states that Booking Holdings is doing business as Agoda.com, Booking.com (USA) Inc., Opentable.com, Priceline.com and Rentalcars.com.

¹⁰ See email dated February 9, 2020 from Booking.com to Manuel Vazquez, Floridian, offering reservations in various cities in Cuba, attached as **Exhibit D**.

g. send communications to Floridians who do not checkout their shopping carts on defendants' websites.

h. configure their landing pages (that is, the web pages that are shown to users when they enter defendants' websites) for Floridians who have searched for hotels in Cuba, including, on information and belief, the Copacabana, so that they direct users to these and other Cuba hotels related to their search; and

i. communicate with hotels in Cuba from Florida, including, on information and belief, with and about the Copacabana, regarding reservations booked on defendants' websites.

12. As a result of defendants' efforts:

a. Floridians have booked a substantial number of stays at hotels in Cuba, including at the Copacabana, through defendants' websites;

b. defendants make a substantial number of sales to Floridians, including reservations at the Copacabana; and

c. defendants receive significant revenues from their activities in Florida.

13. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (3).

THE LIBERTAD ACT

14. Title III of the LIBERTAD Act provides U.S. nationals whose property in Cuba was confiscated by the communist Cuban government with a right of action against those who traffic, and benefit from trafficking, in that property. 22 U.S.C. §§ 6081-6085.

FACTUAL ALLEGATIONS

A. The Trafficked Property

15. The Soto family owned several business ventures throughout Cuba, including the famous oceanfront Copacabana, located at Avenida Primera between 44 and 46 streets, in Havana, Cuba.

16. The Copacabana was inaugurated by Antonio J. Soto y Castellanos in 1955.

17. The Copacabana became a well-known and profitable waterfront hotel with luxurious yacht club.

18. In 1961, the communist Cuban government confiscated the Copacabana from the Soto family. Thereafter, many of the family members fled Cuba to the United States, where they lived ever since.

19. The Cuban government, together with foreign hotel operators, continued to operate and benefit from the Copacabana.

20. At the time of filing of this case, Floridians could reserve vacation packages at the Copacabana from the defendants' websites, and defendants continue to solicit and accept reservations from Floridians.

B. Succession Rights to the Copacabana

21. Antonio J. Soto y Castellanos died a Cuban citizen on May 27, 1962 in Miami. His wife Maria Teresa Polo y Fernandez became a U.S. citizen in the late 1970s.

22. On the passing of Antonio J. Soto y Castellanos in 1962, his entire interest in the property passed to his wife Maria Teresa through intestate succession. When Maria Teresa died in 1983, her entire interest in the Copacabana was distributed by intestate succession in equal parts to their five children, Antonio J. Soto II, Orlando Soto y Polo, Margarita Soto Abril, Maria Teresa Soto Corripio, and Osvaldo N. Soto.

23. Since its confiscation, and as of the time of filing this lawsuit, the Soto Family and subsequently Osvaldo N. Soto, have been the rightful owners of the claim to the Copacabana.

C. *Defendants Traffick in the Copacabana Without Authorization and Without Compensating Soto*

24. Soto has never given any sort of authorization to the defendants, and the defendants never paid—and Soto never received—any compensation whatsoever for defendants’ trafficking of the Copacabana.

25. On November 22, 2019, Soto informed defendants of his intent to commence an action unless defendants ceased to traffic the Copacabana. *See Composite Exhibit D.* Despite being on actual notice, defendants continued to market and make reservations at the Copacabana on their websites for their economic benefit.

26. Soto was not eligible to file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643, *et seq.*), because he was not a U.S. citizen when the Copacabana was confiscated.

27. The Copacabana has not been the subject of a certified claim under Title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643 *et seq.*).

28. Soto has been injured by defendants’ trafficking in the Copacabana without his permission and without paying him any compensation.

D. *The Defendants*

29. Booking Holdings is the corporate parent company for a number of brands, including Booking.com, Kayak, Priceline, Agoda, Rentalcars.com, and OpenTable. *See* Booking Holdings Annual Report, dated February 19, 2020 (“Annual Report”), at 1. Booking Holdings is

the 100% owner of Booking.com B.V., as reflected in its Consolidated Financial Statement. *Id.* at Ex. 21.

30. According to Booking Holdings, its “business is driven primarily by international results, which consist of the results of Booking.com, agoda, and Rentalcars.com and the international business of KAYAK and OpenTable.” *Id.* “Booking.com is the world’s leading brand for booking online accommodation reservations, based on room nights booked, with operations worldwide and headquarters in the Netherlands.” *Id.* at 4. Booking Holdings’ “international business (the substantial majority of which is generated by Booking.com) represented approximately 90% of [defendants’] consolidated revenues.” *Id.* at 2.

31. Defendants operate under both an agency model and a merchant model:

- Agency revenues are derived from travel-related transactions where we do not facilitate payments from travelers for the services provided. We invoice the travel service providers for our commissions after travel is completed. Agency revenues consist almost entirely of travel reservation commissions.
- Merchant revenues are derived from travel-related transactions where we facilitate payments from travelers for the service provided, generally at the time of booking. Merchant revenues include travel reservation commissions and transaction net revenues (i.e., the amount charged to travelers less the amount owed to travel service providers) in connection with our merchant reservation services; credit card processing rebates and customer processing fees; and ancillary fees, including travel-related insurance revenues and certain global distribution system ("GDS") reservation booking fees. Substantially all merchant revenues are derived from transactions where travelers book accommodation reservations or rental car reservations.

Id. at 2. Under these models, along with advertising through its websites, Booking Holdings had revenues of \$15.1 billion in 2019. *Id.* at 2. Ninety percent of that amount represents more than \$13.5 billion attributable to the operations of Booking.com. *Id.* This revenue is reflected in Booking Holdings Consolidated Financial Statements. *Id.* at 63-109. On information and belief, all revenues earned by Booking Holdings’ subsidiaries, including Booking.com B.V., flow

directly to Booking Holdings, which has no independent business or independent revenues other than those of its subsidiaries.

32. Defendant Booking.com B.V. provides online booking services for hotels in Cuba, including the Copacabana, and Booking.com lists a total of 5,793 properties available in Cuba. *See* Screenshot of Booking.com, attached as **Exhibit E**.

33. During all relevant times, defendants knew that the Copacabana had been confiscated by the Cuban government.

34. On information and belief, many of defendants' customers (including Floridians) travel to Cuba, and to the Copacabana in particular, for tourism, which is not a permitted purpose of travel to Cuba under the U.S. Treasury Department regulations and, thus, unlawful travel.

35. In addition to directly benefitting from the Copacabana by receiving commissions and other fees for the booking of the Copacabana, defendants also derive an indirect benefit from the Copacabana by receiving advertising revenues driven by or related to their offering of the Copacabana.

36. According to Booking Holdings, “[w]e connect consumers wishing to make travel reservations with providers of travel services around the world through our online platforms” and “[t]hrough one or more of our brands, consumers can: book a broad array of accommodations (including hotels, motels, resorts, homes, apartments, bed and breakfasts, hostels and other properties)” Annual Report at 1. Booking Holdings does not conduct any of this business itself, but rather through its “brands,” including, primarily, Booking.com B.V. On information and belief, Booking.com B.V., the operator of the booking.com website, acts as an agent, and for the benefit, of its 100% owner Booking Holdings Inc., which has operational control over the

day-to-day activities of Booking Holdings B.V., and whose executives are compensated in part based on the performance of Booking.com B.V.

CAUSE OF ACTION

Private Right of Action Under 22 U.S.C. § 6082(a)(1)

37. Soto incorporates by reference paragraphs 1 to 36 into this count.

38. This claim is brought under Title III of the LIBERTAD Act, 22 U.S.C. § 6081 et seq.

39. Defendants are “persons” as defined by 22 U.S.C. § 6023(11).

40. The Copacabana was confiscated by the communist Cuban government.

41. Since the date the Copacabana was confiscated, the Soto Family, and subsequently Soto, have owned a claim to the Copacabana.

42. Defendants knowingly and intentionally used or benefitted, directly or indirectly from, the Copacabana, by offering, for economic benefit, reservations at the Copacabana, which constitutes trafficking that violates Title III of the LIBERTAD ACT.

43. Defendants conducted this trafficking “without the authorization of any United States national who holds a claim to the [Copacabana]” (22 U.S.C. § 6023(13)), in violation of Title III of the LIBERTAD Act.

44. Accordingly, Soto is entitled to damages to be determined under 22 U.S.C. § 6082(a)(1)(A)(i), and 6082(a)(3)(C), along with attorneys’ fees and costs under 22 U.S.C. § 6082(a)(1)(A)(ii).

45. Soto, in compliance with 22 U.S.C. §§ 6082 (a)(3)(B) and (a)(3)(D), provided notice to the defendants more than 30 days before joining them as defendants in this action. On

information and belief, the defendants continued to traffic in the Copacabana after receiving the notice.

PRAYER FOR RELIEF

WHEREFORE, Soto demands a judgment against defendants that:

- i. Awards actual damages in an amount to be determined under 22 U.S.C. § 6082(a)(1)(A)(i);
- ii. Awards reasonable attorneys' fees and costs incurred in this action under 22 U.S.C. § 6082(a)(1)(A)(ii);
- iii. Awards treble damages under 22 U.S.C. § 6082(a)(3)(C);
- iv. Awards appropriate post-judgment interest; and
- v. Grants all other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Soto demands trial by jury on all issues so triable.

Dated: October 2, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 2, 2020, I electronically filed this document with the Clerk of the Court using CM/ECF. I also certify that this document is being served today on all counsel of record by transmission of Noticed of Electronic Filing generated by CM/ECF.

s/ Andrés Rivero
ANDRÉS RIVERO