



MULTINATIONAL COMPANIES SHOULD REVIEW THEIR TERMS OF USE IN LIGHT OF RECENT COURT RULING

A plaintiff filed a motion to certify a class action in Israel against Booking.com, the Dutch online hotel company, claiming that it violated the Israeli consumer protection law since the price did not include Value Added Tax, deceiving consumers as to the true price. There were two separate issues in the case—whether the plaintiff could effect service of process on the defendant’s Israeli affiliate, and whether the case should be heard in Israeli courts. The plaintiff sought to serve the class action papers on an affiliated Israeli company.

In an important decision, the court denied the motion to serve the Israeli company, in part relying on the wording of Booking.com’s Terms of Use which indicate that the Israeli company is not authorized to accept service of process, and in part relying on the fact that activity of the Israeli affiliate was not directly related to the conduct that was the subject of the class action complaint. The court did, however, permit the plaintiff to serve the papers on Booking.com in the Netherlands. It also invalidated the exclusive jurisdiction clause in the courts of Amsterdam and held that the claim should be heard in Israeli courts.

In light of this decision, multinational companies should review their Online Terms of Use to see whether they might benefit from an explicit statement that local Israeli companies are not authorized to accept service of process.

Background

Booking.com is a Dutch company which is part of the Priceline Group, a leading online seller of hotel rooms. It operates the booking.com website (the “**Site**”) and has the exclusive interaction with consumers booking hotel rooms through the site, but Booking.com is assisted by local companies which help hotels in uploading their pricing information to the site. One of those companies is Booking.com Israel Online Hotel Reservations Ltd. (the “**Israeli Company**”).

A plaintiff brought a class action against Booking.com BV (the “**Dutch**

Company”) and sought to serve the Israeli Company.

Plaintiff’s Arguments Why Service of Process on the Israeli Company Was Appropriate

The plaintiff argued that it should be able to serve the Israeli Company, including for the following reasons:

1. It was the Dutch Company’s tax representative before Israeli authorities.
2. It was established by the Dutch Company, which was its sole shareholder. (Importantly, the judge concluded that the plaintiff did not adequately prove either of the first two allegations.)
3. The Dutch Company stated on the Site that “it was supported by offices in Tel Aviv.”
4. It had the identical name.
5. The Site was in Hebrew, and aimed at Israeli citizens.
6. The Israeli Company’s only income was for work in connection with the Site.

Booking.com’s Arguments Against Service of Process on the Israeli Company

The Dutch Company argued that service on the Israeli Company was not appropriate, including for the following reasons:

1. The Site’s Terms of Use stated explicitly, in relevant part, that “The support companies only provide an internal supporting role to Booking.com. The support companies do not have any power to represent Booking.com or to enter into any contract in the name of Booking.com. **The support companies are not authorized to act as any form of process or service agent of Booking.com.**” [*parts deleted*]
2. The Site is operated from Holland.
3. The Israeli Company’s role was to provide services to Israeli hotels, and was not involved in the engagement with Israeli customers.
4. All end-user contact is with the Dutch Company.
5. Hebrew isn’t relevant; it’s just one of 42 languages for the Site.
6. The Dutch Company is not the parent of the Israeli Company.

Court Holding on Service of Process

The court held, consistent with existing case law, that the standard for whether a plaintiff could serve the complaint on the Israeli Company is the “intensity of the relationship”. In weighing the intensity, the court gave significant weight to the Terms of Use which stated that the Israeli Company could not receive service of process. In addition, its analysis focused on whether the Israeli Company was in the same “field of business” as the Dutch Company. The court was convinced by the Dutch Company that there were two separate fields of business—the Dutch Company was engaged in marketing hotel rooms, and the Israeli Company was involved in assisting hotels in uploading prices to the Site. In addition, the court stated that the Dutch Company denied the Israeli Company was its subsidiary or tax representative in Israel, and the plaintiff did not bring any proof on the matter.

The Court’s Holding on Forum Convenience

The second issue that court addressed was whether the Site’s Terms of Use

choosing courts in Amsterdam as the sole place of jurisdiction was valid. The court rejected this, finding Israeli courts were the appropriate forum to handle this class action.

A key issue in any litigation, and particularly in a class action, is where the case will be heard. It is immensely more convenient and less expensive for plaintiffs to have the case heard in their home jurisdiction. In addition, they are more familiar with the substantive and procedural law, and will not require translations of all the proceedings.

The Booking.com Site Terms of Use stated that the courts in Amsterdam were the exclusive forum for any dispute. The court rejected this, and cited extensively from the 2015 Israeli case of *Klinghoffer v. PayPal Pte. Ltd.*, which held that in a consumer contract, the terms of use which chose Singaporean law and Singapore courts as the choice of forum were invalid for Israeli consumers of PayPal. In this case, the court held that the courts in Israel, and not in the Netherlands, were the appropriate forum to hear the dispute. The main reasons given were as follows:

1. The contract at issue was a contract of adhesion, and was subject to Israel's Standard Contracts Law, which includes a presumption that any clause that limits the consumer's access to the courts in Israel is unfair and invalid;
2. The case refers only to Israeli consumers;
3. Such consumers are protected by the Israeli Consumer Protection Law, 5741-1981 ("**Consumer Protection Law**");
4. Booking.com operates in Israel with the goal to reach the Israeli consumers; and
5. It is reasonable to expect that a multinational corporation like the Dutch Company, which serves hundreds of thousands of consumers in Israel over the internet, will litigate in a location convenient to its customers. In this regard, the court distinguished the case from that of the 2015 case of *Premier Dead Sea Cosmetic Laboratories v. Amazon*, which held that online contracts are binding, including the choice of law and jurisdiction clauses, as the *Amazon* case dealt with business to business relations, and not a consumer relationship.

Comment and Recommendations

If a multinational company is active in Israel and does not have any Israeli subsidiary, it should state clearly in its online Terms of Use that there is no agent to accept service of process, and that the foreign headquarters is the only location authorized to accept service of process. The advantage is that this makes it somewhat more difficult for a plaintiff to establish jurisdiction in Israel.

If, on the other hand, there is an affiliated company in Israel, as was the case for Booking.com, it is important to indicate that it is in a separate field of business, to the extent this is justifiable.

On the forum convenience issue, it is true that the Dutch Company's choice of Dutch courts as the exclusive forum was not upheld. Nevertheless, based on the *PayPal* case, companies which are contracting with businesses, rather than consumers, may very well be able to choose their governing law and jurisdiction for their online agreements in Israel.

This memorandum is provided solely for informational and educational purposes and should not be construed as a legal advice.

If you have any questions regarding the subject of this article, please contact the following attorneys or call your regular Meitar contact:

[David Mirchin, Adv.](#);

Tel. +972-3-6103199; Fax:+972-3-6103667; dmirchin@meitar.com

MEITAR LIQUORNIK GEVA LESHEM TAL

ISRAEL'S LEADING
INTERNATIONAL
LAW FIRM



16 Abba Hillel Rd. Ramat Gan 5250608, Israel
Tel. 972 3 610 3100 **Fax.** 972 3 610 3111
Email. meitar@meitar.com



[Unsubscribe](#) | [Report spam](#)