



## Helms Burton lawsuit against Tripadvisor, Booking, Expedia & Visa, Mastercard dismissed at first instance

On 30th March, the United States District Court for the District of Delaware (the "Court") dismissed the lawsuit filed by Robert M. Glen (the "Plaintiff") against Tripadvisor, Booking and Expedia, as well as Visa and Mastercard (collectively, the "Defendants"), based on Title III of the Helms Burton Act (the "HBA"), which gives US citizens, who hold title to claims to property confiscated by the Cuban government during the Cuban revolution, standing to bring cases against those who "traffic" in such property.

The main reason for the Court's decision to dismiss the claim is that the LHB requires the Claimant to have acquired title to the claim to the confiscated property prior to 12th March 1996. The Tribunal finds it proven that (i) the properties were seized prior to 12th March 1996 and that (ii) the Claimant acquired title to the claim after that date. The background and arguments used by the Tribunal are set out below, without prejudice to the fact that the Tribunal's decision is subject to appeal:

### Background

The Claimant is a US citizen. In the late 1950s, his mother and aunt owned two contiguous beachfront plots of land in Varadero, Cuba (the "Properties"), which were confiscated by the Cuban government during the revolution. In 1999 and 2011, they died, leaving the Claimant with a claim to the Properties, which have been used by beachfront hotels since at least 1996. While the Cuban government holds title to the Properties, it collaborates with hotel chains to build and operate hotels on the Properties, without having paid any compensation to the Plaintiff.

Defendants Tripadvisor, Booking and Expedia operate travel booking websites, making a profit when users make reservations at the hotels listed on their websites. Defendants Visa and Mastercard offer cross-border payment services, earning a commission when transactions are completed using their services (payment by hotel customers at seized properties using credit cards of the entities).

On 3rd August 2020, the United States District Court for the District of Texas dismissed a similar lawsuit filed by the Plaintiff against American Airlines, which was appealed on 28th August 2020 and is still pending.

### Arguments and considerations of the court

The Court agrees with the Claimant that the Claimant has standing insofar as it has suffered immaterial harm, i.e., the Defendants have "trafficked" in the Properties without its authorisation and without compensating it financially in any way. The Tribunal further specifies that Congress, by drafting the HBA, intended to provide an effective remedy against unjust enrichment arising from the use of improperly confiscated property by governments and private entities at the expense of the rightful owners. It also considers that Congress did not intend for the causal link to end with the Cuban government, and therefore finds that the harm caused to the Plaintiff, as the rightful owner, is traceable to the conduct of the Defendants.

The Tribunal finds that the Plaintiff has met its burden of proving damage, causation, and

reparability, the latter since it would be financial compensation from the Respondents.

Notwithstanding the forgoing, since the Plaintiff acquired title to the claim after 12 March 1996, it is not permitted to bring proceedings based on the claim. This is because the HBA was intended, in part, to remove any incentive that might exist to transfer claims to forfeited property to US citizens to take advantage of the remedy created.

In addition, by prohibiting post-enactment transfers of existing claims to property seized prior to the date of enactment, Congress limited the extent to which federal courts would have to delve into the complexities of state inheritance laws and foreign law that might be implicated by the need to determine whether claimants are actually "claim holders" of a property in question.

Regarding intentionality, the Plaintiff argued that "trafficking" only requires that the Defendants "knowingly and intentionally" carry out their commercial activity, but not that they had knowledge that the hotels were located on confiscated property, as the confiscation of property in Cuba by the Cuban government was a notorious fact. The Court rejects this argument and determines that it is an indispensable requirement that they have full knowledge of all the elements. Therefore, the Defendants' intentionality is determined to be non-existent until the moment they are notified by the Plaintiff.

Finally, the Plaintiff alleged that, provided 30 days' notice of the filing of the Complaint, all Defendants, apart from Visa, did not cease the

alleged "trafficking". Visa's intent is therefore fully excluded.

Accordingly, and since there is no conflict as to the fact that the Properties were seized prior to 12th March 1996 and the Claimant's acquisition of the claim after that date, the Court has decided to dismiss the claim.

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