

Booking.com Heads to the High Court

November 14, 2019 – The TMCA

by David Tseng



Last Friday, the U.S. Supreme Court granted the USPTO's writ of certiorari to review traveling website company Booking.com's trademark application for "booking.com". The TMCA previously covered developments in this case [here](#) and [here](#).

Back in 2016, the USPTO rejected the company's trademark application because the proposed mark "Booking.com" was a generic term for the services offered, commenting that "booking" generically refers to "a reservation or arrangement to buy a

travel ticket or stay in a hotel".

The company appealed to federal district court in the Eastern District of Virginia, which reversed the USPTO's rejection. The district court held that although "booking" was a generic term for the services identified, BOOKING.COM as a whole was nevertheless a descriptive mark. Further, the company submitted survey evidence demonstrating that 74.8% of consumers recognized BOOKING.COM as a brand rather than a generic service.

The USPTO appealed to the 4th Circuit Court of Appeals, which affirmed the district court holding. The appellate court observed that "this case presents one such rare occasion where the record evidence supported a finding that the USPTO failed to meet its burden of proving that the public primarily understood BOOKING.COM to refer to the genus of online hotel reservation services, rather than the company or brand itself." In other words, even though the terms "booking" and ".com", were independently generic, the USPTO failed to rebut the evidence from the company showing that the combination had acquired secondary meaning. This USPTO then petitioned for Supreme Court review of the appellate ruling.

Related Capabilities

- Trademark, Copyright + Advertising
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It is anticipated that by summer of 2020, the Supreme Court will provide the final say on this issue.