

# Protect Your Association From Room-Block "Pirates" - Associations Now Magazine - Resources

## Protect Your Association From Room-Block "Pirates"

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By: *Jeff Waddle*

**Your members may be booking outside of your room block right now. Are you giving third-party room block marketers the tools they need to solicit your members' business (and potentially create attrition problems for your association)?**

If someone mentions pirates to you and all that comes to mind is Johnny Depp's swashbuckling Captain Jack Sparrow, consider yourself lucky. For a growing number of association executives and meeting planners, room block "pirates" or "poachers" (as they are sometimes called) are all-too-real characters whose sales efforts negatively affect convention hotel room blocks, resulting in lost revenue and even triggering costly hotel attrition clauses.

According to associations that have been there, the typical scenario begins with calls from a third-party salesperson to tradeshow exhibitors around the time conference registration opens. The salesperson informs an exhibitor that the hotel room block is "virtually sold out" and that if the exhibitor doesn't book through them immediately, he or she likely won't get a room for "the association convention." The salesperson is offering a seemingly good rate at an overflow hotel or another property outside the room block. While the salesperson doesn't actually state that his or her firm is officially sanctioned by the sponsoring association, the implied affiliation is strong. If the exhibitor bites, the salesperson faxes or emails a hotel registration form that carries a hefty cancellation fee, and the association potentially loses those hotel rooms out of its block.

Is this illegal? Does it deserve the moniker of "piracy"? The legal issues surrounding so-called room-block pirates can be murky. But there is no question that associations that have faced such situations can feel violated.

"They are getting past people's normal sales defenses by inferring they are part of a preapproved, ethical, special, selective group of legitimate companies," says Dale Silverman, CAE, retired executive vice president of the Association of Woodworking & Furnishings Suppliers and now an association consultant.

"I've seen things so cleverly done that it's breathtaking," says Steven Hacker, CAE, president of the International Association of Exhibitions and Events (IAEE), about room block piracy. "[On one form] it lists eight or nine or 10 hotels that are in the organization's room block and superimposed over each of them is 'sold out' and then at the bottom of the form is one hotel—Hotel ABC—[with] rooms available at \$50 less than the convention rate. It deceives the recipient into thinking, 'Here's the last remaining hotel in our block and not only that, I get a room there for 50 bucks less.'"

Hacker explains that such room block marketers often will buy the unused inventory of a leisure travel room block from a wholesale travel operation and resell the rooms to association exhibitors and delegates who are on a contact list they somehow obtained. "In some cases that we've seen, the room block that they've secured from these wholesalers may even be in the same hotel or hotels where the event is taking place," he says.

Hacker says that room block "piracy" and similar behavior related to tradeshow have become such a problem

that IAEE has commissioned a white paper on business ethics in the exhibitions industry. According to Hacker, IAEE's research has found evidence of third-party booking firms distributing forms that appear to be issued by the sponsoring organization. "It stops short of naming the name of the exhibition but it clearly states the dates and the location so most reasonable people conclude that if I'm getting this, it must be legitimate and it's not. It's deceptive," says Hacker, adding that even IAEE's events have been victimized.

## **ASAE's Experience with Third-Party Room Block Marketing**

By Jerry Jacobs

The association meeting planning community is well aware of the challenges from third-party room block marketers. These firms often confuse, frustrate, and disappoint an association's constituencies—members, registrants, exhibitors—leading to complaints that fall to the association to manage. Since they book outside of the association's room block, these firms increase the risk of attrition penalties for the association. And there are many reported situations of false and deceptive activities by some of these third-party room block marketers.

ASAE has itself been challenged by these firms. In one recent case, though, ASAE took aggressive action that produced remarkable results. The results benefit not only ASAE & The Center for Association Leadership but also all ASAE members.

On July 11, 2008, following cease-and-desist letters that went unanswered, ASAE filed a complaint in federal court against one firm, Complete Event Planning, Inc., of Henderson, Nevada, near Las Vegas. The suit alleged that this third-party room block marketing firm had posted ASAE's registered logo on its website and had repeatedly represented to prospective meeting attendees that CEP was an authorized representative for housing at ASAE & The Center's meetings and conventions.

After negotiation with CEP's attorneys, ASAE reached a settlement in the form of a consent order filed jointly by the parties for signature by the federal judge, which occurred on December 3, 2008. The advantage of a consent order settlement, as opposed to a simple settlement by contract agreement, is that violation of a court order, including a consent order, is subject to civil or even criminal penalties for contempt of court.

As is typical in legal settlements, CEP admits no wrongdoing. The consent order acknowledges that CEP has a right to legitimately and honestly solicit prospective attendees at ASAE & The Center's events. But it prohibits CEP in its marketing efforts from using ASAE's name or logos without permission, and it prohibits CEP from even suggesting that it has the authority or approval of ASAE to solicit bookings for housing at ASAE & The Center's events.

What is more, the consent order prohibits those CEP practices—unauthorized use of names or logos and misrepresentation of authority—for the meetings, conventions, or events of any associations whose employees are members of ASAE. In short, ASAE achieved blanket protection for all of its members from improper practices by the Complete Event Planning, Inc., firm.

CEP also agreed to pay a portion of ASAE's legal fees and to refrain for three years from seeking membership in ASAE.

Not all associations will have the resources or the will to file lawsuits against third-party room block marketers that threaten the associations' events through improper practices. And they should not have to do so with respect to one firm, CEP, where ASAE has already achieved broad relief for ASAE's constituency. Associations need to recognize that the business of blocking rooms at other organizations' meetings, conventions, and other events is not inherently illegal or improper; what is wrong is for the firms to misuse associations' intellectual property or to misrepresent the firm's authority. Associations that want to deter these firms must more carefully protect information about meeting attendees. It is common for an association to list the names of prospective or past attendees or exhibitors on the public part of an association's website, thereby inviting solicitation of those attendees or exhibitors for housing. That information is confidential for the association; it need not be made public. To do so facilitates third-party solicitation, including improper solicitation at times. The law helps those that help themselves.

For more information about the ASAE lawsuit against Complete Event Planning, Inc., contact Chris Vest, director of public policy, at [cvest@asaenet.org](mailto:cvest@asaenet.org).

*Jerry Jacobs is ASAE & The Center general counsel and a partner with Pillsbury Winthrop Shaw Pittman LLP in Washington, DC.*

## **Is It Illegal?**

As if finding your attendees booking within another room block isn't frustrating enough, the companies in question may be doing nothing illegal.

Jerry Jacobs, a partner with Pillsbury Winthrop Shaw Pittman and general counsel for ASAE & The Center, explains that there is a fine line regarding how far a business can go in referencing a commercial entity like an association. "When companies step over the line, as some of them have done, and call and say they're representing the ABC Association when they have no authorization to do so, that's fraudulent solicitation," says Jacobs. "Any use of a logo without permission also is a clear violation of trademark law. But, if they go into an association's website, see a list of meeting attendees or exhibitors, and start calling them and simply say they are booking hotel rooms for the upcoming [association] convention and tradeshow, that's probably not illegal."

Jacobs adds that even suggesting room blocks are sold out is a gray area, especially if it's conveyed verbally. "It's probably illegal but it's a close call," he says. "If I'm a third-party company and my phone bank sales script says we have a block for the upcoming [association] meeting and it is almost sold out, that's borderline deceptive but it may not be actionable because I can claim we were referring to our own block and not [the association's] block, so it's going to be very difficult to prove."

Jacobs emphasizes that with such murky legal waters swirling around the issue of third-party booking firms, associations should take care to protect the information these firms use for their solicitations. "The best defense here is not to let them get your list," he says. "The Supreme Court declared a number of years ago that it is very difficult, if not impossible, to have copyright ownership of a mere list. For an association to post on its website any kind of list of members, attendees, exhibitors, et cetera, almost certainly it has no copyright protection, so it becomes in the legal parlance public domain and the third-party block firm has a right to use that information," he says, adding that associations can claim such information to be confidential and do not have to make it public.

To further protect themselves, Jacobs believes associations should more carefully screen potential members and those who rent their lists. "If associations want to protect themselves against these third-party room block companies, they ought to be more careful about the information they put on the public domain and the public part of their website, be careful about screening members in case these companies join just to get this information, and be careful about whom they rent their lists to," he says. "Many associations sell this information to anyone who asks for it, while others require that those renting their lists provide a legitimate reason. Then, if a company would defraud or lie about what they were going to do with the list, that would be a contract violation."

## **Under Attack, Fighting Back**

So what's an association to do if it learns that its attendees are being solicited by a third party, even after taking steps to protect itself? Those who have been through it say the best defense is swift and aggressive action and effective communication.

When Andrew LaVigne, president and CEO of the American Seed Trade Association, started receiving calls from his exhibitors asking how the headquarters hotel for ASTA's 2008 conference in Chicago could be sold out

already, he and his staff sprang into action. A staff member contacted the firm that had called the exhibitors to inform them ASTA was aware of it, and ASTA's attorneys sent a cease-and-desist letter to the firm. Alerts also were posted on the association's website and sent to about 2,500 exhibitors and members, while ASTA's hotel partners were put on notice to be vigilant for suspicious reservations activity.

"They're legitimately making reservations, but the problem is that their special rate was \$50 more than our room rate," says LaVigne. "It was just misleading," he adds, noting that he knows of only one ASTA exhibitor that made a reservation through the firm.

"When this kind of thing happens, don't just assume it's a fluke," says LaVigne. "The big lesson we learned is we need to make sure our people understand that unless it comes from ASTA, then it probably isn't something they want to get involved in before they talk to us." LaVigne adds that as a result of the incident, ASTA has taken steps to more effectively guard registrants' contact information and to strengthen language prohibiting the sale of related membership data.

Kayte Shriver, manager of exhibits and sponsorships for the American Trucking Associations, believes that the close relationship she has fostered with her exhibitors played a critical role in identifying and minimizing third-party sales solicitations at ATA's recent conference in New Orleans. "The first correspondence I have with folks when they sign up to exhibit is that all paperwork will come from me on ATA letterhead," says Shriver. "That's why it was alarming to them when they got calls from other companies who are not mentioned as my contractors." ATA did an email blast and posted warnings on its website.

Hacker says that in addition to email blasts, a recorded message sent out to members' voicemail can be effective. "When we were tipped off there was mischief afoot, I recorded a 35- to 40-second message that basically had all the key elements in it and then broadcast it overnight to all our exhibitors and instantly we received emails thanking us that we alerted them."

Hacker says another successful strategy is inserting specific language into cease-and-desist letters. "When confronted with an issue like this, we tell the organizer that they should have their attorney contact the poaching company and put them on notice that we consider your improper intrusion into our event as 'tortuous interference' in a contract, the contract we have in place with our hotel or hotels," he says. "Your tortuous interference—and that's a legal term—into our contract will result in us holding you financially liable for any attrition penalties that are assessed against us. So, we're going to come after you for those attrition penalties plus damages."

## **Relief From Attrition Penalties**

Harve Horowitz agrees that legal tactics can be effective. As both an attorney and president of tradeshow management and marketing firm Exhibits Promotions Plus, Horowitz has copied the Internal Revenue Service as well as state attorneys general offices on letters he sent to offending companies that were using deceptive practices to secure freight, decorating, and other tradeshow-related business. He also believes hotel contracts can play a key role in limiting damage an association might experience.

"Don't just discuss it up front with your hotel partners, address it in the contract," says Horowitz. He reports that he has been able to get a price-protection clause negotiated into most hotel contracts that protects his clients against being undercut on the room rate. He also has inserted clauses into recent contracts that require hotels to cross-reference rooms booked at the group rate to ensure there is a corresponding conference registration. Otherwise, the individual must pay the hotel's rack (undiscounted) rate.

Jacobs agrees that hotel contracts can provide relief. "What the association can do, and I don't think most hotels would resist this, is to build into the arrangement with their hotels that any meeting attendees, whether they book through the association's official booking agent or not, will be counted against the count for the

attrition quotas," he says. "They should also have what's called Most Favored Nation clauses in their hotel contracts that state the hotel cannot sell any rooms to any meeting attendees at prices lower than the agreed upon prices. Some associations with a lot of clout like a citywide convention are able to take the Most Favored Nation clause to the next step, and that is no room in this property can be sold lower than our convention rates over these dates."

Dave Scypinski, senior vice president, industry relations for Starwood Hotels & Resorts, says the hotel community has seen unauthorized third-party booking as a growing problem in the convention market and has taken steps to help protect its customers. "In the case with some of these companies where we do find out they come in through the side or back door, we've actually cancelled the rooms and put that back on the third party which, of course, is very uncomfortable because then the third party has to explain to the end user why they suddenly don't have a room at the Sheraton Chicago," he says.

Scypinski reports that he's seeing a prevalence of clauses inserted into contracts to ensure there are no cheaper rates over the dates of the meeting. He believes additional contract language can help combat poaching as well. Scypinski adds that while associations can't ask their hotel partner specifically who is booked into the hotel over the same dates, they can request the hotel to carefully research any groups with a similar arrival-departure pattern to guard against poaching.

"It's kind of a thin edge between what people have been doing for years, and that is just blocking rooms in a city that's tight," says Scypinski.

LaVigne believes that ultimately, it's left up to the association community to protect itself. "It just seems to me that we as associations need to be more diligent in letting our customers and exhibitors know that if you don't see it from your association, don't make any reservations until you talk to your folks," he says.

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