

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KAYAK SOFTWARE CORPORATION,

Plaintiff,

v.

HOTEL TONIGHT, INC.,

Defendant.

Civil Action No.: 3:15-cv-450

COMPLAINT

JURY TRIAL DEMANDED

KAYAK Software Corporation, by its attorneys, Foley & Lardner LLP, for its Complaint against Hotel Tonight, Inc., alleges as follows:

PARTIES AND JURISDICTION

1. KAYAK Software Corporation (“Plaintiff” or “KAYAK”) is a Delaware corporation, having an address at 7 Market Street, Stamford, Connecticut 06902.
2. Upon information and belief, Hotel Tonight, Inc. is a Delaware corporation having an address at 901 Market Street, Suite 310 San Francisco, California 94103.
3. This is an action for declaratory relief under 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over the claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.
4. This Court has personal jurisdiction over Defendant because, as set forth more fully herein, it transacts substantial business within this State and this District and has threatened harm to KAYAK in this District.
5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

FACTS COMMON TO ALL COUNTS

KAYAK's Business and KAYAK's Trademark

6. KAYAK is one of the world's leading websites and mobile applications for comparing travel sites, flights, hotels and rental car services.

7. KAYAK's rights in its name and mark KAYAK date to 2004, when it first applied to register the name in the United States Patent and Trademark Office based on intent to use.

8. KAYAK commenced use of its name and mark KAYAK in 2006, and, since long prior to the acts at issue herein, had grown to its current status as one of the best known and most trusted websites and mobile applications in this country for comparing travel sites, flights, hotels and rental car services.

9. In connection with its services for comparing travel sites, flights, hotels and rental cars, KAYAK uses not only the name and trademark KAYAK, but also a distinctive orange KAYAK Logo and K Logo.

10. KAYAK currently now owns the following registrations for its name and mark KAYAK and its KAYAK Logo and K logo:

MARK	REGISTRATION NO.	REGISTRATION DATE
KAYAK	3209578	February 13, 2007
KAYAK	3110651	June 27, 2006
KAYAK	4608486	September 23, 2014
KAYAK.COM	3129154	August 15, 2006
KAYAK.COM	3410425	April 8, 2008

MARK	REGISTRATION NO.	REGISTRATION DATE
	4067183	December 6, 2011
	4608485	September 23, 2014
	4300775	March 12, 2013
	3855864	October 5, 2010
	4608484	September 23, 2014
	4300774	March 12, 2013

11. The foregoing registered marks are valid and subsisting, unrevoked and uncanceled, and KAYAK is the sole owner of all rights and good will in such names and marks.

Hotel Tonight’s Threats of Suit

12. KAYAK recently launched an updated feature to its mobile app, that, among other things, aids travelers seeking to find hotel rooms on a nightly basis in proximity to wherever they happen to be located. It describes the feature in a menu listing of the functional features of its app as “Hotel for tonight.”

13. The menu listing of the functional feature “Hotel for tonight” is always used together with the prominent KAYAK name and the KAYAK Logo and the K Logo.

14. Upon information and belief, Defendant offers and provides travel accommodation services both nationally and in this District under the name HOTEL TONIGHT and the following “h/bed” logo:



15. On February 25, 2015, Defendant sent to KAYAK’s corporate parent, Priceline.com, Inc., a letter accusing KAYAK of infringing its claimed rights in the name “Hotel Tonight.”

16. Despite efforts since that date to try to settle the matter, Hotel Tonight has maintained its contention in increasingly threatening tones that KAYAK’s use of the descriptive phrase “Hotel for tonight” infringes its claimed rights in the name “Hotel Tonight,” and the range of its complaints have expanded in scope.

17. Upon information and belief, Defendant owns no patent rights or other intellectual property rights in or to the functional feature of permitting travelers to locate hotels in their immediate locations and reserve rooms on a nightly basis.

18. The words “Hotel for tonight” as used by KAYAK describe a feature of KAYAK’s mobile app of permitting travelers to locate hotels in their immediate locations and reserve rooms on a nightly basis.

19. Despite the threats made by Hotel Tonight, there is no likelihood that relevant consumers of the parties' services are likely to be confused as to the source of origin of the parties' respective travel accommodation services as a result of the common use of the descriptive words "hotel" and "tonight," particularly given the prominent use by KAYAK of its well-known trademarks KAYAK, the KAYAK Logo and the K Logo in connection with such services.

20. KAYAK's use of the phrase "Hotel for tonight" is a permitted descriptive fair use in connection with such services of permitting travelers to locate hotels in their immediate locations and reserve rooms on a nightly basis, notwithstanding any rights Hotel Tonight may have in the descriptive phrase "Hotel Tonight."

FIRST CAUSE OF ACTION

[Declaratory Judgment]

21. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20 as though fully set forth herein.

22. Defendant's threats that KAYAK's use of the phrase "Hotel for tonight" infringes its claimed rights in the name "Hotel Tonight" create a case of actual controversy within the jurisdiction of this Court as to the scope of the parties' rights.

23. As a result of the foregoing, Plaintiff is entitled to a declaratory judgment that its conduct as aforesaid, including its use of the term "Hotel for tonight" as part of its mobile app, infringes no rights of Defendant; and/or that its use of the term "Hotel for tonight" is a permitted fair use.

24. Plaintiff has no adequate remedy at law.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury as to all issues so triable in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against Defendant as follows:

1. Declaring that Plaintiff has infringed no rights of Defendant; and that Plaintiff's use of the term "Hotel for tonight" is a permitted fair use; and
2. Awarding Plaintiff its reasonable attorney's fees and costs of this action as provided by law, together with such other and further relief as the Court may deem just and proper.

Dated: March 27, 2015

Respectfully submitted,

FOLEY & LARDNER LLP

By: /s/ Richard J. Bernard
Richard J. Bernard, Esq.
Jonathan E. Moskin, Esq. (*pro hac vice*
motion to be filed)
90 Park Avenue
New York, New York 10016
Telephone: (212) 682-7474
Facsimile: (212) 687-2329
Email: jmoskin@foley.com
Email: rbernard@foley.com

Attorneys for Plaintiff
KAYAK Software Corporation