



ELEVENTH ANNUAL CONFERENCE of IFTTA NORTH AMERICA

MARCH 10, 2022

For the second straight year, COVID-19 prevented the North American section of the International Forum of Travel & Tourism Advocates (<http://iftta.org/>) from meeting, as it usually does each March, in Fort Lauderdale.

However, it didn't prevent nine speakers from three countries from informing their Zoom audience on a disparate range of issues. Toronto lawyer **Tim Law** hosted the call, with section President **Daniel Zim** both opening and closing the remote event.

Well-known Travel Attorney and columnist **Mark Pestronk** led off by addressing one of the ubiquitous legal consequences of COVID Future Travel (and Cruise) Credits. Starting from the premise that FTCs involve “wrongs without a remedy”, he listed eight ways in which consumers can be victimized by FTCs and their cruise-industry counterparts. All eight types of wrongs lack a practical and effective legal solution. In the absence of a more effective remedy for those wrongs, he suggested that carriers (and cruise lines) ought to be obliged to include in their contracts of carriage the specific ways in which those wrongs can be resolved. Then, the DOT (and the Federal Maritime Commission) would be in a position to enforce legally the relevant provisions of those contracts of carriage.

The carriage of passengers into space was the main topic of the presentation by **Prof. John Thomas** of Florida International University. The regulation of Space Tourism/Travel is in its infancy. Even the definition of what “space” is can be the subject of debate. In the USA, the body with the most knowledge about space (NASA) is not a regulator, and the body with the technical authority to regulate space travel (the FAA) --- like its European counterpart, the European Space Agency --- has shown little interest in doing so. This leaves the various entrepreneurs to self-regulate, and their consumers to try to rely upon statutory and Common Law concepts that were never intended to apply to space travel.

Until recently, space travel was not an actual reality. Now, “reality” need not even be actual. The alternatives (being “augmented”, “virtual”, and “mixed” reality) were explored by **Chunnie Wright**, in Part 2 of her presentation, the first installment of which was delivered at the 2020 Conference. This time, she was joined by her colleague **Chelsea Chan**. Chunnie discussed the use of AR, VR and MR in the context of travel marketing, trip planning, and the legal/booking aspect of the process of selling travel, citing examples of companies and tourist boards who are now using these options. Chelsea addressed the many legal issues that are raised by the use of these versions of reality.

Jeff Ment tackled some of the legal issues raised by the promotion of Sustainable Tourism. Who defines the terms that are used to convey a “green” sense in a company’s marketing of its travel products? Who regulates that type of promotion? To what extent can puffery be an acceptable component in “green” advertising (i.e. can the positive ends justify any misleading or corner-cutting means?)? In his presentation, Jeff referred to some US cases that dealt with such advertizing, and cited some companies that are trying to give real meaning to the many vague terms that can be invoked by a company wanting to promote itself as being “green” without actually doing the things needed in order actually to be such.

As the use of the Web to sell travel experiences grows, so does the need to make the Web experience itself functional for all. As a practicing lawyer who also owns a travel agency and has worked in the industry, New York lawyer **Tom Carpenter** brings a unique point of view to the Conference in general, and any travel/legal topic in particular. This year, he focused his attention on the relevance of the

Americans with Disabilities Act to website access. In doing so, he covered the rules that apply, how they are enforced and by whom, and the results of some cases that have been brought to a conclusion. His information on the geographic incidence of ADA claims, and the frequent appearance of certain law firms on the Plaintiff's side of these cases was intriguing.

In the US, it's called the USMCA. In Canada, it's the CUSMA. In Mexico, it's T-MEC. In all three countries, it used to be called the North American Free Trade Agreement (NAFTA). A Professor in the Sustainable Tourism and Hotel Management program at the University of the Caribbean in Cancun, **Prof. Enrique Mota** explained from the Mexican point of view the ways in which the successor to NAFTA deals with tourism, and how the Agreement fits within that country's hierarchy of laws, rules, treaties and conventions. In the course of his presentation, he touched on the rules for misleading advertising, trademarks, data protection, and the use of electronic signatures.

Daniel Guay of Montreal added to the international nature of the Conference. He is outside counsel to the Quebec chapter of the Canadian travel trade association, and also acts for a number of travel companies in Quebec. From that vantage point, he is well-situated to know what is happening in the province's Travel Law field. The translation of his annual summary for 2021 was circulated prior to the Conference, allowing him to focus on certain of the cases that are summarized in his sixteen-page compilation. Included were comments on two COVID-triggered Class Actions currently underway in the Quebec Courts.

During his career in Travel Law, Boston lawyer **Rodney Gould** has encountered quite a few of the issues in the field. His March 10 remarks focused on a Massachusetts law that is aimed at protecting the consumers of travel services. On the books for years, it has only recently become a high-profile issue. There are three cases involving it, two in Federal Court and one in the State Court, and he advised that the law is now regularly cited in complaint letters from Plaintiff's counsel in travel cases. This led to comments about counselling potential passengers in the Age of COVID, the contents of Releases that travel companies ought to insist on when settling a consumer case, legal differences between negligence and gross negligence, and the comparative merits of arbitration vs litigation.

The Conference ended with a presentation by **Kim Chotkowski**. A Hartford, Connecticut Intellectual Property lawyer by training, an entrepreneur by choice, and herself the holder of four US patents, Kim gave to the non-IP specialists in the audience an introduction to her field, and some of the IP issues that a Travel Law specialist might encounter. Given the international nature of the travel industry, her comments on the Madrid Protocol were of particular interest.

All in attendance were advised that Malta will be the venue for the next Worldwide conference of IFTTA, with the specific Autumn date (likely in October) yet to be finalized. It is of course the expectation that the next North American Conference will be held in-person, in Florida.

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