



CONGRESSIONAL HEARING

IN THE DARK:

LACK OF TRANSPARENCY IN THE LIVE EVENT TICKETING INDUSTRY

Date: Wednesday, February 26, 2020 - 10:00am

Location: 2123 Rayburn House Office Building

Subcommittees: Oversight and Investigations (116th Congress)



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Before the
The Subcommittee on Oversight and Investigations of the
Committee on Energy and Commerce
February 26, 2020

INTRODUCTION

Chairwoman DeGette, Ranking Member Guthrie and Members of the Subcommittee, it is an honor and a privilege to be able to partner with this Committee to provide better transparency for consumers purchasing event tickets on primary and secondary markets.

Thank you for the opportunity to testify today on behalf of TicketNetwork, Inc. (TicketNetwork) regarding these important issues. Below are some highlights and perspectives regarding the issues being discussed today, specifically, “all-in” pricing, ticket transferability, speculative tickets, limiting ticket availability and deceptive websites harming consumers.

For those of you not familiar with TicketNetwork, allow me to briefly introduce to the members of the Subcommittee our company. I founded TicketNetwork in 2002 as a secondary marketplace with a simple idea to empower both ticket buyers and sellers to engage in free market transactions to buy and sell tickets to sporting events, shows, and concerts. With a wide selection of real-time ticket inventory, we provide a valuable service to consumers worldwide. Our mission is to provide access to tickets to live events and a safe, secure environment for transactions. As one of the industry leaders, TicketNetwork strives to provide “best in class” customer service and provide fair terms for its customers, both brokers and eventgoers.

TESTIMONY

The first issue I would like to touch on is so called “all-in” pricing as opposed to “drip” pricing. “All-in” pricing refers to displaying the full price a consumer will pay, including any and all fees, upfront. “Drip” pricing, in contrast, shows just a ticket price, adding subsequent fees (i.e. shipping charges, delivery fee, handling fees, etc.) later. In some instances, these hidden and



often high fees are not disclosed to the consumer until he or she is well into the purchasing process. Disclosing the full ticket price to consumers at the start of the shopping process, in our opinion, would be the best practice for both primary and secondary ticket sellers. This will make comparison shopping much easier, especially for inexperienced consumers. TicketNetwork currently offers an “all in” pricing option on 99% of our sites. Customers can select an option to see ticket listings including the ticket price and an estimate of all fees included at the maps or listing page. This enables consumers to shop based on the price they will pay and avoid being surprised by fees appearing at checkout. Some but not all the competitors in our industry provide “all-in” pricing options.

While TicketNetwork has increasingly embraced this model, “all-in” priced websites often operate at a disadvantage when consumers comparison shop, because drip pricing tickets will appear less expensive until the consumer sees the fees in connection with checking out. “All-in” priced tickets will look more expensive to consumers at first glance. Regardless of whether our competitors move in the direction of “all-in” pricing as a uniform pricing model, we feel such websites are much clearer for consumers, and we will continue to offer them so long as we can maintain them as a viable business model while attempting to scale up to compete with less-transparent marketplace websites.

Next I would like to address the issue of ticket transferability, which is a cornerstone of the TicketNetwork business model. Each consumer must have the ability to freely transfer any tickets purchased and cannot use for a wide array of reasons. We believe in full transferability of tickets purchased, which also goes to the core of the idea of a free market and limitations on one’s ownership rights once goods are sold. The Supreme Court affirmed this right recently in *Impression Products v. Lexmark International* (No. 15-1189, 2016)¹ deciding 7 to 1 that Lexmark’s right to control its products ended after the products were sold.

"The purchaser and all subsequent owners are free to use or resell the product just like any other item of personal property, without fear of an infringement lawsuit [...] Take a shop that restores and sells used cars," chief justice John Roberts wrote in the majority opinion. "The business works because the shop can rest assured that, so long as those bringing in the cars own them, the shop is free to repair and resell those vehicles. That smooth flow of commerce would sputter if companies that make the thousands of parts that go into a vehicle could keep their patent rights after the first sale."

¹ See here: https://www.supremecourt.gov/opinions/16pdf/15-1189_ebfj.pdf

The Connecticut legislature has embraced this concept for the ticketing industry as well. Public Act 17-28² was signed by the governor on June 6, 2017 and went into effect on January 1, 2018. The Act Concerning the Sale of Entertainment Event Tickets on the Secondary Market contains provisions covering the following:

(1) a prohibition on an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system, with an exception carved out for a paperless ticketing system that does not allow for independent transferability of tickets, provided the purchaser of such tickets is offered the option, at the time of initial sale, to purchase the same tickets in another form that is transferrable, independent of such a ticketing sales system, including, but not limited to, paper tickets or e-tickets and without additional fees, regardless of the form or transferability of such tickets;

(2) a prohibition on denying admission to an entertainment event to a ticket holder who possesses a resold ticket to such entertainment event based solely on the grounds that such ticket has been resold [...]

Similarly, businesses should not be able to force³ consumers to disclose their personal data for further reselling of this data to various “affiliates” just to be able to transfer the ticket to the other person by using their proprietary platform and dynamically generated admission codes.

The ability to freely transfer the ownership of tickets will promote natural free market price regulations, uninhibited by deceptive and unfair practices, such as coordinated floor pricing, artificial limits on ticket availability and gender discriminatory pricing. With your kind permission, I would like to give you a bit more information about these three issues.

In 2016 the practice of so called “floor pricing” was the subject of the multi-state settlement with the NFL, with New York Attorney General leading the charge⁴.

“No sports fan should be forced to buy, or sell, a ticket at an artificially inflated price,” said Attorney General Schneiderman. “Under the NFL’s price floor scheme, fans were forced to pay inflated prices for even the least desirable NFL games. That is a slap to both sports fans and free markets. In the meantime, I encourage

² See here: <https://www.cga.ct.gov/2017/ACT/pa/pdf/2017PA-00028-R00HB-07114-PA.pdf>

³ TICKETING APP AXS SCRAPES EVERYTHING IT CAN GET FROM YOUR PHONE. Seeing your favorite band live will probably cost you more in data than in dollars. By Paris Martineau. <https://theoutline.com/post/5628/how-a-concert-ticket-steals-your-personal-data?zd=2&zi=o6aaapk1>

⁴ See here: https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf



every NFL team—and every team in professional sports—to heed the call of all sports fans and remove price floors from every team-authorized secondary ticket market.”

We ban “floor pricing” on all our sites, a practice which the NFL has now officially abandoned, but is still common on secondary marketplaces aligned with rights-holders. Fair markets allow competitive ticket pricing for customers that can lead to prices below face value. We were shocked to hear Ticketmaster, SeatGeek and StubHub admit to the coordinated implementation of floor pricing at June’s FTC workshop. Placing such artificial marketplace constraints against downward price pressure often puts TicketNetwork at a competitive disadvantage⁵, but we are determined to do what is best for customers.

We further believe that gender neutral pricing is the best option for all our consumers, and especially LGBTQ community. We ban all gender-discriminatory pricing (when one gender is given preferential pricing for admission over another) for all tickets listed on our exchange.

Finally, I strongly believe that artificially limiting ticket availability only harms consumers and further inflates already expensive ticket prices. Allow me to elaborate further on this issue mostly affecting primary ticket sellers. Upon the general on-sale offering of tickets to an event, consumers typically believe that they have a chance to purchase tickets for all, or at least most, of the tickets in each venue. In fact, less than half of the tickets for an event, on average, are ever made available to the general public⁶. In 2016, the New York Attorney General’s office found that on average, only 46% of popular concert tickets are made available to the general public⁷. Similarly, the Government Accountability Office (GAO), found that the live event ticket industry frequently lists tickets directly with brokers to “capture a share of higher secondary market prices without the reputation risk of raising an events ticket price directly⁸.”

Let me give you several examples of concert tickets (the type of tickets that are most often held back):

⁵ NFL routinely cautions consumers not to purchase tickets from secondary sources: <https://www.packers.com/news/packers-urge-caution-when-purchasing-game-tickets-through-secondary-source-2019>

⁶ See here: https://www.ftc.gov/system/files/documents/public_comments/2018/12/06714-163065.pdf

⁷ See here: <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>

⁸ U.S. Gov’t Accountability Office, GAO-18-347 Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018).

- Of the 750,000 tickets for Adele’s 2016 North American tour, it is estimated that only 300,000 were made available to the general public.⁹
- For Justin Bieber’s January 18, 2013 show in Nashville, Tennessee, 93% of the tickets were set aside for presale and insiders. Many of the tickets were allocated to Bieber’s management company and were later listed on ticket resale websites at inflated prices.¹⁰
- After tickets to Jimmy Buffet’s April 2018 show in Hattiesburg Mississippi sold out in two minutes, the executive director of the venue complained that the promoter, Live Nation, had set aside a “sizable block” of tickets before they went on sale.¹¹
- Katy Perry’s contract riders stipulated that her management company could withhold from the box office unlimited numbers of tickets expressly for the purpose of reselling them.¹²
- Only 30% of tickets for the Barclays Center 2012 New Year’s Eve show starring Jay-Z and Coldplay were sold to the public.¹³

Congress did establish a “firewall” between managers and promoters in the boxing industry by enacting the Muhammad Ali Boxing Reform Act.¹⁴ We believe this initiative should be taken further and become applicable to other live events as well.

⁹ Ray Waddell. Adele Ticket Blowout Frustrates Fans, with Ticketmaster Taking the Heat, Billboard (Dec. 15, 2015). <https://www.billboard.com/articles/news/6813725/adele-tour-sold-out-angry-fans-ticketmaster>

¹⁰ Kyle Anderson, Justin Bieber has been scalping his own tickets, says Nashville TV Station, Entertainment Weekly (Sep. 28, 2012, 8:43pm) <https://ew.com/article/2012/09/28/justin-bieber-ticket-scalping-nashville/>

¹¹ TicketNews, Sizable block of Holdbacks Precipitate Rapid Jimmy Buffett Sellout, TicketNews (April 10, 2018), <https://www.ticketnews.com/2018/04/sizable-block-jimmy-buffett-tickets-held-back/>

¹² The Smoking Gun. Drivers Beware: Don’t Stare at Katy Perry Singer’s tour rider offers 23-point wheelman policy, The Smoking Gun (May 19, 2011). <http://www.thesmokinggun.com/documents/celebrity/katy-perry-concert-rider-138490>

¹³ State of New York. “Obstructed View: What’s blocking New Yorkers from Getting Tickets,” Office of the New York Attorney General. Pg. 14. January 28, 2016 (“Schneiderman report”) Online: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

¹⁴ Section 5. (b) FIREWALL BETWEEN PROMOTERS AND MANAGERS--
(1) IN GENERAL- It is unlawful for--
(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or
(B) a manager--
(i) to have a direct or indirect financial interest in the promotion of a boxer; or
(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager’s contract with the boxer.
“H.R. 1832 — 106th Congress: Muhammad Ali Boxing Reform Act.” www.GovTrack.us. 1999.
<https://www.govtrack.us/congress/bills/106/hr1832>



Another way to combat practices that are harmful to consumers is to require ticket sellers to disclose the actual face value of tickets to consumers. In Q3 of 2019, we beta tested a website that displayed the face value of tickets to the end consumer. We plan to continue aggressively testing this model in Q2 of 2020. However, certain venues and promoters have complained about showing face prices directly to consumers, due to the fact that it commonly shows that consumers purchase tickets for below face value on the secondary market, particularly in instances where the primary market enabled variable “dynamic” pricing to maximize prices at periods of high demand.

Additionally, TicketNetwork has installed state of the art artificial intelligence to identify and purge tickets listed on our exchange that indicate exorbitant and predatory pricing. That said, identifying speculative inventory¹⁵ is very difficult to do, as the definition is inherently vague, and an inflated price is only one indicator of a potentially speculative ticket. Ultimately, our primary concern as a marketplace is that the consumer receives the ticket purchased – and that it is the ticket he or she expected to receive. If a seller has the right to a ticket, but doesn’t yet have that ticket in hand (e.g., a season ticket holder), and offers that ticket for sale to help fund the purchase of the season ticket package, the holder should be entitled to offer that ticket prior to receiving a hard copy of the ticket from the team. Given the advancements in technology and ticket delivery systems, a requirement that a seller have a ticket “in hand” is quickly becoming antiquated.

A free market is the best regulator of prices, and the product (in this case – event tickets) can be priced only as high as the market will bear. As supply and demand shift, the price will go down if there is insufficient demand at a given price. In fact, promoters and artists alike are interested in pricing their tickets at the top of what the market will bear and brokers create the proverbial supply / demand tension testing what the market will bear. And that is why we see venues and artists holding back blocks of tickets, which has a larger impact on price increases than anything the brokers or secondary markets can do.

One way to identify brokers with intentions of not providing tickets as advertised, the ultimate concern relating to speculative tickets, is to offer consumers a mandatory 200% refund for cancelled ticket orders applicable to both primary and secondary markets.

That said, we must go further to empower consumers. We support a growing call for a complete ban on binding arbitration clauses for disputes relating to live event tickets. In 2011, Ticketmaster changed its Terms of Use to require purchasers to settle disputes in arbitration. Now, when you buy a ticket, “you agree to waive any right to a jury trial or to participate in a

¹⁵ For the purposes of this testimony, we identify “speculative” tickets as tickets offered for sale while the seller has no reasonable expectation of obtaining the tickets listed. See further here: Obstructed View: New York State. From the Office of Attorney General Eric T. Schneiderman: What’s Blocking New Yorkers from Getting Tickets. https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf



class action.” Allowing arbitration clauses demotivates consumers seeking remedy, as their recovery is likely to be very small. With class actions, there’s strength in numbers. This is a real leverage for bad actors to avoid predatory and unfair practices.

In one example, *Lee v. Ticketmaster LLC*¹⁶, a customer pursued a class action against the world’s largest ticket seller for conspiring with brokers to resell event tickets on approved Ticketmaster resale websites, enabling the company to cash in twice by collecting fees on the initial sale and upon resale. The plaintiff argued that this scheme constituted unlawful and unfair business acts and unjust enrichment at the expense of consumers. A trial court dismissed the case and compelled arbitration, siding with Ticketmaster who argued that its online terms of use policy required users to arbitrate all disputes.

There is also an example of successful Congressional actions in a similar situation. On November 2, 2002, President Bush signed into law the Motor Vehicle Franchise Contract Arbitration Fairness Act designed to address a disparity in bargaining power between motor vehicle dealers and manufacturers. This law makes pre-dispute arbitration clauses in motor vehicle franchise contracts unenforceable under the Federal Arbitration Act unless both parties consent after the dispute arises. Congress should act again to eliminate the effect of these arbitration clauses in live event ticket terms and conditions.

Finally, I would like to conclude my testimony with my thoughts on so called “white label” websites, although this term is not entirely accurate. The “white label” or “private label” concept is widely accepted in many industries. For example, one vitamin complex manufactured in the same laboratory may be sold under a dozen of different names or “private” (“white”) labels. Similarly, TicketNetwork’s powerful exchange platform is available to our clients to use under their own private label brand, which is a wide-spread practice, and allows private label websites to market to different segments of consumers, provide additional services and otherwise fairly compete with one another which only benefits consumers. It is my understanding that the respected members of this Subcommittee are mostly concerned with a different issue, namely websites posing as an actual venue or an artist attempting to “trick” consumers into thinking that they are dealing with a primary source of tickets, when in practice, this is not the case. To further avoid confusion on the issue, I will refer to these websites as “fake label” websites, to better reflect their deceptive nature.

In July of 2014, TicketNetwork entered a consent decree¹⁷ with the FTC that, among other things, outlines clear and concise rules for conduct of operation of a white label website that is not deceptive and is designed to simply refer to a venue or an artist without becoming a fake

¹⁶ No. 18-cv-05987, 2019 U.S. Dist. LEXIS 57661 (N.D. Cal. Apr. 3, 2019)

¹⁷ <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>



label website tricking consumers. This conduct includes avoidance use of the term “official” and clearly indicating that the site is a reseller not affiliated with the applicable venue, team, performer or other entity, among others. It is our understanding that the FTC conducted extensive research and concluded that the steps recommended in the decree will be sufficient steps to protect consumers.

It is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC and are NOT “fake” label websites.

Finally, the results of the FTC Workshop complaint data showed that only 70 out of the 2000 complaints we reviewed were caused by false and deceptive advertisements. Note that this number includes ALL forms of deceptive advertisement and is by far not the biggest issue consumers were complaining about in 2019.

Hidden, deceptive and exorbitant fees topped the list of complaints at 897 (45%), complaints for high or excessive fees totaled 749 (37%), which brings the total of all fee related complaints to 82% of the 2000 we reviewed. Transparency and upfront fee disclosure are also on the list of customers’ primary concerns.

CONCLUSION

TicketNetwork is committed to providing a consumer-friendly fair and open marketplace for ticket brokers and the general public. Greater transparency in ticket sales, through all-in pricing, limited holdbacks, and greater freedom of transferability and pricing will benefit consumers and bring the prices down to whatever the open market determines the prices should be.