



ADVERTISING SELF-REGULATORY COUNCIL

National Advertising Division

December 5, 2018

Via Electronic Submission:

Mr. Donald Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C., 20580

Re: Workshop Examining Online Event Ticket Sales; Project No. P18450

Online ticket exchange websites offer consumers the ability to purchase tickets for sports, concerts, theater and other live entertainment. When consumers search for tickets, they can locate an event and choose from a number of ticket options listed by price. While this convenience benefits consumers, if ticket exchanges obscure material information about the cost of the tickets, including fees charged, this can undermine many potential benefits to consumers and competition which online ticket exchanges could promote.

Initial prices displayed to consumers on ticket exchanges have the potential to mislead consumers and limit their ability to compare prices. The same standards of truthfulness and accuracy pertaining to all advertising apply to pricing claims. The initial advertising interaction between a consumer and an advertiser should be truthful, as it affects consumer behavior and determines whether the consumer will choose to learn more about the product and ultimately make a purchase. The consumer's opening contact with the price of the ticket reasonably conveys a message that the price displayed is the total price (or close to the total price) for the ticket. When ticket exchange fees are not disclosed when the initial ticket price is displayed, consumers may be misled about the total cost of tickets, including the pricing details of all fees and their ability to accurately compare prices is limited. Although consumers may generally understand taxes or shipping fees may be added to the initial ticket price, consumers expect that the price displayed is near the total price for the ticket.

As described in our comment filed for the record of the FTC's hearings on Competition and Consumer Protection in the 21st Century (attached here), self-regulation can play an important role in monitoring market place practices. With clearer standards for adequate disclosure of cost information, an independent, transparent self-regulatory program can both ensure that consumers receive adequate information and level the playing field to safeguard that sellers meeting

standards for non-misleading online sales practices are not placed at a competitive disadvantage versus those that do not.

Employing these principles, the National Advertising Division (NAD) has attempted to provide self-regulatory guidance to the online ticket exchange industry on this issue. NAD evaluated the ticket pricing practices of StubHub, a popular online ticket exchange. StubHub displays a price during a consumer's initial search for tickets that does not include its ticket exchange fees or shipping and handling fees. On StubHub, a purchaser chooses tickets and clicks through to the final checkout page where, for the first time, the total price is displayed inclusive of fees and taxes. While service fees are added to the total price of the ticket purchase, they are not separately itemized. Only purchasers who click on a hyperlink labeled "pricing details" view the breakdown in fees charged.¹ The service fee, unlike taxes or standard shipping fees, is not a set fee or a set percentage on every purchase. It can range from 24% to 29% of the ticket cost. This extra cost can be high for sought-after events that can go for up to \$2000 a ticket. Even for lower-priced events, an \$8 fee on a \$27 ticket might influence a decision to buy from a specific vendor. StubHub did not to comply with NAD's recommendations that it disclose its fees when it displays ticket prices, and, as a result, NAD referred the matter to the Federal Trade Commission.

Disclosing the service fee only on the checkout page may prevent consumers from meaningfully comparing prices with other vendors as consumers seek to compare prices before making a purchase. The inability to compare ticket prices can mislead consumers as to the total price charged, the comparative competitiveness of the ticket price charged, and generally undermines trust in the marketplace for online ticket purchases.

StubHub advised that this is not just StubHub's practice – it is, in fact, the industry-standard practice. When StubHub moved away from the industry-standard practice and instead used "all-in" or fee-inclusive list prices, it advised NAD that it put StubHub at a significant competitive disadvantage, thus demonstrating that consumers compare the initial price displayed when they do not have information about the total price charged.

When consumers are considering a ticket purchase, before deciding to buy and click through to checkout, they should know any material fees charged.² It is ineffective to provide pricing information only after a consumer makes a decision to buy. It is a practice which harms both consumer confidence and competition.

¹ NAD questioned whether a hyperlink labeled, "pricing details," sufficiently informs consumers that it leads to a disclosure of additional fees charged. The FTC has provided explicit guidance on the use of hyperlinks disclosing material information, specifically that if a hyperlink is used, the hyperlink should be labeled "to convey the importance, nature and relevance of the information to which it leads." More importantly, as discussed more fully above, the disclosure is not made until after the purchase decision has been made.

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>

² <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> at 14.

Respectfully,

Laura Brett
Director, National Advertising Division
Advertising Self-Regulatory Council

Note: A recommendation by NAD to modify or discontinue a claim is not a finding of wrongdoing and an advertiser's voluntary discontinuance or modification of claims should not be construed as an admission of impropriety. It is the policy of NAD not to endorse any company, product, or service. Decisions finding that advertising claims have been substantiated should not be construed as endorsements.

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About Advertising Industry Self-Regulation: The Advertising Self-Regulatory Council establishes the policies and procedures for advertising industry self-regulation, including the National Advertising Division (NAD), Children's Advertising Review Unit (CARU), National Advertising Review Board (NARB), Electronic Retailing Self-Regulation Program (ERSP) and Online Interest-Based Advertising Accountability Program (Accountability Program.) The self-regulatory system is administered by the Council of Better Business Bureaus.

Self-regulation is good for consumers. The self-regulatory system monitors the marketplace, holds advertisers responsible for their claims and practices and tracks emerging issues and trends. Self-regulation is good for advertisers. Rigorous review serves to encourage consumer trust; the self-regulatory system offers an expert, cost-efficient, meaningful alternative to litigation and provides a framework for the development of a self-regulatory solution to emerging issues.

To learn more about supporting advertising industry self-regulation, please visit us at: www.asrcreviews.org.