

STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
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February 22, 2012

The Hon. Paul Doyle, State Senator
Co-Chair, General Law Committee
Legislative Office Building
Hartford, CT 06106

The Hon. Kevin Witkos, State Senator
Ranking Member, General Law Committee
Legislative Office Building
Hartford, CT 06106

The Hon. Joe Taborsak, State Representative
Co-Chair, General Law Committee
Legislative Office Building
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The Hon. Rosa Rebimbas, State Representative
Ranking Member, General Law Committee
Legislative Office Building
Hartford, CT 06106

Dear Honorable Chairs and Ranking Members:

On April 25, 2011, you requested our assistance in researching the underlying issues having to do with H.B. 6298 (2011), An Act Concerning the Fair Sale of Tickets to Entertainment Events. Specifically, you requested that this Department provide an objective analysis of the manner in which event tickets are sold in Connecticut and the ways in which consumers are impacted by current ticket selling practices.

As part of its review, the Department consulted with representatives from a wide spectrum of entities that touch the ticket sale and distribution process, in both the primary and secondary ticket markets. We consulted with promoters, venues, sponsors, primary ticketing service providers, payment system companies, online search engine companies, ticket brokers, online secondary ticket exchanges and consumers. The Department evaluated the entire ticket purchase experience from the initial ticket search, most often conducted through online searching, through the ticket sale transaction by the ultimate event attendee. Also, in furtherance of its review, the Department thoroughly reviewed complaints received from consumers, venues, the Better Business Bureau and other agencies.

Below we set out an overview of the current practices in both the primary and secondary ticket markets that impact the ticket purchasing experience for consumers. Included is a summary and discussion of the types of complaints the Department reviewed. We discuss areas of concern in both the primary and secondary ticket markets. We conclude with a discussion of the adequacy of existing laws to address these areas of concern. Finally, we conclude that legislative changes are not currently necessary to address the areas of concern that we have identified.

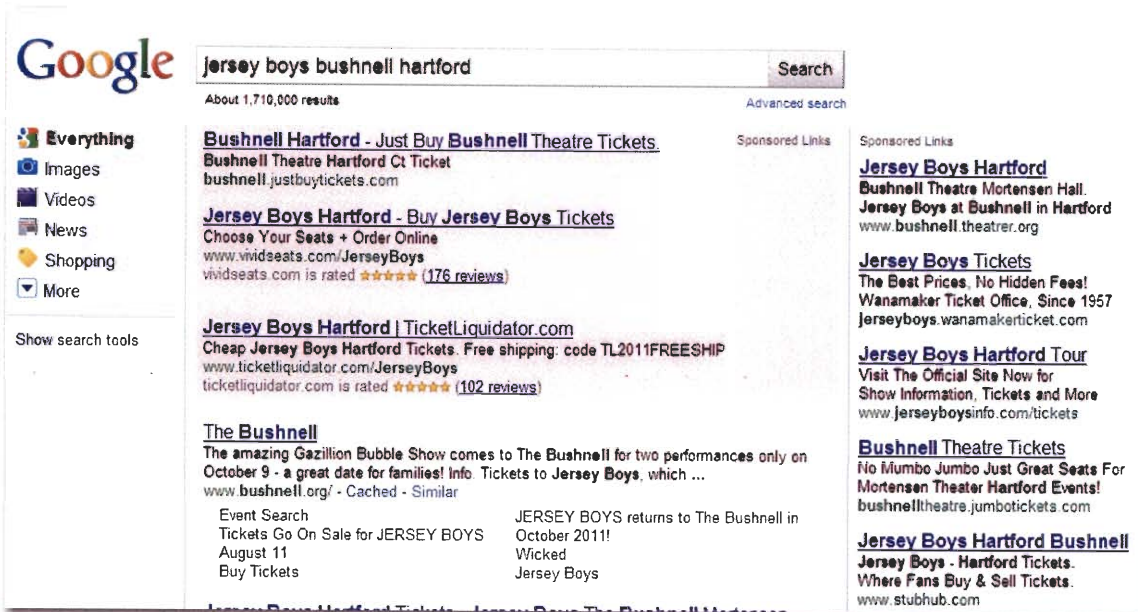
Overview of Current Practices and Consumer Impact

At the outset, we want to be clear about our use of the term “consumer” in the context of this discussion. There are two main types of ticket purchasers: (1) those who purchase and resell; and (2) those who purchase and attend the event. We refer to the first type of purchaser as a “broker” or “reseller” and we refer to the latter type as a “consumer.” Brokers and consumers often compete with each other for ticket purchases in both the primary and secondary ticket markets. Although brokers deserve fair opportunities, our primary concern is to assure that the ticket markets operate for the ultimate benefit of consumers.

Broadly speaking, most consumer ticket purchases generally begin with an online search for an event or ticket, and end with a sales transaction in either the primary or secondary ticket market. The search process and each market are discussed below.

The Ticket Search

A popular method that consumers use to search for tickets to an event is by conducting an internet search on a Web search engine such as Google or Bing. For a specific event at a Connecticut venue such as The Bushnell, for instance, a consumer may typically type a search string of words describing the desired event and venue. For example, a consumer may enter a search string such as “jersey boys bushnell hartford”, or something similar. The first results a consumer would typically see are paid advertisements, or “Sponsored Links”, either at the top of the search results page in a shaded section, or along the side of the web page. Below the shaded section of paid ads, the consumer finds the natural search results of the inquiry. For example:



This simple search has resulted in numerous websites from which the consumer can choose to purchase tickets. The venue's official website, www.bushnell.org, appears, as well as several reseller sites, including sites using the venue name such as www.bushnell.theatrer.org. The search results often make it difficult for consumers to discern which site provides tickets through the primary ticket market and which sites participate in the secondary ticket market.

Primary Ticket Market

Tickets to events are initially offered by either the event promoter or the venue at which the event will take place. This initial ticket sale takes place in what is known as the primary ticket market. While there are exceptions and anomalies, ticket sales in the primary ticket market are typically sold at face value through, or by arrangement with, the venue's box office. Consumers can access the primary market by visiting the physical box office at venues such as the XL Center, The Bushnell, Mohegan Sun Arena, and Foxwoods Resort Casino, or online through the venue's official online site, such as www.xlcenter.com, www.bushnell.org, www.mohegansun.com, or www.foxwoods.com. Tickets in the primary ticket market are also often sold through a private entity contracted to print, offer and sell tickets to the public at face value. Ticketmaster, for example, is a well-known private entity that is often contracted to provide such ticketing services on behalf of a venue, in the primary ticket market.

Sellers in the primary ticket market often announce the availability of tickets in advance of the event date. The date on which tickets will be available to all members of the public is known as the “public on-sale date.”

The number of tickets actually available for sale on the public on-sale date for a particular event is the result of a number of factors. While the seating capacity of the venue provides the starting point, venues may “hold back” tickets due to stage configuration or other considerations that require certain seats be sold before others. Tickets may also be subject to hold-back for promotional or personal use by the promoters, the venue, event sponsors or the artists. Hold-backs may be released after the public on-sale date, sometimes making tickets available after consumers have been told that the event sold out.

In addition to hold-backs, the availability of tickets on the public on-sale date are affected by “pre-sales.” Pre-sales occur when tickets are made available, prior to the public on-sale date, to a variety of special privilege purchasers such as official fan clubs, sponsor’s customers and other membership or select groups. Hold-backs and pre-sales both reduce the number of tickets available on the public on-sale date and, therefore, have a direct impact on the general public’s ability to access tickets in the primary ticket market.

We have not done a full study to determine the precise percentages of tickets available on the public on-sale date. However, our review of a sampling of sell-out or near sell-out events at Connecticut venues indicates that the vast majority of tickets are typically available to the public on the public on-sale date. Nonetheless, a significant number of tickets are subject to hold-backs and pre-sales.

The extent to which tickets are available on the public on-sale date can be important information to consumers. Armed with such information, a consumer could make a choice of whether to wait for the public on-sale date or attempt to participate in the pre-sale by joining a group to whom pre-sale is offered. Similarly, a consumer may forego purchase on the public on-sale date in the hope that a hold-back ticket will be released for sale at a later date.

Professional ticket brokers and resellers who purchase tickets in the primary market with the intent of reselling in the secondary market also have a direct impact on the general public’s ability to access tickets. Professional resellers may utilize automated systems (“bots”) or a legion of employees to reserve and purchase large quantities of tickets at the onset of the initial public on-sale. Similarly, professional resellers may join fan clubs and other pre-sale eligible groups and purchase tickets before they are available to consumers on the public on-sale date. These efforts have a direct impact on the general public’s ability to access tickets in the primary ticket market. Brokers’

participation in purchasing tickets in the primary ticket market compete with consumers seeking to purchase the same tickets and, depending on the degree of such activity, may crowd out consumers from being able to make those purchases. These disappointed consumers may then turn to the secondary market to purchase tickets from the same brokers.

The primary ticket market sellers have recently been experimenting with ticket sales techniques that seek to discourage brokers from competing with consumers for tickets. Among the rationales posited by primary ticket sellers for these techniques are: (1) to give preference for tickets in the primary market at face-value to fans, i.e. purchasers who want to actually attend the event; and (2) to keep ticket prices to consumers low so that consumers will be able to afford to attend other shows, thereby expanding the number of events available at the venue.

One of these experimental techniques is known as “paperless tickets.” While there are variations in this technique, in a typical paperless ticket transaction, no ticket is issued. Rather, the purchaser’s name and credit card information is placed on a list at the venue. At the time of the event, the purchaser must appear at the venue and show the credit card used for the transaction in order to be admitted to the event. The nature of this transaction makes it difficult to transfer the “ticket” to someone other than the initial purchaser. Although we have heard anecdotally of the use of similar techniques in other states, we are aware of only one such paperless ticket event in Connecticut in the past several years.

Secondary Ticket Market

Tickets to events and shows are also offered to the public by way of the secondary ticket market through ticket resellers. While resellers in the secondary market were once referred to as “scalpers,” that pejorative term is anachronistic and inappropriate. We refer to resellers in this market as brokers or ticket resellers.

Tickets become available on the secondary ticket market for two main reasons – either the original ticket purchasers finds they cannot attend the show or has purchased more tickets than they can use, or profit seeking by professional ticket brokers and resellers who purchased with the intent to resell. Our understanding from the major secondary ticket exchanges is that the vast majority of tickets for events such as concerts and shows are sold by professional brokers and ticket resellers. A majority of the tickets offered on the secondary ticket market are priced above face value.

The secondary ticket market serves an important role in distributing tickets to consumers. The secondary ticket market can create several benefits to both consumers and to venues and promoters. First, the secondary ticket market can provide an efficient

mechanism to provide consumers with access to a large number of competing sellers. Second, some consumers do not desire to participate in the primary market for a variety of reasons. These consumers may find it inconvenient to be available to make the purchase when tickets go on sale in the primary market. Or, they make a decision to attend an event after most or all tickets have been sold in the primary market. Or, they desire better tickets than they were able to obtain on the primary market. For these consumers, the secondary market provides a desired service. A third benefit is the secondary market's ability to reduce a venue's or promoter's risk that their tickets will actually sell. These venues or promoters may be happy to have brokers snap up large numbers of tickets and assure that the event is a financial success. The risk of reselling the tickets to consumers is transferred to the brokers who have taken the risk that such resales will occur. The off-loading of this risk to the secondary market can have the effect of encouraging venues and promoters to invest in additional events. The secondary ticket market is capable of creating other efficiencies as well.

Today, the secondary ticket market exists primarily online. There are several distinct participants in the secondary ticket market. At one end of the transaction there is the consumer, the person hoping to get a ticket to attend an event. At the other end of the transaction is the ticket broker who holds a ticket or will attempt to procure a ticket for the consumer. In between, are entities known as "ticket marketplaces" or "ticket exchanges." Ticket exchanges create a mechanism to connect the consumer to the broker. Among the largest exchanges are StubHub (an E-bay affiliate), TicketsNow (a Ticketmaster/Live Nation affiliate) and TicketNetwork. Other secondary market participants include entities that attract consumers on the internet and deliver the consumer to one of the exchanges for a fee. These entities are often called "partners" or "affiliates" by the exchanges that pay them to deliver consumers. Each of the exchanges uses different models and arrangements with their partners to increase consumer traffic through the exchange. As described below, certain of these partner arrangements are of great concern to the Department.

Like the primary market, the secondary market is often accessed by way of an online search, as shown above. Consumers can also access the ticket exchanges directly by entering the exchange's domain name directly into the address bar of the internet browser. Well-known domain names for direct access to exchanges include www.stubhub.com, www.ticketsnow.com and www.ticketnetwork.com. Examples of the numerous independent websites that turned up in online searches for Connecticut event tickets at the time of our review, and that primarily drive traffic through a ticket exchange as partners or affiliates, are www.mohegan.sun.arena.com, www.xl.center-tickets.com, www.bushnell.theatre.org, www.websterbank.arena-tickets.org, www.xl.centerhartford.com, just to name a few. Such secondary ticket market websites acting as partners for an exchange are not connected to any venue or artist. Due to the use of actual venue names in the domain names, however, consumers may not realize

they are purchasing a ticket from a broker and not purchasing from the official box office website. This confusion directly impacts the public's ticket-buying experience.

In a typical secondary market transaction, a consumer will connect with an exchange, either directly or through a partner. The exchange will provide a listing provided by brokers offering to sell the consumer tickets for particular events. Prices for similar tickets being offered for the same event often vary and are often well above face value. The ticket prices on the exchanges are set by the broker offering the ticket. In addition to providing the listing, the exchange typically offers additional services, which vary from exchange to exchange, and sometimes different services on the same exchange that vary depending on the broker or partner that is also involved in the transaction. Among these additional services are fulfillment services, payment services and varying guarantees of ticket availability and authenticity.

Exchanges charge fees to consumers over and above the ticket price offered. Exchanges also charge fees to brokers for use of the exchange. Exchanges pay partners for driving traffic to the exchange. Exchanges pay partners in a variety of ways. Some exchanges pay flat fees, others pay a percentage of the sale, still others allow partners to charge their own fees directly to the consumer.

After a consumer makes payment through the exchange, the broker is obligated to provide the ticket to the consumer. In some transactions, the ticket is transferred to the consumer immediately. In other transactions the tickets may not be delivered for several weeks. Occasionally tickets are not delivered at all.

Consumer Complaints

Over the last year, the Department received 122 complaints about ticket sales. The Department receives complaints directly and from the Connecticut Better Business Bureau, which forwards to us complaints that it receives. Of the 122 complaints, two concerned the primary ticket market and 120 concerned the secondary ticket market.

In the primary ticket market, one complaint was about an incorrect advertising of the public on-sale date and the other involved the failure to deliver elements of a premium package that was purchased along with the tickets.

The 120 complaints in the secondary ticket market largely centered on confusion by consumers about the nature of the transaction, the insufficient disclosure of terms and conditions and sale of tickets through exchanges where the broker did not have the tickets at the time of sale. We cannot break out the complaints into the categories that you delineated in your inquiry because most consumers complained about a multitude of problems and frustrations in the same transaction. We will however, summarize the prevalent problems that cut across the majority of the complaints about the secondary

ticket market. Regardless of how the complaints were articulated, it was clear that those consumers who complained to us did not understand the nature of the transaction.

Many consumers complained that they were unaware that they were paying above face value for the tickets that they purchased or the nature of add-on fees. In many instances consumers were very specific about why they were unaware that they were paying above face values. They told us that they believed that they were purchasing directly from the venue in the primary ticket market because of the look and feel of the websites. Domain addresses often included the name of the venue, event or artist and the sites displayed prominent banners naming the venue on their initial web pages as well as a depiction of the arena with seating. Examples of the domain names that these consumers accessed were www.comcast.theatrehartford.com, www.comcast.theatreboxoffices.com, www.mohegansun.arenaboxoffice.com, www.mohegansun.arena-ct.com, www.xl.centerhartford.com and www.hartford-xl.centerboxoffice.org. None of these websites are affiliated with a venue, but rather, drive ticket sales through a secondary market ticket exchange.

Other consumers complained that they often did not know the total price of the tickets and associated fees prior to purchase. Some consumers said that fees were not disclosed until after the vendor secured payment. Other consumers complained that the transaction costs were not reasonable based upon the service rendered. Consumers complained that disclosure about fees, ticket face values and refunds were buried in several pages of small print terms and conditions that were not conspicuous. When the consumers sought recourse through an exchange, the exchange either disavowed any responsibility for the sale referring the consumer instead to the broker who used the exchange or the exchange informed the consumer that they were bound by the inconspicuous terms and conditions and no refund was issued to the consumer.

Consumers also complained because tickets being offered through secondary market exchanges were not within the inventory of the ticket reseller. Rather, these tickets were "speculative." After the broker sold the consumer a ticket, the reseller would only then seek to obtain the ticket. The consumers were unaware that they broker did not have the ticket to sell and indicated that they would not have purchased the ticket had they been aware.

A few of the 120 secondary ticket market complaints do not involve ticket exchanges at all. These complaints concerned fraudsters who created fake websites or posted solicitations on sites like Craigslist and who never intended to provide tickets at all.

The Department's Primary Areas of Concern

In our review of the ticket markets, we have developed areas of concern in both the primary ticket market and the secondary ticket market.

In the primary ticket market, we have concerns about adequate disclosure of the availability of tickets on the public on-sale date. The significance of such information to consumers, however, will vary depending on the degree of public on-sale date availability. We also have some concerns over whether techniques such as paperless tickets strike a proper balance between the legitimate interests of artists, promoters and venues on the one hand, and consumers on the other. However, we have received an extremely small number of consumer complaints about the primary ticket market.

In the secondary ticket market, our three primary areas of concern are: (1) deception that causes consumers to believe that they are purchasing in the primary market when they are actually purchasing in the secondary market, including use of deceptive domain names and deceptive site layouts; (2) inadequate disclosures of the terms and conditions of the transactions; and (3) speculative ticket sales in the secondary market without adequate disclosure to the consumer about the additional risks of such transactions or the value of the offer. Of these concerns, the first and third deserve more detailed discussion.

Deception creating confusion with the venue box office is the area of most concern, as reflected in the complaints discussed earlier. Independent websites with internet domain names that are designed to confuse consumers and site layouts that resemble official venue sites are practices that stood out throughout the course of our review.

As shown by the number and consistency in the complaints reviewed, consumers are often deceived by independent websites with domain names that include the name of the venue, or an intentionally misspelled version of the same. Consumers believe they are purchasing directly from the official box office website of the venue and that the tickets are being offered at the face value price; they are not aware that they are purchasing from a ticket reseller in the secondary ticket market at an inflated price. These websites, run by ticket exchange partners, use layouts that further the deception by prominently displaying the name of the venue at the top of the site, with a seating chart and narrative description of the venue often copied directly from the official website. At the time of our review, we found that disclosures regarding the website's lack of affiliation with the box office and its reseller status are frequently non-existent, unclear, or inconspicuously displayed.

We want to be clear that these practices are not uniformly utilized by ticket exchanges. But some ticket exchanges do allow independent sites with deceptive domain

names and website layouts to be partners or affiliates. There is strong incentive to do this, as such deceptive websites naturally drive more traffic to affiliated exchanges, in turn generating more sales. This deception comes at the direct expense of not only the duped consumer, but also the venue that is confronted by that consumer when they realize they paid significantly above face value for tickets they thought they had purchased from the venue's own website. The venue is left with an unhappy customer, through no fault of its own.

Ticket exchanges should not permit partners and affiliates to use deceptive domain names – domains that include the name of a venue or a misspelled version of the same, for example, or deceptively designed website pages – and all ticket reseller websites need to clearly and conspicuously disclose that they are not affiliated with any venue or box office, that they are ticket resellers, and that the tickets offered are priced above-face value when that is the case.

Speculative ticket sales in the secondary market are also an area of concern. Speculative tickets are those tickets that the broker offers for sale, and sells, when the broker neither has the ticket in-hand, nor has the right to that ticket at the time of the sale. Many ticket exchange listings do not clearly and conspicuously disclose when the tickets offered for sale are speculative tickets. Because of this lack of disclosure, the consumer is often not aware that the broker is only offering to seek to obtain the ticket on the consumer's behalf. If the broker is not successful, the consumer may not get a ticket at all. While exchanges often refund a consumer when that happens, that is cold comfort for the consumer. When a "hot" event is involved, the consumer is usually faced with the choice of not going to the event at all or reentering the market at time when there is a decreased supply of tickets and presumably an increased ticket price.

Speculative tickets also can present a problem when there are still plenty of tickets available at the box office. Our review uncovered a highly nefarious speculative ticket practice that combines speculative ticket sales with the practice of deceiving the consumer into thinking that they are dealing with the box office. The scheme works like this: the consumer is deceived into thinking that they are at the official box office website. Yet, in fact, they have arrived at a secondary market website driving traffic through a ticket exchange. The consumer purchases tickets at inflated prices, thinking the price is face value. Incredibly, large numbers of tickets are still available through the box office at the much lower face value. The broker who just sold the consumer a ticket at an inflated price, contacts the official box office of the event, and purchases the ticket at face value, sometimes using a gift card and providing the consumer's name. In these situations, the consumer is neither aware that they are not purchasing from the box office nor that they have paid a highly inflated price to a broker that did not own the tickets and took no risk in procuring them for the consumer. Our review documented a single broker who, operating through a ticket exchange, utilized this ruse over 300 times in an 18 month period.

Recommendation

Despite areas of concern in both the primary ticket market and the secondary ticket market, we believe that additional legislation is not necessary at this time. We believe that the Connecticut Unfair Trade Practices Act (“CUTPA”) is robust enough to provide remedy to prevent the types of deceptive practices that we describe above. Indeed, as has been widely reported in the press, we have an active investigation ongoing regarding these practices. While it would be imprudent to disclose the details of our investigation at this point, our ultimate resolution of any enforcement action that we may bring will be made public.

Although we do not see a need for additional state legislation to appropriately protect consumers against deceptive practices, we do think that changes in federal legislation could aid our enforcement. Currently there is a broad immunity from liability for certain internet providers under the federal Computer Decency Act (“CDA”). Ticket exchanges have claimed that the immunity of the CDA applies to their activities, and thus, they believe that they are immune from application of laws like CUTPA for the exchanges’ participation in the deceptive acts of their partners and brokers. We believe the CDA to be inapplicable based upon the close inter-relationship between the exchanges, their partners and their brokers. In any event, changes to Connecticut law will not resolve that issue.

Finally, with regard to paperless tickets and other similar techniques, we do not think the practice warrants legislative intervention at this time. We are aware of only a single such event which has occurred in Connecticut. There is resistance to such practices by venues that find implementation difficult and by some consumers who find it inconvenient. There is no evidence that the practice has gained market acceptance in Connecticut. Moreover, industry news sources report that some primary ticket sellers are experimenting with various similar techniques designed to achieve the industry’s legitimate objectives while alleviating the burden on consumers who, after purchasing the ticket find out that they cannot attend the event. There is no uniform or accepted practice that has taken hold in the industry. Thus, although there will likely be occasional paperless ticket events in Connecticut as the experiments continue, we do not see a swift influx that would necessitate a legislative solution. Rather, our recommendation is to allow the marketplace to work in the first instance before resorting to legislation. If paperless tickets are not accepted in the market, they will fall of their own weight. If they adapt to a consumer friendly form, then they should not be prevented. If they take hold in consumer unfriendly ways, however, you may then wish to consider appropriate legislation that removes consumer unfriendly restraints while permitting practices that are

Page 12,
February 22, 2012

designed to keep prices as low as possible to consumers who actually want to attend the event. If that time comes, we would look forward to providing our thoughts on how that might be achieved.

We hope these thoughts have been helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "William M. Rubenstein".

William M. Rubenstein
Commissioner of Consumer Protection