

FILED / PRODUIT

Date: June 27, 2019

CT-2018-005

Bianca Zamor for / pour
REGISTRAR / REGISTRARE

CT-2018-005

OTTAWA, ONT.

#96

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondents under paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**TICKETMASTER L.L.C., TNOW ENTERTAINMENT GROUP, INC., and
TICKETMASTER CANADA LP**

Respondents

CONSENT AGREEMENT

WHEREAS the Commissioner is responsible for the administration and enforcement of the Act;

AND WHEREAS the Respondents supply or offer to supply Tickets to sports and entertainment events and have made Representations about the price at which consumers could purchase Tickets;

AND WHEREAS Representations were made to and target the public in Canada;

AND WHEREAS the Respondents controlled the domain names and associated Websites by which persons in Canada accessed the Representations;

AND WHEREAS the Respondents made the Representations to the public to promote the sale of Tickets and their business interests more generally;

AND WHEREAS the Commissioner has concluded that the Respondents advertised prices for Tickets that were not in fact attainable, because the Respondents charged consumers Non-Optional Fees in addition to the prices initially advertised;

AND WHEREAS the Commissioner has concluded that certain of the Respondents' Representations created the general impression that consumers could purchase Tickets for less than what the Respondents actually charge, because consumers were required to pay additional Non-Optional Fees that were added later in the purchasing process;

AND WHEREAS the Commissioner has concluded that disclosure of the amount of the Non-Optional Fees at later stages of the purchasing process was inadequate to prevent the Representations from being false or misleading in a material respect;

AND WHEREAS the Commissioner has concluded that the Respondents' Non-Optional Fees often increased the cost of Tickets by over 20%, and in some cases, by over 65%;

AND WHEREAS the Respondents' Non-Optional Fees consist of Per-Ticket Fees and Per-Order Fees, with the former charged on a per ticket basis and the latter charged on a per transaction basis;

AND WHEREAS the Commissioner acknowledges that the Respondents made a number of changes to their Websites and Mobile Applications beginning in July 2018, including changing many of their representations regarding certain Non-Optional Fees and redesigning certain of their Websites and Mobile Applications so that consumers are shown a price inclusive of Per-Ticket Fees, and the maximum Per-Order Fee that could be charged on the entire ticket order, the first time they are shown a price;

AND WHEREAS the Respondents have advised the Commissioner that they have applied these changes voluntarily across Canada in circumstances where their competitors have not made similar changes;

AND WHEREAS the Commissioner has concluded that the Respondents made Representations to the public that were false or misleading in a material respect;

AND WHEREAS the Commissioner has concluded that the Respondents supplied Tickets to consumers at prices higher than those advertised;

AND WHEREAS the Commissioner has concluded that the Respondents engaged in conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, and subject to paragraph 20 of this Agreement, the Respondents do not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondents against third parties including any defences available under the Act;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

NOW THEREFORE, in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - a. "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34;
 - b. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
 - c. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act, including Appendix "A" hereto;
 - d. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
 - e. "**Execution Date**" means the date on which the Agreement has been signed by both Parties;
 - f. "**Headline Price**" means the price for a Ticket, exclusive of Non-Optional Fees;
 - g. "**Interpretation Act**", means the *Interpretation Act*, R.S.C. 1985, c. I-21;
 - h. "**Marketing Personnel**" means all current and future employees of the Respondents and Senior Management of the Respondents who are materially involved in or responsible for developing, implementing or overseeing the advertising, marketing or pricing for Tickets;
 - i. "**Mobile Applications**" means any mobile application owned, controlled or operated by the Respondents and used for the purposes of supplying Tickets to the public in Canada;
 - j. "**Non-Optional Fees**" means any charges, surcharges, fees, or other amounts that are charged in addition to Headline Prices and that consumers are required to pay to purchase Tickets. Non-Optional fees include, but are not limited to, fees identified by the Respondents as "service fees or charges", "facility charges", "order processing fees", "additional fees", "resale service fees", "TM+ resale service fees" and "fees";

- k. **“Parties”** means the Commissioner and the Respondents collectively, and **“Party”** means any one of them;
- l. **“Person”** means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- m. **“Per-Order Fee”** means any Non-Optional Fee charged on a per transaction, rather than per Ticket, basis;
- n. **“Per-Ticket Fee”** means any Non-Optional Fee charged on a per Ticket, rather than per transaction, basis;
- o. **“Representations”** means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondents, including any representation on the Websites and Mobile Applications;
- p. **“Respondents”** means Ticketmaster LLC, TNOW Entertainment, and Ticketmaster Canada LP;
- q. **“Senior Management”** means the Respondents’ current and future Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, President, Vice Presidents, Secretary, Controller, General Manager, Managing Directors, and any individual who performs their functions;
- r. **“Ticketmaster Canada LP”** means Ticketmaster Canada LP, a limited partnership existing under the laws of Ontario, its general and limited partners, their directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- s. **“Ticketmaster LLC”** means Ticketmaster L.L.C., a limited liability company incorporated pursuant to the laws of the State of Virginia, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- t. **“Tickets”** means tickets to live sports or entertainment events in Canada;
- u. **“TNOW Entertainment”** means TNOW Entertainment Group, Inc., a corporation incorporated pursuant to the laws of the State of Illinois, its directors, officers, employees, agents, representatives, successors and

- assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- v. “**Tribunal**” means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended; and
- w. “**Websites**” means each website accessible from Ticketmaster.ca, Ticketweb.ca, TicketExchangebyTicketmaster.com, TicketsNow.com and any other website owned, controlled or operated by the Respondents and used for the purposes of supplying Tickets to the public in Canada. For greater certainty, Websites shall include websites accessed via desktop computers and via mobile devices such as phones and tablets.

II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT

2. Within 30 days of the Execution Date, the Respondents shall comply with Part VII.1 of the Act.
3. Without limiting the generality of the foregoing, within 30 days of the Execution Date, the Respondents shall not make, cause to be made, or permit to be made on their behalf any Representation to the public in Canada that creates the materially false or misleading general impression that consumers can buy Tickets at prices that are not in fact attainable because of the existence of Non-Optional Fees.
4. If any of the Respondents becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondents shall, within ten (10) days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, and the steps the Respondents have taken to correct the breach or possible breach.

III. PAYMENTS

ADMINISTRATIVE MONETARY PENALTY

5. The Respondents shall pay an administrative monetary penalty in the amount of \$4,000,000.

COSTS

6. The Respondents shall pay \$500,000 for costs incurred by the Commissioner during the course of his investigation into this matter.

FORM AND TIME OF PAYMENT

7. The payments referred to in paragraphs 5 and 6 above shall be made within 30 days after the Execution Date by certified cheque or by wire transfer payable to the Receiver General for Canada.

IV. CORPORATE COMPLIANCE PROGRAM

8. Within 90 days after the Execution Date, the Respondents shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondents with the Act generally, and Part VII.1 of the Act specifically. The compliance program shall be framed and implemented in a manner consistent with the Commissioner's bulletin titled "Corporate Compliance Programs", as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at www.competitionbureau.gc.ca.
9. The Respondents' Senior Management shall fully support and enforce the compliance program and shall take an active and visible role in its establishment and maintenance.
10. Within 21 days after the establishment of the compliance program, each current member of Senior Management shall acknowledge his or her commitment to the compliance program by signing and delivering to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement. Any individual that becomes a member of Senior Management during the term of this Agreement shall sign and deliver to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement, within 21 days of becoming a member of Senior Management.

V. COMPLIANCE REPORTING AND MONITORING

11. During the term of this Agreement, (i) the Respondents shall provide a copy of this Agreement to all Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Marketing Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondents shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and Part VII.1 of the Act.

12. The Respondents shall provide the Commissioner written confirmation that all Marketing Personnel have received a copy of this Agreement, as required by paragraph 11, within 21 days after the registration of this Agreement.
13. For the purposes of monitoring compliance with this Agreement, the Respondents shall provide to the Commissioner information relating to any matters referred to in Parts II, IV and V of this Agreement that the Commissioner requests, within 30 days following receipt of a written request from the Commissioner.
14. No later than 120 days after the Execution Date, the President or Chief Operating Officer of the Respondents shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been implemented.

VI. GENERAL

15. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

(a) Commissioner of Competition

Competition Bureau
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Attention: Senior Deputy Commissioner of Competition, Cartels and
Deceptive Marketing Practices Branch

Facsimile: (819) 956-2836

With a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

(b) The Respondents:

With a copy to:

Linda Plumpton
Torys LLP
3000 79 Wellington Street West
Box 270, TD South Tower
Toronto, ON M5K 1N2

Facsimile: (416) 865-7380

Mark Opashinov
McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3

Facsimile: (416) 865-7048

16. This Agreement shall be binding upon the Respondents for a period of 10 years following its registration.
17. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
18. The Commissioner may, in his sole discretion and after informing the Respondents in writing, extend any of the time frames in Parts IV and V of this Agreement.
19. The Commissioner may, with the consent of the Respondents, extend any of the time frames in Part VI of this Agreement.
20. Nothing in this Agreement precludes a Respondent or the Commissioner from bringing an application under section 74.13 of the Act where circumstances that led to the making of this Agreement have changed. Subject to this paragraph, the Respondents will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions as stated herein.
21. The Respondents shall not make any public statements that contradict the terms of this Agreement.

22. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement for variation or rescission.
23. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
24. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
25. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
26. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.
27. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

[The remainder of this page is intentionally left blank]

The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at Beverly Hills, California this 26th day of June, 2019.

for: Ticketmaster

"Original signed by Michael Rowles"

Michael Rowles
Executive Vice President and
General Counsel
I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec this 26th day of June, 2019.

"Original signed by Matthew Boswell"

Matthew Boswell
Commissioner of Competition

“APPENDIX A”

ACKNOWLEDGEMENT BY SENIOR MANAGEMENT

[Corporate Company Letterhead]

[date], 2019

CONFIDENTIAL

Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street, 21st Floor
Gatineau (QC) K1A 0C9

RE: Commitment to Establishment and Maintenance of Compliance Program

Further to paragraph 10 of this Agreement between the Commissioner of Competition (the “Commissioner”) and [Respondents], dated _____, 2019, I hereby commit to the successful implementation of the corporate compliance described in Part IV of this Agreement program for the purpose of promoting compliance with the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”), including the deceptive marketing practices provisions in Part VII.1 of the Act. I will take an active and visible role in the establishment and maintenance of the corporate compliance program.

Sincerely,

(Name and title)

cc: Executive Director and Senior General Counsel, Competition Bureau Legal Services

Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate, Cartels and Deceptive Marketing Practices Branch