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CT- 2023-009

Annie Ruhlmann for / pour
REGISTRAR / REGISTRARE

OTTAWA, ONT.

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CT-

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 Respondent under paragraph 74.01(1)(a) and section 74.011 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

TICKETNETWORK, INC.

Respondent

CONSENT AGREEMENT

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

AND WHEREAS the Respondent operates an online ticket exchange that connects buyers and sellers of Tickets to concerts, sports, theater and entertainment events;

AND WHEREAS the Respondent, a US-domiciled and registered business with no physical presence in Canada, does not own or operate any websites accessible from a .ca domain, but makes available Tickets to be offered for sale to events in Canada;

AND WHEREAS the Respondent operates certain Websites, including those accessible from ticketnetwork.com, ticketliquidator.com, superbillets.com, and tickets.expert (including subdomains such as RogersCentre.tickets.expert and CentreBell.tickets.expert);

AND WHEREAS the Respondent provides technology and services to assist clients through a white label program known as the Private Label Program;

AND WHEREAS the Respondent's Private Label Program clients market the ticket inventory through Websites utilizing the Respondent's checkout process;

AND WHEREAS the Respondent and its Private Label Program clients make Representations to the public in Canada about the currency, price and percentage-off discounts at which consumers can purchase Tickets for the purpose of promoting the sale of Tickets and their business interests more generally;

AND WHEREAS the Respondent and its Private Label Program clients have made these Representations since at least 2017 on Websites and in Electronic Messages;

AND WHEREAS the Commissioner has concluded that the Respondent and its Private Label Program clients advertised prices for Tickets that were not attainable due to Non-Optional Fees, including fixed obligatory charges and fees that did not represent an amount imposed by or under an Act of Parliament or the legislature of a province;

AND WHEREAS the Commissioner has concluded that the Respondent made Representations, and permitted Representations to be made by its Private Label Program clients, that created the general impression that consumers could purchase Tickets at prices that were not in fact attainable because of Non-Optional Fees that were added later in the purchasing process at the checkout stage;

AND WHEREAS the Commissioner has concluded that Non-Optional Fees often increased the cost of Tickets by over 38%, and in some cases, by over 53%;

AND WHEREAS the Commissioner has concluded that the Respondent makes Representations, and permits Representations to be made by its Private Label Program clients, that create the general impression that consumers can save on the cost of Tickets at percentage-off discounts that are not in fact attainable because of Non-Optional Fees that are not discounted;

AND WHEREAS the Commissioner has concluded that the Respondent makes Representations, and permits Representations to be made by its Private Label Program clients, that create the general impression that prices for Tickets are in Canadian dollars when in fact the prices advertised are in United States dollars;

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

AND WHEREAS the Respondent has made changes to its Websites in September 2022 to address certain of the Representations at issue;

AND WHEREAS the Commissioner has concluded that the Respondent and certain of its Private Label Program clients make Representations to the public in Canada that create the false or misleading general impression that consumers are dealing with the performer, venue, or sports team to purchase tickets directly from the Primary Vendor, when in fact they are purchasing resale tickets on the Websites of the Respondent and certain of its Private Label Program clients;

AND WHEREAS the Respondent and certain of its Private Label Program clients have made these Representations since at least 2017 on Websites, in Website addresses (URLs), in Electronic Messages, and in search engine advertisements;

AND WHEREAS the Respondent requires its Private Label Program clients to include specific content on their Websites, including resale market disclosures;

AND WHEREAS the Commissioner has concluded that the disclosures mandated by the Respondent and the policies imposed by the Respondent on its Private Label Program clients with respect to search engine advertisements, Website content, and URLs (including display URLs, subdomain URLs and feeder website URLs) are inadequate to prevent the Representations from creating the materially false or misleading general impression that consumers are dealing with the Primary Vendor when in fact they are purchasing resale tickets;

AND WHEREAS the Commissioner has concluded that the Respondent makes Representations to the public that are false or misleading in a material respect for the purposes of promoting the sale of products and for promoting its business interests;

AND WHEREAS the Commissioner has concluded that the Respondent sends, causes to be sent or permits the sending of Representations in Electronic Messages that are false or misleading in a material respect for the purposes of promoting the sale of products and for promoting its business interests;

AND WHEREAS the Commissioner has concluded that the Respondent engaged in reviewable conduct contrary to paragraph 74.01(1)(a) and section 74.011 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, the Respondent does not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondent 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;

AND WHEREAS the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case because of TicketNetwork's cooperation with the Commissioner's investigation;

AND WHEREAS the Commissioner has agreed to certain longer time frames in this Agreement than would otherwise be the case because of the policies and procedures under the corporate compliance program affecting Private Label Program clients;

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. "**Electronic Message**" has the meaning as in subsection 2(1) of the Act;
- f. "**Execution Date**" means the date on which the Agreement has been signed by both Parties;
- g. "**Headline Price**" means the price for a Ticket, exclusive of Non-Optional Fees;
- h. "**Interpretation Act**" means the *Interpretation Act*, R.S.C. 1985, c. I-21;
- i. "**Locator**" means a name or information used to identify a source of data on a computer system, and includes a URL;
- j. "**Marketing Personnel**" means all current and future employees of the Respondent and Senior Management of the Respondent who are materially

- involved in or responsible for developing, implementing or overseeing the advertising, or marketing for Tickets;
- k. **“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 Respondent as “service fees” and “delivery fees”;
 - l. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means one of them;
 - m. **“Person”** means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
 - n. **“Primary Vendor”** means the primary seller, or original ticket issuer. For greater certainty, Primary Vendor shall include the box office, a performer, a venue, or a sports team.
 - o. **“Private Label Program”** means a white label program whereby the Respondent provides technology and services to display Tickets and assist clients in marketing Tickets on their Websites;
 - p. **“Representations”** means any and all representations made, caused to be made, sent, caused to be sent by or on behalf of the Respondent, including any representation on the Websites, in Electronic Messages, or in Locators, and includes permitting any such representations to be made;
 - q. **“Respondent”** means TicketNetwork, Inc.;
 - r. **“Senior Management”** means the Respondent’s 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;
 - s. **“TicketNetwork, Inc.”** means TicketNetwork, Inc., a corporation incorporated pursuant to the laws of the State of Delaware, 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 concerts, sports, theater and entertainment events in Canada;

- u. **“Tribunal”** means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.);
- v. **“Unauthorized”** means not authorized by a Primary Vendor; and
- w. **“Websites”** means any website utilizing the Respondent’s technology, software or services and used for the purposes of connecting buyers and sellers of Tickets. For greater certainty, Websites shall include websites accessed via desktop computers and via mobile devices.

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

- 2. Within 90 days of the Execution Date, the Respondent shall comply with Part VII.1 of the Act.
- 3. Without limiting the generality of paragraph 2, within 90 days of the Execution Date, the Respondent shall not make, cause to be made, or permit to be made on its behalf any material Representation to the public in Canada that constitutes drip pricing within the meaning of subsection 74.01(1.1) of the Act.
- 4. Without limiting the generality of paragraph 2, within 90 days of the Execution Date, the Respondent shall not make, cause to be made, or permit to be made on its behalf any Representation to the public in Canada, or send or cause to be sent such a Representation in an Electronic Message that creates the materially false or misleading general impression that:
 - a. consumers can buy Tickets at prices or percentage-off discounts that are not in fact attainable because of the existence of Non-Optional Fees;
 - b. prices for Tickets are in Canadian dollars when in fact the prices advertised are in a different currency; or
 - c. consumers are dealing with the performer, venue, or sports team to purchase Tickets directly from the Primary Vendor unless that is in fact the case.
- 5. For the purposes of paragraphs 3 and 4, permitting includes allowing access to the Respondent’s technology, software or services for the purposes of connecting buyers and sellers of Tickets.
- 6. If the Respondent becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondent 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 Respondent has taken to correct the breach or possible breach.

III. PAYMENT

ADMINISTRATIVE MONETARY PENALTY

7. The Respondent shall pay an administrative monetary penalty in the amount of 825,000 CAD.

FORM AND TIME OF PAYMENT

8. The payment referred to in paragraph 7 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

9. Within 90 days after the Execution Date, the Respondent shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondent 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.
10. The compliance program shall include policies and procedures relating to the Private Label Program, the goal of which will be to prevent the making or permitting of false or misleading Representations as outlined in paragraphs 3 and 4 of this Agreement. Such policies and procedures shall include, *inter alia*, a policy prohibiting the Unauthorized use of:
 - a) the name of a Canadian venue (including alternate spellings thereof) in the URL of any domain name or subdomain name;
 - b) the name of a Canadian sport team (including alternate spellings thereof) in the URL of any domain name or subdomain name;
 - c) the name of a performer (including alternate spellings thereof) in the URL of any domain name or subdomain name; and
 - d) the name of any event or tour (including alternate spellings thereof) in the URL of any domain name or subdomain name.
11. The compliance program shall include monitoring to detect contraventions to policies and procedures relating to the Private Label Program. Such monitoring shall be designed to ensure any contravention is detected and addressed promptly.

12. Further to paragraph 11 above, where contraventions to policies and procedures relating to the Private Label Program are detected, the Respondent shall promptly take steps to stop the use, and prevent the further use, of the Respondent's technology, software or services for the making of false or misleading Representations as outlined in paragraphs 3 and 4 of this Agreement.
13. The Respondent's Senior Management and applicable personnel shall fully support and enforce the compliance program and shall take an active and visible role in its establishment and maintenance.
14. Within 21 days after the establishment of the compliance program, each current member of Senior Management and applicable personnel 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 or an applicable personnel 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

15. During the term of this Agreement, (i) the Respondent shall provide a copy of this Agreement to all Marketing Personnel and make it available to all Private Label Program clients within 14 days after the date of registration of this Agreement, and (ii) all future Marketing Personnel and ensure all new Private Label Program clients will be provided with a copy of this Agreement within 14 days after his or her commencement of employment or within 14 days after the Person becomes a Private Label Program client. Within 14 days after being provided with a copy of this Agreement, the Respondent 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.
16. The Respondent shall provide the Commissioner written confirmation that all Marketing Personnel and authorized representatives of the Private Label Program clients have received a copy of this Agreement, as required by paragraph 15, within 21 days after the registration of this Agreement.
17. For the purposes of monitoring compliance with this Agreement, the Respondent 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.

18. No later than 120 days after the Execution Date, the President or Chief Operating Officer of the Respondent 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

19. 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, facsimile transmission, or by email 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: Deputy Commissioner of Competition, Cartels and Deceptive
Marketing Practices Branch

Email: josephine.palumbo@cb-bc.gc.ca

Facsimile: (819) 953-4792

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 Respondent:

TicketNetwork, Inc.
Attention: Legal Counsel
75 Gerber Road East
South Windsor, CT 06074

Email: Legal@TicketNetwork.com

Facsimile: 860-812-2274

With a copy to:

Patterson Belknap Webb & Tyler LLP
Attention: Peter Harvey
1133 6th Ave
New York, NY 10036

Email: PCHarvey@pbwt.com

20. This Agreement shall be binding upon the Respondent for a period of 10 years following its registration.
21. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
22. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time frames in Parts IV and V of this Agreement.
23. The Commissioner may, with the consent of the Respondent, extend any of the time frames in Part VI of this Agreement.
24. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act to rescind or vary this Agreement. The Respondent will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions.
25. The Respondent shall not make any public statements that contradict the terms of this Agreement.
26. The Respondent attorns 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.
27. 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.

28. 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.
29. 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.
30. 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.
31. 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 undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at South Windsor, CT, USA this 20th day of November 2023.

for: TicketNetwork, Inc.

“Original signed by Donald Vaccaro”

Donald Vaccaro
CEO

I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec this 20th day of November 2023.

“Original signed by Matthew Boswell”

Matthew Boswell
Commissioner of Competition

“APPENDIX A”

ACKNOWLEDGEMENT BY SENIOR MANAGEMENT

[Corporate Company Letterhead]

[date], 2023

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 14 of this Agreement between the Commissioner of Competition (the “Commissioner”) and TicketNetwork, Inc., dated _____, 2023, I hereby commit to the successful implementation of the corporate compliance program described in Part IV of this Agreement 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