

NO. D-1-GV-08-001629

STATE OF TEXAS

Plaintiff

v.

TICKET CITY, INC.

Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

BP AUG 5 2008 10:10 AM

At Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, the STATE OF TEXAS ("Plaintiff"), acting by and through the Attorney General of Texas, GREG ABBOTT, and files its Original Petition, complaining of TICKET CITY INC. ("Defendant"). For cause of action, Plaintiff respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1.1 Pursuant to Tex. R. Civ. P. 190.2(b)(3), 190.3, discovery is intended to be Level 2.

II. NATURE OF SUIT

2.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by section 17.47 of the Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§ 17.41-17.61 (hereinafter "DTPA") permitting the Consumer Protection & Public Health Division of the Attorney General's office to bring an action to restrain by injunction, the use of any method, act or practice declared to be

unlawful by Tex. Bus. & Com. Code Ann. § 17.46(a) - (b), when such proceedings are in the public interest. The Attorney General files this suit against Defendant on the grounds that:

A. Defendant has engaged in false, misleading and deceptive acts and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to the Texas Deceptive Trade Practices Act.

B. This action is brought against Defendant by the STATE OF TEXAS, seeking injunctive relief, actual damages, restitution and/or restoration of money and/or other property to identifiable persons, civil penalties, costs, and attorney's fees as a result of Defendant's violation of the DTPA.

III. DEFENDANT

3.1 Ticket City, Inc. is a corporation doing business in Travis County, Texas. It may be served with process through its **Registered Agent: Randall Scott Cohen, at 5912 Balcones Dr., #102, Austin, Texas 78731.**

IV. AUTHORITY

4.1 Pursuant to DTPA section 17.47(b), this Court has jurisdiction over this action.

V. VENUE

5.1 Venue of this suit lies in Travis County, Texas for the following reason:

A. Under DTPA section 17.47(b), venue is proper because Defendant has done business in Travis County, Texas.

VI. PUBLIC INTEREST

6.1 The State of Texas has reason to believe that Defendant has engaged in, and will

continue to engage in, the unlawful practices set forth below. The State of Texas has reason to believe Defendant has caused, and will continue to cause, irreparable injury, loss and damage, directly or indirectly affecting the people of this State, including conduct that adversely affects lawful conduct of trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas considers these proceedings in the public interest.

VII. TRADE AND COMMERCE

7.1 Defendant has, at all times described herein, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by DTPA section 17.45(6).

VIII. PRE-SUIT NOTICE

8.1 At least seven days prior to the filing of this suit, the Consumer Protection and Public Health Division of the Office of the Attorney General informed Defendant of the alleged unlawful conduct by the State’s communications and Civil Investigative Demands.

IX. ACTS OF AGENTS

9.1 Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

A. Defendant performed or participated in the act; and/or

B. Defendant’s officers, agents or employees performed or participated in the act

on behalf of and under the authority of Defendant.

X. FACTS

10.1 Defendant does business through an internet website known as www.ticketcity.com, representing that it possesses tickets to various sporting events, concerts and other live performances

and offers to sell them to consumers. If the tickets are not delivered to the consumer, Defendant represents that it will refund 200%¹ of the purchase price, provided the Defendant was at fault for the failure to deliver. Defendant's representations are false, as it does not always possess the tickets that it purports to sell to consumers and frequently does not honor its 200% guarantee when it fails to deliver the tickets as promised.

10.2 On its website, Defendant represents itself as a ticket broker that “buys and sells tickets” and that it “own[s] the tickets,” so it can provide the best deal to the consumer. See Exhibit A (attached) (excerpts from www.ticketcity.com website as of June 10, 2008). Defendant further represents that it has “one of the largest ticket inventories in our industry” and “a huge number of tickets, making our inventory one of the largest in the world.” Id. Defendant compares itself to a well-known ticket vendor, Ticketmaster, which sells tickets to similar events. Defendant represents that, just like Ticketmaster, it actually owns the tickets that it offers to sell to consumers. Defendant then represents that its “top competitors do not own tickets and just resell our seats at a marked up price.” Id. Defendant also represents that it purchases tickets and will pay top dollar for tickets to high-demand events; that it will keep the transaction confidential; and that it will make immediate payment, claiming that Defendant is unlike others “that make you list your tickets and then wait weeks to find out if they sold.” Id. Defendant represents that “all sales are final; there are no refunds, cancellations or exchanges.” Id.

¹Defendant offers a 200% guarantee to domestic events; it generally offers 100% to international events. However, until approximately mid-day April 2, 2008, it was offering a 200% guarantee on the Beijing 2008 Summer Olympics.

10.3 Against the backdrop of these representations indicating that Defendant possesses the tickets that it offers for sale, Defendant's website contains the following advice on "How to [A]void Ticket Scams," wrongly implying that consumers can trust Defendant's business practices.

[T]here are unsavory people out there who will try to scam you when buying tickets; particularly for hot events when demand is high. They could be trying to sell fake tickets, counterfeit tickets or *offering to sell tickets that they do not own.*"

Id. (emphasis added).

10.4 Through these representations, Defendant leads consumers to believe--erroneously at times--that they are purchasing tickets from Defendant's existing inventory, that Defendant actually has what it is selling. Defendant accomplishes this deception through explicit and implicit representations on its website, such as:

- A. Explicitly stating that it has one of the largest ticket inventories in the industry;
- B. Advising how to avoid being "scammed" by a company that does not actually possess the ticket it is offering for sale;
- C. Offering to purchase tickets and pay the seller for them immediately; and
- D. Representing that all sales are final, that no refunds, cancellations or exchanges are possible.

Against this backdrop, Defendant offers the following language, buried in its website and amidst the misrepresentations, hinting that Defendant may not actually possess all of the tickets it offers for sale, at least for "events [it] do[es] not own."

TicketCity owns more tickets than any other ticket broker in the country, so we are a great source to find the best value on tickets. *To provide coverage for events we do*

not own we list tickets from a network of reliable suppliers; online orders from our suppliers must be manually confirmed by our Web Sales Department. . . .

Id. (emphasis added). Likewise, embedded in another section of fine print titled “Buying Tickets,” Defendant indicates that certain internet orders may require manual confirmation, but Defendant represents that it will notify the consumer within two days if there is a problem with their order.² Nevertheless, consumers are not told, and cannot discern, prior to their purchase whether their tickets come from Defendant’s existing “largest” ticket inventory or come from another entity that will theoretically supply a ticket. While Defendant changed its website in 2008, it remains unclear, prior to purchase, whether the consumer is purchasing an existing ticket or one to be theoretically provided by an outside supplier. See Exhibit B (attached) (excerpts from Defendant’s July 16, 2008 website).

XI. SPECIFIC INSTANCES OF DEFENDANT’S DECEPTION

11.1 In mid-2007, Defendant represented that it had tickets to sell to the August 2008, Beijing Olympics. In truth, Defendant did not possess these tickets; rather, it merely had an arrangement with a supplier to provide the tickets. At the time, the supplier did not have the tickets either. In fact, an entirely unrelated entity, CoSports (also known as Jet Set Sports), is the sole legitimate U.S. seller for Beijing Olympic tickets. See Exhibit C (attached) (Beijing Organizing Committee Olympic Games [“BOCOG”] List of Authorized Ticket Sellers).

11.2 In June 2007, a consumer purchased from Defendant three tickets to the 2008 Beijing Olympics Opening Ceremony, paying \$1,250.00 for each ticket. Defendant charged the consumer’s

² Defendant immediately charges consumers for the ticket, even if it is a ticket that requires manual confirmation.

credit card accordingly and represented that the tickets would be shipped to him before the time for departure to China. Defendant never indicated that it did not possess the consumer's tickets. In late March 2008, after the consumer and his traveling companions purchased airline tickets to Beijing and made non-refundable deposits for hotel accommodations, Defendant informed the consumer that his three tickets were not available. At this time, Defendant was still representing that it had tickets to the Beijing Olympics for sale and offering to refund 200% of the purchase price if Defendant, through its own fault, failed to deliver the tickets. See Exhibit D (attached) (Defendant's Guarantee). On April 1, 2008, the consumer requested his 200% refund because Defendant failed to deliver. The very next day, Defendant changed its website to reflect a 100% refund (see Exhibit E) and refused this consumer's request, only refunding to him the original purchase price of the tickets, despite the fact that he had purchased airline tickets and tendered non-refundable deposits for accommodations.³

11.3 During this time, Defendant continued to represent that it possessed tickets for sale to the 2008 Beijing Olympics. Now, however, Defendant was offering tickets to the Opening Ceremony at seven-fold what the deceived consumer had paid (\$7,000.00 to \$8,688.00 per ticket). As late as June 18, 2008, Defendant assured Plaintiff's investigator that it had tickets available for sale to the 2008 Beijing Olympics Opening Ceremony.

11.4 Because of security concerns, the Chinese authorities have imposed strict transfer rules applicable to holders of tickets to the Beijing Olympics. See Exhibit F (Beijing 2008 Official Olympic Rules relating to the Terms and Conditions of Ticket Sales, Use and Ordering). For

³After the consumer complained to Plaintiff's Office, Defendant refunded the full 200%.

instance, tickets to the Olympic Opening and Closing Ceremonies may only be transferred once – from the original purchaser to one subsequent purchaser. Further, the ultimate user of the ticket must have their identifying information, including a photograph, embedded into the ticket. Moreover, to transfer a ticket to the Opening or Closing Ceremonies, the ticket holder must have the prior written approval of BOCOG to transfer the ticket and must comply with the specific transfer procedures announced by BOCOG, requiring, among other things, that the transfer take place, between the original holder and user, in person in a designated Bank of China facility. Finally, according to the Beijing Official Olympic Website, the last day to transfer Opening Ceremony tickets was Monday, July 14, 2008. See Exhibit G (attached). Nonetheless, as of July 16, 2008, Defendant represented that it had fourteen tickets for sale to the Opening Ceremonies. See Exhibit B (attached).

XII. CAUSE OF ACTION

Texas Deceptive Trade Practices Act (“DTPA”)

12.1 Plaintiff incorporates the preceding paragraphs as if set out in full.

12.2 Plaintiff alleges that Defendant has, in the course of trade and commerce, engaged in false, misleading and deceptive acts and practices as declared unlawful in DTPA section 17.46(a) and (b). Such acts include:

A. Engaging in false, misleading or deceptive acts or practices, in violation of DTPA section 17.46(a);

B. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, of DTPA section 17.46(b)(2);

C. Causing confusion or misunderstanding as to affiliation, connection, or

association with, or certification by, another, in violation of DTPA section 17.46(b)(3);

D. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, in violation of DTPA section 17.46(b)(5);

E. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA section 17.46(b)(9);

F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA section 17.47(b)(12);

G. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, in violation of DTPA section 17.46(b)(20);

H. Failing to disclose information concerning goods or services which was known at the time of the transaction with the intent to induce the consumer into the transaction he or she would not have otherwise entered into, in violation of DTPA section 17.46(b)(24).

XIII. TRIAL BY JURY

13.1 Plaintiff herein requests a jury trial and tenders the jury fee to the Travis County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604.

XIV. CONDITIONS PRECEDENT

14.1 All conditions precedent to Defendant's liability and Plaintiff's right to recover have occurred or have been waived.

XV. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

15.1 Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this Petition. Unless enjoined by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause irreparable injury, loss and damage to the people of this State. Therefore, Plaintiff requests a temporary and permanent injunction, as indicated below.

XVI. PRAYER

16.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited according to law to appear and answer herein; after notice and hearing, a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant and its agents, servants, employees, affiliated companies, representatives, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

A. Representing, expressly or by implication, that Defendant possesses, owns or has the ability to sell a ticket to any event, when Defendant does not own or does not physically possess the ticket being offered for sale;

B. Selling a ticket to any event and failing to deliver the ticket to the purchaser;

C. Offering a ticket to any event when Defendant is not an authorized seller of tickets to such event;

D. Refusing or failing to honor a guarantee to refund 200% of the purchase price when Defendant fails to deliver a ticket to the purchaser;

E. Failing to disclose, prominently, that Defendant does not own or does not possess a ticket that it is attempting to sell; and

F. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to Defendant's business currently or hereafter in Defendant's possession, custody or control except in response to further Orders or subpoenas in this cause.

16.2 Plaintiff further requests that it be granted leave to take telephonic, video, written, and other depositions prior to any scheduled temporary injunction hearing upon reasonable shortened notice to Defendant.

16.3 In addition, Plaintiff respectfully prays that this Court:

A. Order Defendant to pay civil penalties in favor of the State of Texas in an amount up to Twenty Thousand Dollars (\$20,000.00) for each violation of the DTPA, pursuant to section 17.47(c)(1);

B. Order Defendant to compensate identifiable persons by awarding actual damages or restoring to such persons all money or other property that may have been acquired from them by means of any unlawful acts or practices;

C. Order Defendant to pay the State of Texas for its attorney's fees, investigative costs, and costs of court pursuant to Tex. Govt. Code Ann. § 402.006(c);

D. Order Defendant to pay prejudgment and postjudgment interest as provided by law;

E. Order that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable by Defendant under bankruptcy pursuant to 11 U.S.C. §523(a)(7); and

F. Grant any further relief, at law or in equity, to which the State of Texas may be justly entitled.

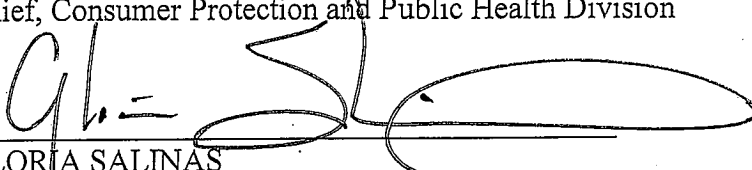
Respectfully submitted,

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