



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 26-Sep-2018
Toronto

STACEY THOMPSON-MARCIAL

Plaintiff

and

TICKETMASTER CANADA HOLDINGS ULC

Defendant

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: TICKETMASTER CANADA HOLDINGS ULC
1 Blue Jays Way
Suite #3900
Toronto, ON M5V 1J3

CLAIM

(1) DEFINED TERMS

1. The capitalized terms used in this Notice of Action have the following meanings:
 - (a) “**Class**” or “**Class Member**” means all persons who purchased Secondary Market tickets for live events occurring in Canada from the defendant;
 - (b) “**Class Period**” means September 1, 2013 and continuing until September 26, 2018 and/or during any subsequent period during which ticket prices for live events occurring in Canada were affected by the alleged conduct;
 - (c) “**CA**” means the *Competition Act*, R.S.C. 1985, c. C-34;
 - (d) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43;
 - (e) “**Consumer Protection Act**” means *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A;
 - (f) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
 - (g) “**Double-Dip Commissions**” mean additional revenues resulting from reselling tickets on the Secondary Market using software and websites sponsored by the defendant;
 - (h) “**Equivalent Consumer Protection Statutes**” means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Consumer Protection Act*, S.S. 1996, c. C-30.1,

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the *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2, the *Business Practices Act*, C.C.S.M., c. B120, the *Consumer Protection Act*, C.Q.L.R., c. P-40.1, the *Consumer Protection Act*, R.S.N.S. 1989, c. 92; and the *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, all as amended;

- (i) “**Primary Market**” means the market in Canada that exists for the sale and purchase of live event tickets when they are initially listed for sale; and
- (j) “**Secondary Market**” means the market in Canada that exists for the resale of live event tickets, after they are purchased from the Primary Market;

(2) RELIEF SOUGHT

2. The Plaintiff’s claim is for:

- (a) an order appointing the plaintiff as the representative plaintiff of the Class;
- (b) damages or compensation in an amount not exceeding \$250 million for:
 - (i) unfair practices contrary to Part III of the Consumer Protection Act and/or any Equivalent Consumer Protection Statutes;
 - (ii) false or misleading misrepresentations, contrary to s. 52 of the CA;
 - (iii) breach of contract; and
 - (iv) loss or damage suffered as a result of conduct contrary to Part VI of the CA;

- (c) punitive, exemplary and aggravated damages in the amount of \$25 million, or such further and other amount that is specified;
- (d) pre-judgment interest in accordance with s. 128 of the CJA;
- (e) post-judgment interest in accordance with s. 129 of the CJA;
- (f) investigative costs and costs of this proceeding on a full-indemnity basis pursuant to s. 36 of the CA; and
- (g) such further and other relief as this Honourable Court deems just.

(3) THE PARTIES

3. The plaintiff is an individual who resides in Toronto, Ontario. On or about April 23, 2018, she purchased two Secondary Market Verified Tickets by Ticketmaster from ticketmaster.ca to a Childish Gambino concert, for a total of \$313.56, a price well in excess of the face value of the tickets.

4. The defendant Ticketmaster Canada Holdings ULC is a company that carries on business in Canada, and has its principal place of business in Toronto, Ontario.

(4) SUMMARY OF CLAIM

5. The defendant has been the undisputed dominant ticket sellers in Canada for many years. It dominates the market for primary ticket sales of live events.

6. The defendant earns revenues when live event tickets are sold in the Primary Market. The defendant has sought for many years to increase its market share and revenues arising from the Secondary Market. It has succeeded in this respect.

7. To give all consumers an equal and fair opportunity to acquire the best tickets for live events in Canada, the Terms of Use on ticketmaster.ca prohibit the use of so-called “bot” software or other automation systems or other alleged violations of the Terms of Use. The ticketmaster.ca Terms of Use state in part as follows:

“You agree that you will comply with all applicable laws, rules and regulations, and that you will not [...] order a number of tickets for an event that exceeds the stated limit for that event;”

[...]

“We grant you a limited, conditional [...] license to view this Site and its Content as permitted by these Terms for non-commercial purposes only if, as a condition precedent, you agree you will not:

[...]

Use any automated software or computer system to search for, reserve, buy or otherwise obtain tickets [...].”

[...]

“Take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure;”

“Access, reload or refresh transactional event or ticketing pages, or many any other request to transactional servers, more than once during any three-second interval;”

“Request more than 1,000 pages of the Site in any 24-hour period, whether alone or with a group of individuals;”

“Make more than 800 reserve requests on the Site in any 24-hour period, whether alone or with a group of individuals;”

[...]

“This licence exists only so long as you strictly comply with each of the provisions described [above].”

[...]

“You may not attempt to conceal your identity by using multiple Internet Protocol addresses or email addresses to conduct transactions on the Site.”

[...]

“If we determine that you have violated these Terms or the law, or for any reason or for no reason, we may cancel your account, delete all your Use Content and prevent you from accessing the Site at any time without notice to you. If that happens, you may no longer use the Site or any Content.”

8. The ticketmaster.ca Purchase Policy further states in part:

“When purchasing tickets on our Site, you are limited to a specified number of tickets for each event (also known as a “ticket limit”). This ticket limit is posted during the purchase process and is verified with every transaction. This policy is in effect to discourage unfair ticket buying practices. We reserve the right to cancel any or all orders and tickets without notice to you if you exceed the posted limits. This includes orders associated with the same name, e-mail address, billing address, credit card number or other information.

9. During the Class Period, the defendant knowingly, recklessly, falsely, misleadingly or deceptively represented that it strictly prohibited the use of “bot” software or other automation systems or other alleged violations of the Terms of Use by professional ticket resellers to search for, reserve, buy or otherwise obtain live event tickets through the defendant, including through the TradeDesk platform. The defendant represented to Class Members that all consumers had an equal and fair opportunity to acquire the best tickets for live events in Canada.

10. In fact, the defendant encouraged, acquiesced to or, alternatively, was wilfully blind to the use of “bot” software or other automation systems or other alleged violations of the Terms of Use by professional ticket resellers to search for, reserve, buy or otherwise obtain tickets through

the defendant. These actions allowed professional ticket resellers to acquire massive volumes of Primary Market tickets for resale, often at significant markups above the original ticket price. The defendant's actions or acquiescence gave tremendous advantages to professional ticket resellers over Class Members in the acquisition of Primary Market tickets.

11. It was in the defendant's interests to encourage or alternatively to turn a blind eye to the use of "bot" software or other automation systems or other alleged violations of the Terms of Use to allow professional ticket resellers to purchase large volumes of tickets from the Primary Market, including through the use of the TradeDesk platform. In so doing, the defendant obtained Double-Dip Commissions. Unlike the Terms of Use applicable to consumers, the defendant's Professional Reseller Handbook contains no limits on ticket purchases and specifies no penalties for breaking ticket buying limits.

12. On September 19, 2018, the defendant's scheme was uncovered by a joint investigation by CBC news and the *Toronto Star*. They reported that a CBC reporter went undercover as a ticket reseller at a ticket convention in Las Vegas. At the convention, a Ticketmaster representative stated in part to the CBC reporter:

- (a) The representative "brought on people that are extremely small that've had just a few sets of tickets and frankly just had the gumption to try and they become pretty good partners for me, doing half a million [in sales], or whatever."
- (b) The representative had "people who've done their first year with me, they sold a hundred grand. So it wasn't enormous. But this is where they got started."

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- (c) The representative stated Ticketmaster would not police the use of multiple accounts, stating he had “a gentleman who’s got over 200 ticketmaster.com accounts.”
- (d) When asked “how many brokers are using multiple accounts,” the representative stated “I’d say pretty damn near every one of them. [...] I can’t think of any of my clients that aren’t using multiple accounts. I mean, they have to. Because if you want to get a good show and the ticket limit is six or eight... you’re not going to make a living on eight tickets, yeah.”

13. The defendant has misrepresented to the Class that it strives to provide an equitable ticket distribution system that affords all consumers a fair opportunity to acquire the best tickets for events. In fact, the defendant relies on and reaps substantial profits from the sale of tickets to professional ticket resellers, and the defendant encourage the use of its systems (including via the TradeDesk platform) by such resellers, whether or not they use alleged “bots” or other automation systems or engage in any other violations of the Terms of Use. The defendant makes no *bona fide* attempt to restrict the violation of Terms of Use by professional ticket resellers. The defendant has the information and means to identify professional ticket reseller accounts that violate the Terms of Use, but intentionally choose to not restrict such activity because the defendant profits substantially from their business.

(5) CAUSES OF ACTION

A. Consumer Protection claims

14. The Terms of Use specify the law of Ontario. The defendant is located in Ontario and carries on business throughout Canada. As a result, all Class Members obtain the benefit of the Consumer Protection Act. In the alternative, Class Members outside of Ontario obtain the benefit of the Equivalent Consumer Protection Statutes.

15. The Class Members purchased live event tickets for personal, family or household purposes and are consumers for the purposes of the Consumer Protection Act and/or Equivalent Consumer Protection Statutes.

16. The defendant's representations were false, misleading, deceptive and constituted unconscionable representations, contrary to the Consumer Protection Act and/or Equivalent Consumer Protection Statutes.

17. To the extent necessary, the Class Members are entitled to a waiver of any notice requirements under the Consumer Protection Act or the Equivalent Consumer Protection Statutes, particularly as the defendant concealed the actual state of affairs from the Class Members.

18. The plaintiff and Class Members are entitled to rescission of the purchase agreements, as well as damages pursuant to section 18 of the Consumer Protection Act and /or equivalent provisions of the Equivalent Consumer Protection Statutes.

B. False or misleading representations

19. The defendant knowingly or recklessly made representations to the public that were false or misleading in a material respect for the purposes of promoting, directly or indirectly, its business interests, contrary to s. 52 of the CA. The Class suffered loss or damage as a result of conduct that is contrary to Part VI of the CA.

C. Breach of contract

20. The Terms of Use and Purchase Policy formed terms of the contract between the defendant and Class Members. The defendant breached the contract by encouraging (including through the use of the TradeDesk platform) professional ticket resellers to search for, reserve, buy or otherwise obtain tickets through the defendant without restrictions specified in the Terms of Use and Purchase Policy. In the alternative, the defendant breached the contract by failing to strictly prohibit alleged “bots” or other automation systems or engage in any other violations of the Terms of Use by professional ticket resellers. As a result of the defendant’s breach of contract, Class Members have suffered damages.

D. Breach of s. 45(1)(c) of the CA

21. The defendant and unknown co-conspirators conspired, agreed or arranged with professional ticket resellers to fix, maintain, control, prevent, lessen or eliminate the production or supply of live event tickets in Canada, contrary to s. 45(1)(c) of the *Competition Act*, R.S.C. 1985, c. C-34. The Class suffered loss or damage as a result of conduct that is contrary to Part VI of the CA.

E. Discoverability

22. The plaintiff and other Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the misrepresentations during the Class Period.

September 26, 2018

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STACEY THOMPSON-MARCIAL
Plaintiff

-and-

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