

# Consumer Protection Advisory: FTC Settlement Ends Ticketmaster's Reselling "Glory Days"

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Ticketmaster and its affiliates entered into a settlement with the Federal Trade Commission (FTC) on February 18, 2010, in which Ticketmaster agreed to pay refunds to consumers who purchased tickets for 14 Bruce Springsteen concerts in 2009 through Ticketmaster's resale website, TicketsNow, and to include certain disclosures about the cost and risk of purchasing tickets through its various reseller sites. The FTC will be sending out warning letters to other ticket resellers reminding them of similar best practices. This should act as a reminder to all businesses, not just ticket resellers, of the importance of clear and conspicuous disclosures on websites and in other advertising and promotional materials.

## Background

The FTC alleged in its complaint that when Ticketmaster put tickets on sale for Bruce Springsteen's concerts in May and June, it displayed a "no tickets found" message on its website and then steered consumers to its affiliate website, TicketsNow. On that site, tickets were offered for higher prices, some up to quadruple the face value. In addition, the tickets were not always "in-hand." Some tickets were being sold on TicketsNow speculatively, *i.e.*, as offers to try to find tickets without a guarantee that the consumer would actually receive a ticket. But there were no disclosures on the Ticketmaster or TicketsNow websites to that effect. Ticketmaster displayed the same message to consumers looking to purchase tickets to other events between October 2008 and February 2009. Ticketmaster kept the sales proceeds for over three months without a reasonable basis according to the FTC's allegations.

## Settlement

Under the settlement, which will carry the force of law once the court enters it, Ticketmaster is required to pay refunds to consumers who purchased tickets to the concerts at issue. The refunds will be the difference between the price the tickets would have been from Ticketmaster and what they were purchased for on TicketsNow. The refunds will be determined by the FTC's redress administrator based on purchase information in TicketsNow's database.

In addition to consumer redress, the settlement requires Ticketmaster and its affiliates, including TicketsNow, to disclose, clearly and conspicuously, and within close proximity to links to a resale website, that 1) the website to which the consumer is being directed is a resale website, and 2) the ticket prices on the resale website often exceed the ticket's original price. The companies must disclose, clearly and conspicuously, that 1) the website is a resale website and

ticket prices often exceed the ticket's original price, and 2) in connection with the ticket listing itself, that the list price displayed for the ticket is the reseller or resale price. In addition, when promoting or offering for-sale tickets on a resale website, the companies must, clearly and conspicuously, and within close proximity of the ticket listing for which the status of the ticket is anything other than "in-hand," disclose the status of the ticket as either 1) not "in-hand," but the reseller has a contractual obligation to provide it to the consumer, or 2) not "in-hand," and the reseller is merely making an offer to try to procure it. The companies must also disclose any other material information regarding the status of the ticket if it is not "in-hand."

The settlement also requires Ticketmaster and its affiliates to develop policies, practices, and procedures designed to require resellers to accurately identify ticket status. It also requires the companies to provide certain compliance reports to the FTC for a period of three years and to engage in compliance monitoring. Furthermore, the settlement order imposes several record keeping requirements on the companies for a period of six years.

### **Warning Letters**

The FTC is also sending warning letters to other ticket resale companies whose practices may violate the law. The letter informs the other companies of the TicketsNow investigation and settlement. It advises resellers that information similar to that in the settlement should be provided to prospective purchasers on the other resellers' websites. The letter states "[f]or example, if any tickets sold on your website are not "in-hand" and ready for immediate delivery to consumers, then disclosures should be presented in the ticket listing clearly explaining either (1) that the ticket is not "in-hand" but will ship by a particular date, or (2) that there is no ticket, but rather the listing is an offer to seek or procure one. The staff believes that this information is important to consumers and that failure to disclose it may violate the law." The letter urges companies to review their websites for misleading statements.

### **Conclusion**

Ticket resellers should heed the FTC's warnings, and should review and revise their websites and other promotions accordingly. Other resellers should also evaluate whether similar disclosures are required. Note that the FTC did not enjoin TicketsNow's reselling practices (*i.e.*, offering to procure tickets not "in-hand" or selling tickets at higher prices), it only required the company to disclose the practices. Thus, the lesson here for all companies, not just ticket resellers and other resellers, is that disclosure to consumers is key—if a consumer could be confused or misled by your website or other promotional materials, there should be a clear and conspicuous disclosure to remove the potential for confusion. Of course, disclosure does not excuse otherwise misleading or illegal practices.

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