

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 60CV-21-

STUBHUB, INC.

DEFENDANT

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”)¹, for its Complaint against StubHub, Inc. (“StubHub”), states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 115 (“ADTPA”).

2. StubHub operates a secondary online event ticket sale site and mobile app that promised buyers refunds for canceled events through its “Fan Protect” guarantee. In early March 2020, the COVID-19 pandemic resulted in widespread cancelations of most, if not all events. On March 25, 2020, without notice to consumers, StubHub unilaterally changed its refund policy, no longer offering consumers refunds for canceled events, instead, offering consumers a credit that

¹ Arkansas brings this Complaint in coordination with Arizona, Colorado, Indiana, Maryland, Minnesota, New Hampshire, Ohio, Virginia, Wisconsin, and the District of Columbia.

could be applied toward future purchases on StubHub's marketplace. StubHub's actions concerning its "FanProtect" guarantee were deceptive and unconscionable.

3. The State seeks an injunction, an order imposing restitution for affected consumers, civil penalties, an injunction and other relief against Defendant.

II. PARTIES

4. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

5. Defendant StubHub, Inc., a Delaware corporation with its principal office or place of business at 199 Fremont Street, San Francisco, CA 94105. StubHub is a foreign entity that regularly advertises, markets, and sells its services to Arkansas consumers.

III. JURISDICTION

6. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

7. StubHub is an entity that has transacted business in Arkansas within the applicable statute of limitations. This Court has personal jurisdiction over Defendant pursuant to Ark. Code Ann. § 16-4-404 which extends to all persons, causes of action, and claims to the maximum extent permitted by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

8. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, 4-88-112 and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

9. StubHub operates a secondary marketplace, online and through its mobile apps, in which individuals or organizations that have purchased tickets to upcoming live events (“Sellers”) can resell those tickets to individuals who wish to purchase them (“Buyers”). Tickets sold in the StubHub marketplace, referred to as secondary tickets, include tickets to live sporting events, musical concerts, theatrical performances, comedy shows, conventions, and exhibitions.

10. The purchase price of tickets offered for sale in StubHub’s marketplace is determined by the Seller. When a Buyer purchases tickets to an event through StubHub’s marketplace, StubHub manages the entire transaction, taking payment from the Buyer, ensuring that the Seller’s tickets are delivered to the Buyer, and remitting funds to the Seller.

11. Because StubHub’s marketplace is a secondary market, a Buyer who purchases tickets through StubHub to an event that is subsequently canceled will not normally receive a refund directly from the event organizer. If an event is canceled and the event organizer issues refunds, the ticket Seller, not the Buyer, will receive the refund.

12. To assure Buyers that they will receive refunds for their purchase of secondary tickets on StubHub’s marketplace if an event is canceled, StubHub has offered refund guarantees to Buyers. For example, until March 5, 2020, StubHub

represented to Buyers through its “FanProtect” guarantee that if an event for which the Buyer purchased tickets was canceled and not rescheduled, it would provide the Buyer with a full refund (including any fees and shipping and handling charges). StubHub made similar representations in its advertising and other public statements.

13. In March 2020, the outbreak of coronavirus disease 2019 (“COVID-19”) was declared a global pandemic by the World Health Organization. Stay-at-home orders, bans on large gatherings, and similar public health measures resulted in the widespread cancellation of live, in-person events, including events for which Buyers had purchased tickets on StubHub.

14. On or about March 6, 2020, StubHub began sending emails to Buyers whose events had been canceled as a result of COVID-19. In those emails, StubHub reassured consumers that Buyers “are always protected by our Fan Protect” guarantee and that the Buyer would receive a “full refund for the amount paid” unless the Buyer affirmatively requested, in lieu of a refund, a coupon worth 120 percent of the Buyer’s original order. StubHub sent a similar email on or about March 20, 2020, again offering the consumers the option of a full refund or a coupon worth 120 percent of their original order.

15. However, on or about March 25, 2020, contrary to its prior representations, StubHub revised its “Fan Protect” guarantee and subsequently informed Buyers that because of COVID-19’s impact on live events and a large number of event cancellations, StubHub had updated its Buyer policies and would

no longer issue refunds to Buyers for canceled events. In fact, StubHub refused to pay refunds to hundreds of thousands of Buyers nationwide, including hundreds of consumers who either purchased tickets while residing in Arkansas or purchased tickets to events occurring in Maryland, under terms that included the “Fan Protect” guarantee.

16. StubHub’s representations to consumers that it would provide them full refunds to canceled events when, in fact, it did not honor its “Fan Protect” guarantee were misrepresentations.

17. StubHub did not inform consumers who purchased tickets under terms that included its “Fan Protect” guarantee that it would not honor its guarantee to pay refunds under some circumstances, including during a pandemic, a fact that was material to consumers.

18. StubHub’s refusal to pay refunds to consumers who bought tickets under terms that included its “Fan Protect” guarantee when the events for which they purchased their tickets were canceled harmed Arkansas consumers.

V. VIOLATIONS OF LAW

19. The ADTPA sets forth the State’s statutory program prohibiting deceptive and unconscionable trade practices.²

20. The resale of secondary tickets StubHub offered through its marketplace constitutes the offer and sale of consumer goods and services, because the tickets are purchased for personal, family or household purposes. The business

² Ark. Code Ann. §§ 4-88-101, *et seq.*

practices of Defendant constitute the sale of “goods” or “services.”³ The same business practices constitute business, commerce, or trade.⁴

21. It is unlawful to “knowingly make a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, approval, or certification of goods or services...”⁵ Defendant has engaged in prohibited conduct by misrepresenting that consumers’ ticket purchases were refundable under the “Fan Protect” guarantee for canceled events.

22. The law prohibits the use of “concealment, suppression, or omission of any material fact with the intent that others rely upon the concealment, suppression, or omission” while selling or advertising any goods or services.⁶ Defendant has engaged in prohibited conduct by concealing, suppressing, or omitting the material fact that StubHub would not provide its promised “Fan Protect” refunds for canceled events with the intent that Arkansas consumers would rely upon StubHub’s concealment, suppression or omission.

23. It is a violation to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.⁷ Defendant has engaged in prohibited conduct by refusing to honor its “Fan Protect” guarantee for canceled events and altering the policy or how it was applied after tickets were sold.

³ Ark. Code Ann. § 4-88-102(4) and (7).

⁴ Ark. Code Ann. § 4-88-107.

⁵ Ark. Code Ann. § 4-88-107(a)(1).

⁶ Ark. Code Ann. § 4-88-108(2).

⁷ Ark. Code Ann. § 4-88-107(a)(10).

PRAYER FOR RELIEF

24. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.⁸

25. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.⁹

26. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.¹⁰

27. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.¹¹

28. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.¹²

29. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.¹³

⁸ Ark. Code Ann. § 4-88-113(a)(1).

⁹ Ark. Code Ann. § 4-88-113(a)(2)(A).

¹⁰ Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

¹¹ Ark. Code Ann. § 4-88-113(a)(3).

¹² Ark. Code Ann. § 4-88-113(e).

¹³ Ark. Code Ann. § 4-88-102(5).

30. StubHub is a “person” who has engaged in an unconscionable, false, or deceptive act or practice in business, commerce, or trade.

31. The State will exercise its right to a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendant of the practices described herein which are violations of the ADTPA;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendant to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein; in addition, or in the alternative, enter an order requiring Defendant to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;
- c. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendant in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter, the full amount of which will exceed the amount necessary to establish federal diversity jurisdiction.

- d. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendant to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs; and
- e. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

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