

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR/CIRCUIT COURT

CAUSE NO. _____

STATE OF INDIANA,

Plaintiff,

v.

StubHub, Inc.,

Defendant.

**COMPLAINT
FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES, AND COSTS**

Plaintiff, the State of Indiana, through the Indiana Office of the Attorney General, by Deputy Attorney General Erica Sullivan, commences this action pursuant to the Indiana Deceptive Consumer Sales Act, specifically, Indiana Code Section 24-5-0.5-3(a) against Defendant StubHub, Inc. (“StubHub”). StubHub offers and sells on the secondary market tickets to sports, concerts, theater and other live events through its online marketplace at www.stubhub.com and on its mobile apps.

StubHub’s secondary ticket sales were backed by its “FanProtect” guarantee, which promised that if an event was cancelled and not rescheduled, StubHub would provide consumers with a full refund of the amount they paid for their tickets, including any fees and shipping/handling charges. In early March 2020, COVID-19 was declared a global pandemic and there was widespread cancellation of live in-person events, including events for which Indiana consumers had purchased tickets through StubHub’s marketplace. On March 25, 2020, without notice to consumers, StubHub unilaterally changed its refund policy, no longer offering consumers refunds for cancelled events, instead, offering consumers a credit that could be

applied toward future purchases on StubHub's marketplace. StubHub's actions were unfair, abusive, and deceptive.

The State of Indiana has commenced this action to enjoin StubHub from engaging in unfair or deceptive trade practices in connection with its offer and sale of secondary tickets, to obtain relief for consumers victimized by StubHub's unfair or deceptive trade practices, and to seek civil penalties for StubHub's unlawful conduct.

The Parties, Jurisdiction and Venue

1. The Plaintiff is the State of Indiana, through the Office of the Attorney General. This action is brought by the Plaintiff to redress violations to date and to prevent future violations of the Indiana Deceptive Consumer Sales Act, Indiana Code §§ 24-5-0.5-1 *et. seq.*

2. The Defendant is 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 consumers in Indiana, including in Marion County.

3. This Court has jurisdiction over the Defendant pursuant to Indiana Trial Rule 4.4 because Defendant StubHub has transacted business within the State of Indiana at all times relevant to the Complaint.

4. Venue is proper in Marion County pursuant to Indiana Trial Rule 75(A).

Allegations of Fact

5. 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 as secondary tickets, include tickets to live sporting

events, musical concerts, theatrical performances, comedy shows, conventions, and exhibitions.

6. 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.

7. 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.

8. In order to assure Buyers that they will receive refunds for their purchase of secondary tickets on StubHub's marketplace if an event is cancelled, 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 cancelled 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.

9. 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.

10. 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 FanProtect 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.

11. However, on or about March 25, 2020, StubHub, contrary to its prior representations, StubHub revised its FanProtect guarantee and subsequently informed Buyers that because of COVID-19’s impact on live events and the 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, and, at the least, six thousand eight hundred (6,800) consumers residing in Indiana, who had previously purchased tickets on StubHub’s marketplace under terms that included the FanProtect guarantee.

12. StubHub’s representations to consumers that it would provide them full refunds to cancelled events when, in fact, it would not honor its FanProtect guarantee were misrepresentations that were capable of misleading consumers.

13. StubHub did not inform consumers who purchased tickets under terms that included its FanProtect 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.

14. StubHub’s refusal to pay refunds to consumers who bought tickets under terms that included its FanProtect guarantee when the events for which they purchase their tickets were cancelled substantially harmed consumers. Consumers could not reasonably avoid the harm

because they did not know StubHub would not honor its refund guarantee. Guaranteeing refunds to consumers and then refusing to pay the promised refunds is a practice that does not benefit the marketplace.

COUNT I
KNOWING VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

15. The State incorporates paragraphs 1 through 14 as if fully alleged herein.
16. StubHub regularly engages in “consumer transactions” as defined in Indiana Code Section 24-5-0.5-2(a)(1).
17. StubHub is a “supplier as defined in Indiana Code Section 24-5-0.5-2(a)(3).
18. StubHub’s false and misleading statements to consumers that it would refund their payments for cancelled events, as set forth above, constitute unfair, abusive, or deceptive acts, omissions, or practices in connection with consumer transactions in violation of Indiana Code Section 24-5-0.5-3(a).
19. StubHub failed to inform consumers that they would not provide promised refunds for cancelled events were material facts, the omission of which has deceived or tended to deceive consumers and constitutes and unfair, abusive, or deceptive act, omission, or practice violation of Indiana Code Section 24-5-0.5-3(a).
20. StubHub’s offer and sale of tickets under its FanProtect guarantee and subsequent failure to provide refunds for cancelled events constitutes unfair, abusive, or deceptive acts, omissions, or practices in violation of Indiana Code Section 24-5-0.5-3(a).
21. StubHub committed the deceptive acts asserted in this Complaint with knowledge of the deceptive acts, subjecting StubHub to civil penalties pursuant to Ind. Code § 24-5-0.5-

4(g).

COUNT II
INCURABLE DECEPTIVE ACTS

22. The State incorporates paragraphs 1 through 21 as if fully alleged herein.

23. The deceptive acts asserted in this Complaint are incurable deceptive acts and were committed by Stub Hub as part of a scheme, artifice, or device with intent to defraud or mislead, subjecting Stub Hub to civil penalties pursuant to Ind. Code § 24-5-0.5-8.

WHEREFORE, for the foregoing reasons, the Plaintiff requests that the Court issue an Order:

- (a) Issuing an injunction under Ind. Code § 24-5-0.5-4(c)(1) requiring the Defendant to cease and desist from engaging in violations of the Indiana Deceptive Consumer Sales Act;
- (b) Requiring the Defendant to take affirmative action, including providing restitution to consumers of all moneys Defendant promised it would refund to consumers pursuant to its prior FanProtect policy and failed to do so;
- (c) Requiring the Defendant to pay the costs of this proceeding, including all costs of investigation pursuant to Indiana Code Section 24-5-0.5-4(c);
- (e) Requiring the Defendant to pay a suitable civil penalty pursuant to Ind. Code § 24-5-0.5-8; and
- (f) Granting such other and further relief as is appropriate and necessary.

Respectfully submitted,

/s/Erica Sullivan

Erica Sullivan #29504-49

Deputy Attorney General

Consumer Protection Division

Indiana Office of the Attorney General

302 W. Washington Street, IGCS 5th Floor

Indianapolis, IN 46204

Erica.Sullivan@atg.in.gov

Attorney for Plaintiff, State of Indiana

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Appearance by Attorney in a Civil Case was electronically filed using the Indiana E-Filing System (IEFS) and served via email and by United States mail, first class postage prepaid, this 14th day of September, 2021, to the following:

Sarah P. Hogarth # 32634-29
MCDERMOTT WILL & EMERY LLP
500 North Capitol Street NW
Washington, D.C. 20001
(202) 756-8354
shogarth@mwe.com

Jonathan A. Direnfeld
Maria J. Rouvalis
ORRICK, HERRINGTON & SUTCLIFFE LLP
Columbia Center
1152 15th Street, N.W.
Washington, D.C. 20005-1706
(202) 339-8400
jdirenfeld@orrick.com
mrouvalis@orrick.com

Antony P. Kim
LATHAM & WATKINS LLP
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
(202) 637-2200
antony.kim@lw.com

/s/ Erica S. Sullivan
Erica S. Sullivan
Deputy Attorney General
Attorney Number 29504-49
Office of Attorney General
Indiana Government Center South
302 West Washington St., 5th Floor

Indianapolis, IN 46204
Telephone: (317) 234-6784
Fax: (317) 233-4393
Erica.Sullivan@atg.in.gov