

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

Steve DelBianco, President
Carl Szabo, Vice-President & General Counsel
NetChoice
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7498



www.netchoice.org

December 3, 2018
SUBMITTED ELECTRONICALLY
Federal Trade Commission

NetChoice Response to Federal Trade Commission Request for Request for Comments on FTC to Hold Workshop Examining Online Event Ticket Sale - Agency Seeks Input in Advance of March 2019 Workshop; Project No. P18450

NetChoice submits this response regarding the Federal Trade Commission's ("FTC") request for comments on the online event-ticket marketplace, *FTC to Hold Workshop Examining Online Event Ticket Sale - Agency Seeks Input in Advance of March 2019 Workshop; Project No. P18450*.

NetChoice is a trade association of leading e-commerce and online companies promoting the value, convenience, and choice of internet business models. Our mission is to make the internet safe for free enterprise and for free expression. We work to promote the integrity and availability of the global internet and are significantly engaged in privacy issues in the states, in Washington, and in international internet governance organizations.

Overview

The ecosystem surrounding the sale and use of event tickets is more complex than most know. With a majority of tickets held-back from public sale for many events, and one company controlling a majority of primary tickets issued, the event ticket world is an area that the FTC can and should engage to ensure transparency, choice, and competition for all.

The advent of online secondary ticket sales has made ticket purchases safer and more reliable. Consumers can now see and compare prices and availability with the click of a button. And the leading secondary ticket sellers have buyer protection programs to protect against fraud.

Nonetheless, we have seen efforts from unscrupulous actors to mislead consumers via deceptive website domains. We have also seen efforts to remove choice and competition in the secondary market by restricting ticket transferability.

Now is the time for the FTC to use its investigative and Section 5 authority to protect consumers when buying event tickets.

Transparency

The FTC should address issues of transparency that have arisen in connection with deceptive and misleading concert and sports ticket website domains. This falls well within the FTC's Section 5 authority as such transparency issues constitute unfair and deceptive trade practices.

Misleading Consumers to Fake Sites

Fans across the country regularly search for tickets to their favorite concerts and shows. Unfortunately, many fans are misled by deceptive domain names in search results, which are designed to trick fans into thinking they are seeing unsold seats offered by the venue.

Consider, for example, search results for recent ticketed events in Maryland and New Jersey. A fan looking to see Cher in concert earlier this year at the MGM theater at National Harbor in Maryland might have entered “**cher national harbor**” in her search engine. A fan interested in seeing the Foo Fighters in concert earlier this year at the BB&T Pavilion in Camden, NJ might have entered “**BB&T Pavilion**” in his search engine. Here are the top results these fans would have seen:

Cher National Harbor | 2018 Tickets On Sale Today.

Ad www.theaternationalharbor.com/ ▼

Cher Concert Resale Tickets The Theater at National Harbor Oxon Hill, MD.

Last Minute Tickets · Secure Checkout · A+ Rated · 100% Guarantee · Instant Download · eTickets

BB&T Pavilion | 2018 Tickets On Sale Today | pavilioncamden.com

Ad www.pavilioncamden.com/ ▼

BB&T Pavilion Resale Tickets Camden, NJ. Instant Download. Find Deals & Save.

Great Service & Selection · Last Minute Tickets · Secure Checkout · eTickets · Find Deals · A+ Rated

BB&T Pavilion

Find The Best Deals Online Today.
Huge Selection. Summer Concerts.

Contact Us

Need Help or Have Questions?
Excellent Customer Service Support.

Despite the domain names, **theaternationalharbor.com** and **PavillionCamden.com**, these sites have *no affiliation* with MGM National Harbor or BB&T Pavilion. In fact, these websites are run by ticket resale outfits that show only tickets offered by brokers – at significant markups over regular seats still available at National Harbor or BB&T Pavilion.

The website theaternatioanlharbor.com makes it appear they are the official site for National Harbor, and displays Section 3 seats for Saturday night's show at over \$400 (see image at right). But over at MGM's official ticket website, **there were still dozens of unsold seats in Section 3, at the face value of \$270.**

Similarly, the domain name PavilionCamden.com makes it appear as if they are the official site for BB&T Pavilion



NATIONALHARBORTICKETS

We are a resale mar
Prices may exceed f
This site is not own

CHER, THE THEATER AT MGM NATIONAL HARBOR

Feb 17, 2018 — 8:00 PM — Oxon Hill, MD

FILTER: Qty Any Price: Min \$ 142 Max \$ 469

SORT BY: Price: High to Low Show e-tickets first

FLOOR 3 Row K QTY 6 \$463.00 ea. BUY
Email delivery by: 02/15/18

FLOOR 3 Row B QTY 2 \$446.00 ea. BUY
Email Delivery

with 2 seats not on the grass starting at \$206 (see image at left). But over at BB&T's official ticket website, **there were still dozens of unsold seats in Section 200, at the face value of \$126.**

These deceptive domains add no value for consumers when unsold seats are still available at the venue/promoter website. And when a show is actually sold-out, fans can turn to trusted secondary market websites where they can see a larger selection of resale seats.

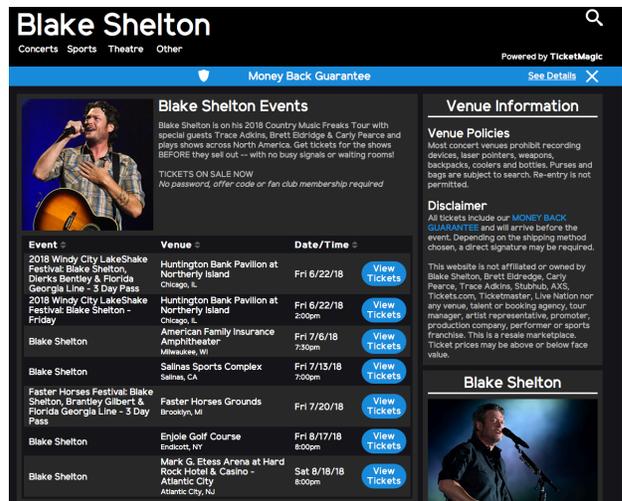
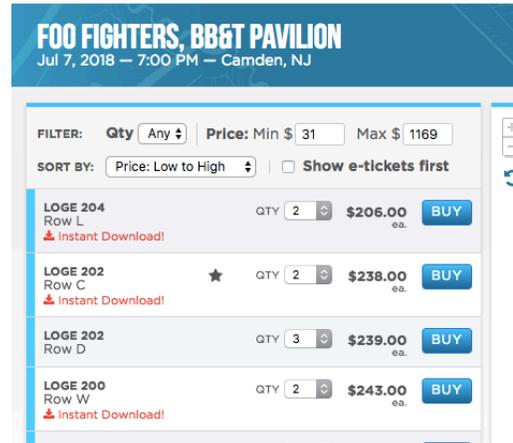
As you can see, there is little to alert Maryland or New Jersey fans that this site has no affiliation with the artist, tour, or venue. These deceptive sites may have fine-print disclosures about their lack of affiliation with the artist or venue, but such disclosures are rarely noticeable to fans.

The FTC should therefore consider legislation passed in states such as Maryland¹ that makes these examples "unfair or deceptive trade practices" and subjects the domain owners to enforcement and penalty provisions.

Deceptive websites like **theaternationalharbor.com**, **PavillionCamden.com**, and **BlakeSheltonShows.com** are luring fans into over-paying for a small selection of resale seats offered by professional ticket brokers. Those fans are not aware that unsold tickets are actually available at the venue website. The Better Business Bureau has logged hundreds of complaints against these tactics.

A good way to stop this deception is to prohibit artist or venue names from being used in domain names. Other states have taken action to stop these deceptive domains. Nevada recently enacted a law criminalizing these deceptive domain names.² The Connecticut Attorney General and the FTC settled with two notorious deceptive domain operators, resulting in a permanent injunction and \$1.4 million in fines.³

These types of deceptive domain names fall directly within the purview of the FTC's Section 5 enforcement authority. Consumers are harmed when they are unwittingly duped into spending their money with companies who are (1) unaffiliated with the actual venue or event and (2) taking advantage of consumers by offering these tickets at significant markup. If the FTC is to protect consumers from these types of blatantly unfair and deceptive trade practices, it should focus efforts on exercising its power to enforce against deceptive ticket sale domain names.



¹ Md. CODE ANN., COM. LAW § 14-4003 to -4004 (West 2018).

² Nev. Rev. Stat. § 598.3978 (2017).

³ Federal Trade Commission, *TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets* (July 24, 2014).

Another example of deceptive domain names that should be prohibited is **BlakeSheltonShows.com**, a website offering only resale tickets for the Blake Shelton concert at multiple locations including the Mark G. Etess Arena at Hard Rock Hotel & Casino in Atlantic City, New Jersey:

In fact, this tickets website is not for Blake Shelton or his tour, but is run by TicketMagic, a ticket-reseller with an “F” rating from the Better Business Bureau.⁴

Require disclosure of ticket holdbacks

The FTC should help “shine the light” and require venues to disclose how many tickets are being withheld from public purchase and to whom they are going.

A report by the New York Attorney General⁵ showed that nearly half of all tickets are never made available for public purchase. The report shows that around 54% of tickets are withheld from public purchase—with most going to VIPs and fan club insiders.

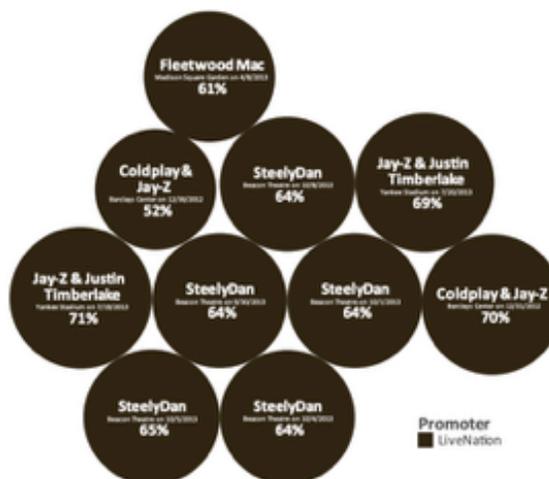
“For example, just over 1,600 tickets (12% of all tickets) were released to the public during the initial public on-sale for a July 24, 2014 Katy Perry concert at Barclays Center. Similarly, for two Justin Bieber concerts at Madison Square Garden, on November 28, 2012 and November 29, 2012, fewer than 2,000 tickets (15% of all tickets) to each show were released to the public during the initial public on-sale.”⁶

The result is fans are forced to fight over a very small pool of tickets. This drives up the costs of tickets on the secondary market, and the more limited supply results in higher prices.

What’s worse is that held-back tickets are later dumped onto secondary ticket markets once prices become inflated.

This reality is often hidden from the public. The NY AG said, “the industry must provide greater transparency into the allocation of tickets, to increase accountability and enable the public to make informed choices.”⁷ We suggest the FTC embrace and require transparency in number of tickets available for public purchase.

Figure 3. Ten Popular Shows Reserved Over 50% of Tickets Through Pre-Sales Events, None Explicitly Earmarked for Fan Clubs.
Source: Live Nation/Ticketmaster (2012 – 2013)²⁴



⁴ In addition, according to the Better Business Bureau, TicketMagic has 32 complaints filed against it. See *Ticketmagic.com Inc.*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ct/east-haven/profile/event-ticket-sales/ticketmagiccom-inc-0111-87124953> (last visited Nov. 26, 2018). In the Bureau’s latest investigation, they “were unable to locate the identified addresses and mail sent was returned as ‘undeliverable’ or ‘address unknown’.” *Business Details, Ticketmagic.com*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ct/east-haven/profile/event-ticket-sales/ticketmagiccom-inc-0111-87124953/details> (last visited Nov. 26, 2018).

⁵ New York State Attorney General Eric T. Schneiderman, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf.

⁶ *Id.* at 15.

⁷ *Id.* at 5.

Barriers to Competition

Another area that merits attention from the FTC is the limiting of ticket transferability by legitimate ticket sellers like Ticketmaster. This practice creates a barrier to competition that restricts consumers' choice in what to do with the tickets they purchase. This can push costs higher for consumer as they are forced into a locked market where transactions are controlled by one entity—the entity that controls ticket sales. This can result in yet another convenience fee for consumers and diminution of competition in the market for secondary platforms.

Today consumers enjoy robust competition in reselling their tickets. They can use a multitude of platforms that compete on price, convenience, and reliability. However, under restricted tickets, consumers are forced into one marketplace and competition is eliminated. It is important to note that Ticketmaster's presence in the ticket sales market represents both horizontal and vertical integration. Ticketmaster operates ticket sales for music events at most of the major concert venues across the country.⁸ LiveNation, the leading concert promoter, owns TicketMaster.⁹ This means that a single entity controls a vast proportion of the ticket sales market—leaving eventgoers with no choice but to yield to any policies the company chooses to attach to its ticket sales.

Take for example, Ticketmaster's "Credit Card Entry" tickets. This system requires a fan to present the credit card used to buy the ticket, plus a government-issued identification card for the person who bought the ticket. Venues using these restricted tickets could deny admission to fans whose credentials do not match the original ticket buyer, as seen in the attached restrictions displayed on Ticketmaster's website.

Because of this, citizens and businesses can't even give away tickets to friends, family, or clients, because the purchaser's name won't match the ticketholder. Parents can be forced to accompany their teenagers to the event gate to show ID of the ticket *purchaser*, rather than allowing the teen to present their ticket to the usher.

While Ticketmaster sometimes gives the option to transfer a ticket, it requires a complex interaction with Ticketmaster and may require payment of yet another "convenience fee."

This approach is not only anti-competition, it is anti-consumer. Take for example polling of Utah citizens¹⁰ that found:

- 79% support legislation that guaranteed their right to give away, resell, or donate their tickets however they choose.
- 88% say the ticket purchaser should choose what to do with their tickets (resell them, give them away, donate them) rather than allowing the event organizer to prevent sharing or reselling tickets.
- 71% said that when they buy their ticket, it is their personal property and they have full control over what they can do with their ticket.

⁸ See, e.g., Ben Sisario & Graham Bowley, *Live Nation Rules Music Ticketing, Some Say With Threats*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

⁹ See *id.*

¹⁰ Frequencies available at NetChoice.org/UtahPoll.

These consumer preferences run counter to the notion of restricted tickets.

When a company dominates the landscape as comprehensively as LiveNation and Ticketmaster, such restrictions are a problem. According to the New York Times:

“Live Nation empire, still tickets 80 of the top 100 arenas in the country. No other company has more than a handful. No competitor has risen to challenge its pre-eminence. Now Department of Justice officials are looking into serious accusations about Live Nation’s behavior in the marketplace.”¹¹

We’re already seeing restricted tickets. Garth Brooks used restricted tickets for several of his 2016 performances. Fans who gave their tickets to family or friends still had to escort them to the venue doors. And a ticketholder who couldn’t attend could not easily sell or even give away his tickets.

We’ve attached a page from Ticketmaster’s website that explains the inconvenient restrictions imposed on fans who must buy Credit Card Entry tickets.

However, fans don’t suffer these restrictions when Garth Brooks performs in states like New York, Virginia, Connecticut, or Colorado. These states have laws with the same protections that maintain consumer choice, convenience, and market competition, so New York,¹² Virginia,¹³ Connecticut¹⁴, and Colorado¹⁵ fans can freely transfer, resell, and give away their tickets. Big-name acts like Garth Brooks regularly perform in states with laws ensuring these protections, so enforcing against this competition-limiting practice will not impede concerts and other ticketed events from continuing to take place.

The Rationale for Restricted Tickets Doesn’t Match Reality

Ticketmaster’s own website explains why it requires “Credit-Card Entry” restrictions—to stop software ‘bots’ used by unscrupulous brokers to grab hundreds of tickets in first minutes they go on sale:

Why is Credit Card Entry the only option for some events, or some sections?

When Credit Card Entry is the only option it’s probably because the tickets are in high demand, and the artist, team, or venue wants true fans like you to get the seats you want at face value by eliminating unfair competition from professional scalpers. Without the ability to resell tickets at steep prices, scalpers have no reason to snatch them up when they go on sale using automated software, or “bots”.

Fortunately, Congress recently passed the Better Online Ticket Sales, or BOTS Act, making it illegal for brokers to circumvent ticket purchase limits on sites like Ticketmaster.¹⁶ The bill empowers the FTC and

¹¹ Sisario & Bowley, *supra* note 8. <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

¹² NY Arts & Cult Aff L § 25.30. “[I]t shall be *prohibited* for any operator of a place of entertainment, or operator’s agent, to: (a) *restrict by any means the resale of any tickets...*(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator’s agent.” *Id.* (emphasis added).

¹³ VA Stat. §§ 59.1-466.5-.7. “*No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser’s choice... No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform.*”

¹⁴ CT Pub Act. 17-28 (2017). “*No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system.*”

¹⁵ Colorado Rev. Stat. § 6-1-718(3). “*It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale... A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.*” *Id.* (emphasis added).

¹⁶ BOTS Act of 2016, 15 U.S.C. § 45c (2012).

state Attorneys General to stop ticket scalpers from buying-up tickets by bypassing online controls that limit the number of tickets a person can buy.

Even Ticketmaster supported the BOTS Act, stating that “Ticketmaster worked closely with legislators to develop the BOTS Act and we believe its passage is a critical step in raising awareness and regulating the unauthorized use of Bots.”¹⁷

With BOTS now a federal crime, there's no justification for Ticketmaster to offer only restricted tickets.

While private contracts are a private matter, governments step in when contracts threaten property rights, constrain consumer choice, or force unfair agreements on consumers. Event tickets are another situation ripe with concern for anti-competitive practices that harm not only consumers but also competitive businesses.

Ticketmaster's *primary* ticket sales platform has previously required customers to resell only through Ticketmaster's own secondary market service. Failing to stick with Ticketmaster has resulted in voided tickets and threats to cancel patrons' season tickets.¹⁸

Ticketmaster is aggressively expanding its Credit Card Entry ticket program. This will limit fan choice and could impose a new battery of “convenience fees” just to give a ticket to a friend. Now is the time for the FTC to crack down on this barrier to competition and help consumers enjoy the choice and convenience of an open tickets marketplace.

We thank you for convening this important discussion and welcome the opportunity to work with you to address the flaws in the event ticketing market.

Sincerely,

Steve DelBianco
President, NetChoice

Carl M. Szabo
Vice-President & General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

¹⁷ *Obama signs law to combat ticket bots*, ENTERTAINMENT WEEKLY (Dec. 16, 2018) <http://ew.com/article/2016/12/16/obama-law-ticket-bots/>.

¹⁸ *See Stubhub, Inc. v. Golden State Warriors, LLC*, No. C 15-1436 MMC, 2015 WL 6755594 (N.D. Cal. Nov. 5, 2015), *appeal dismissed* (July 22, 2016).

From Ticketmaster's Website

Q. How does it work?

A. Instead of receiving tickets ahead of the event, the credit card used to make the purchase will serve as the customer's ticket. To attend the show, the customer just presents the credit card used to purchase the ticket(s) and a valid, government issued ID (such as a driver's license, state ID or passport). The gate attendant will swipe the credit card and since all the seats are assigned to a single credit card, your entire party must enter the venue at the same time.

...

Q. What if I'm not going to the show, but I purchased the tickets?

A. If you bought the tickets for a friend or family member, you will need to take them to the entry gate and still present your credit card and government issued ID.

Q. What if I want to buy tickets for someone else in another state and can't get to the venue for the day of the event?

A. To ensure that the tickets remain in the hands of the fan, paperless ticketing requires that that cardholder who purchased the tickets presents their credit card at the door for admission. We would advise you to have the person, who will be attending the show, purchase the tickets themselves with their credit card and then you can reimburse them.

...

Q. What if I don't have or I lose my credit card before the event?

A. If you do not have a credit card with the same account number as the one used to make the purchase, you will need to go to the box office will call window on the day of the event for alternative handling of your situation. In this case, please be sure to bring a print out of your confirmation email or online order history and your government issued ID. The box office will verify that the name associated with the order matches the name on the government issued ID. If they do not match, entry will be denied. In all other cases, entry without your credit card will be at the discretion of each venue.

...

Q: What if I purchased the tickets, but my spouse is going to the event?

A: Your spouse must be an authorized user of the credit card, and must present the credit card along with their government issued ID to gain entry.¹⁹

I bought tickets for friends – can we get in separately?

If you bought for a group you gotta enter as a group, UNLESS Ticket Transfer is available for your event. To check, just click the order number under Order History in My Account and look for the Transfer Tickets button.²⁰

¹⁹ Miley Cyrus "Paperless Ticket" FAQs, TICKETMASTER.COM (emphasis added), <http://www.ticketmaster.com/mileycyrus/faq.html> (last visited Nov. 26, 2018).

²⁰ Ticketmaster Credit Card Entry, TICKETMASTER.COM (emphasis added), <http://www.ticketmaster.com/creditcardentry> (last visited Nov. 26, 2018).