

Third amendment pursuant to an order of Mr. Justice Tammen made 12 May 2025

Further amended pursuant to *Supreme Court Civil Rule 6-1(1)(b)(i)*

Amended pursuant to *Supreme Court Civil Rule 6-1(1)(a)*.

Original filed on 19/Oct/2018.

No. S1811318

Vancouver Registry

In the Supreme Court of British Columbia



Between

DAVID GOMEL

Plaintiff

and

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION
WORLDWIDE, INC., TICKETMASTER LLC,
TICKETMASTER CANADA HOLDINGS ULC, and
TICKETMASTER CANADA LP**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, C. 50

FURTHER-THIRD AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Nature of the Action

1. This action relates to the deceptive and misleading representations the Defendants made regarding the sale of event tickets through the website, www.ticketmaster.ca.

2. The Defendants are, and have been at all relevant times, engaged in the business of event promotion and ticket sales throughout Canada and the world.
3. As a result of an undercover investigation by the Canadian Broadcasting Corporation and the *Toronto Star*, a news report dated September 19, 2018 revealed that the Defendants fostered an artificial secondary market for event ticket sales wherein professional ticket brokers use automated purchasing software to obtain event tickets *en masse* from Ticketmaster and subsequently resell these tickets to consumers at significant markups from their original face value.
4. As described herein, the Defendants gain substantial profits from this scheme.

The Plaintiff and the Class

5. The Plaintiff is an individual who resides in Vancouver, British Columbia. On November 18, 2016, the Plaintiff purchased two tickets from StubHub to a Bruno Mars concert for \$437.86 USD. The original tickets were sold by the Defendants.
6. The Plaintiff brings this action on behalf of members of the class (the "Class Members" or the "Class") consisting of the Plaintiff and all British Columbia resident persons who, during some or all of the class period of June 30, 2015 to April 15, 2021 (the "Class Period"), purchased tickets for personal use and not for resale from Secondary Sales for events where the original tickets were sold by the Defendants.

The Defendants

7. The Defendants, either together or individually, supply tickets to purchasers in Canada through websites such as www.ticketmaster.ca.
8. Live Nation Entertainment, Inc. ("Live Nation") is a Delaware corporation with its principal place of business in Beverly Hills, California, United States. Live Nation is the parent company of the other named defendants.

9. Live Nation Worldwide, Inc. (“Live Nation Worldwide”) is a subsidiary of Live Nation and a Delaware corporation. Live Nation Worldwide’s principal place of business is Beverly Hills, California. Live Nation Worldwide has either owned or controlled www.ticketmaster.ca during the Class Period.
10. Ticketmaster LLC (“Ticketmaster LLC”) is a Virginia limited liability corporation and a subsidiary of Live Nation. Its principal place of business is West Hollywood, California. During the Class Period, Ticketmaster LLC was involved in the control of www.ticketmaster.ca. Additionally, Ticketmaster LLC markets and provides a mobile application for consumers in Canada to download and use as a means of purchasing tickets from www.ticketmaster.ca using their mobile devices.
11. Ticketmaster Canada Holdings ULC (“Ticketmaster Canada ULC”) is a subsidiary of Live Nation and a Nova Scotia unlimited liability corporation. Its principal place of business is Toronto, Ontario. At various times during the Class Period, Ticketmaster Canada ULC handled transactions and collected payments for event tickets sold through www.ticketmaster.ca for events in Canada.
12. Ticketmaster Canada LP (“Ticketmaster Canada”) is a subsidiary of Live Nation and an Ontario limited partnership. Its general partner is Ticketmaster Canada ULC. During the Class Period, Ticketmaster Canada was involved in the sale of event tickets through www.ticketmaster.ca.
13. The business of Live Nation, its subsidiaries, or any other related entities is a joint enterprise and is inextricably interwoven such that each is the agent for the other for the purpose of marketing and selling event tickets on websites such as www.ticketmaster.ca for ultimate use by consumers in Canada.
14. Live Nation, Live Nation Worldwide, Ticketmaster LLC, Ticketmaster Canada ULC, and Ticketmaster Canada are hereinafter referred to collectively as “Ticketmaster”.

15. Whenever reference is made herein to any act, deed, or transaction of any corporation, the allegation means the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business affairs.

Factual Background

Sale of event tickets on www.ticketmaster.ca

16. Ticketmaster is the world's largest promoter, distributor and seller of event tickets. Its business involves both the primary and secondary sale of event tickets.
17. Primary sales ("Primary Sales") refer to the sale of event tickets conducted directly between Ticketmaster and a purchaser. Tickets sold directly through Ticketmaster as Primary Sales on www.ticketmaster.ca are identified as "Standard Ticket[s]".
18. Secondary sales ("Secondary Sales") refer to the resale of event tickets by or on behalf of an event ticketholder. Secondary Sales can occur through www.ticketmaster.ca using a service known as Ticketmaster Resale, or other resale services such as StubHub or the Ticketmaster owned and operated TicketsNow. Resale event tickets are identified on www.ticketmaster.ca as "Verified Resale Ticket[s]".
19. Ticketmaster collects service and handling fees on all event tickets purchased from www.ticketmaster.ca, including event tickets resold through Ticketmaster Resale. The amount and type of fees levied varies from ticket to ticket.
20. There is a purchasing limit on event ticket orders. The purchasing limit varies from event to event, but it is generally between 6 and 8 tickets per purchaser. According to Ticketmaster's Purchase Policy published on www.ticketmaster.ca, the purchasing limit is intended to ensure fairness between concert goers by

preventing a small contingent of purchasers from obtaining large quantities of event tickets for resale.

Professional ticket brokers and the use of ticket bots

21. Ticketmaster has been aware at all material times, and in particular during the Class Period, that professional ticket brokers circumvent the ticket purchasing limits by using ticket “bots” to acquire numerous event tickets at once through multiple online accounts.
22. A ticket bot is a software program designed to automate ticket purchasing. It enables professional ticket brokers to automatically search for and purchase event tickets through websites such as www.ticketmaster.ca. It also enables professional ticket brokers to conduct numerous event ticket purchase transactions simultaneously using multiple accounts.
23. After acquiring event tickets, professional ticket brokers post the event tickets acquired from Ticketmaster for resale using Ticketmaster Resale and other means, including StubHub and the Ticketmaster owned and operated TicketsNow.

Ticketmaster's Terms of Use and Purchase Policy

24. The Terms of Use on www.ticketmaster.ca contain, *inter alia*, the following provisions:
 - (a) users are prohibited from ordering tickets for an event that exceeds the stated purchasing limit for that event;
 - (b) users shall not use any automated software or computer system to search for, reserve, buy, or otherwise obtain tickets;
 - (c) users shall not attempt to conceal their identity by using multiple Internet Protocol addresses or email addresses to conduct transactions;
 - (d) Ticketmaster may investigate any violations of the Terms of Use;

- (e) if Ticketmaster determines a violation of the Terms of Use has occurred, it may provide law enforcement with information to assist in any investigation or prosecution of the offending user; and
 - (f) Ticketmaster reserves the right to take legal action against users who violate the Terms of Use.
25. The Purchase Policy published on www.ticketmaster.ca states that purchasers are limited to a specified number of tickets for each event in order to discourage unfair ticket buying practices.
 26. The Terms of Use and Purchase Policy contained representations to the public, and to the Plaintiff and the Class Members.
 27. Through the Terms of Use and the Purchase Policy, Ticketmaster represented that it enforced fair ticket buying practices and it enforced a prohibition on the use of ticket bots.

TradeDesk and Ticketmaster's Representations

28. Ticketmaster developed proprietary software known as "TradeDesk", which it marketed to professional ticket brokers.
29. TradeDesk is a platform that enables professional ticket brokers to sync multiple Ticketmaster accounts to quickly and efficiently offer already-purchased event tickets for resale through Ticketmaster Resale and other platforms for Secondary Sales, including at prices that exceeded the face value of the event tickets.
30. Notwithstanding Ticketmaster's representations that it enforced fair ticket buying practices and enforced a prohibition on the use of ticket bots, Ticketmaster developed and promoted TradeDesk, a platform that Ticketmaster knew facilitated and encouraged the use of ticket bots on www.ticketmaster.ca. Alternatively, Ticketmaster was willfully blind to the use of ticket bots on www.ticketmaster.ca and the circumvention of event ticket purchasing limits by professional ticket brokers using TradeDesk. Ticketmaster's conduct, whether

witting or unwitting, permitted and encouraged professional ticket brokers to use ticket bots to acquire large quantities of event tickets from Ticketmaster directly, and then resell those event tickets at a substantial mark up from their original face value.

31. While Ticketmaster represents that violation of the Terms of Use may result in penalties and legal action, Ticketmaster has not, at any material time, attempted to curtail the activities of professional ticket brokers that were in violation of the Terms of Use.
32. Ticketmaster earns substantial profits from all event ticket sales conducted through www.ticketmaster.ca, including through Ticketmaster Resale. When professional ticket brokers use ticket bots to purchase event tickets *en masse*, Ticketmaster collects fees on each transaction. Additionally, if that event ticket is resold through Ticketmaster Resale, Ticketmaster collects a fee on that transaction as well. In this way, each time there is Secondary Sales of an event ticket through Ticketmaster Resale, Ticketmaster collects an additional fee.

PART 2: RELIEF SOUGHT

33. The Plaintiff claims on his own behalf and on behalf of other Class Members for:
 - (a) an Order pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
 - (b) a declaration that the Defendants are in breach of s. 52 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "*Competition Act*");
 - (c) damages pursuant to s. 36 of the *Competition Act*;
 - (d) investigation costs pursuant to s. 36 of the *Competition Act*;
 - ~~(b)~~(e) a declaration pursuant to s. 172(1)(a) of the *Business Practice and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "*BPCPA*") that the

Defendants' representations are deceptive acts or practices, or unconscionable acts or practices;

~~(e)~~(f) damages pursuant to s. 171 of the *BPCPA*;

~~(d)~~(g) an injunction pursuant to s. 172(1)(b) of the *BPCPA* restraining the Defendants from engaging in deceptive acts or practices, or unconscionable acts or practices;

~~(h)~~ an order pursuant to s. 172(3)(a) of the *BPCPA* directing the Defendants to restore to the Plaintiff and Class for money acquired;

~~(e)~~(i) an order pursuant to s. 172(3)(c) of the *BPCPA* that the Defendants be required to advertise this Court's judgment, declaration, order, and/or injunction;

~~(j)~~ a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiff and the other Class Members;

~~(k)~~ a declaration that the Defendants account for and make restitution to the Class Members in an amount equal to the excess profits derived;

~~(f)~~(l) punitive damages;

~~(g)~~(m) the costs of administering and distributing a damage award;

~~(h)~~(n) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
and

~~(+)~~(o) such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

Statutory Causes of Action

Contravention of the Competition Act

34. Ticketmaster knowingly or recklessly made, and continues to knowingly or recklessly make, representations in its Terms of Use and Purchase Policy through press releases in response to the recent undercover investigation and through the Internet, including through its website, www.ticketmaster.ca. This includes representations that Ticketmaster:

- (a) provides consumers with a fair opportunity to acquire event tickets;
- (b) prohibits the use of ticket bots or other automated software for purchasing tickets through www.ticketmaster.ca;
- (c) enforces ticket purchasing limits;
- (d) prohibits users of www.ticketmaster.ca from concealing their identities through multiple Internet Protocol addresses or email addresses to conduct multiple transactions;
- (e) investigates any misuse of www.ticketmaster.ca;
- (f) assists law enforcement officials with the prosecution of any individual found to be in violation of Ticketmaster's Terms of Use; and
- (g) discourages misuse of www.ticketmaster.ca, including any activity designed to circumvent ticket purchase limits per transaction.

35. The representations were false or misleading in a material respect and, as such, constituted, and continue to constitute, contraventions of s. 52 of the *Competition Act*.

36. As a result of these representations, the market for event tickets that originated from Ticketmaster was distorted, leading to higher prices for event tickets.

Further, and in the alternative, the Plaintiff and Class relied upon the representations. As a result, the Plaintiff and Class have suffered loss, damage and expense as described herein, and plead and rely on s. 36 of the *Competition Act*.

Contraventions of Consumer Protection Legislation

~~34-37.~~ Ticketmaster was and continues to be a supplier as that term is defined in the *BPCPA*. The Plaintiff and the Class were consumers as that term is defined in the *BPCPA*.

~~35-38.~~ Ticketmaster's marketing, promotion, labelling and sale of events tickets resold on www.ticketmaster.ca constituted and continue to constitute a consumer transaction, as defined in the *BPCPA*.

~~36-39.~~ Ticketmaster made representations, including representations that it:

- (a) provides consumers with a fair opportunity to acquire event tickets;
- (b) prohibits the use of ticket bots or other automated software for purchasing tickets through www.ticketmaster.ca;
- (c) enforces ticket purchasing limits;
- (d) prohibits users of www.ticketmaster.ca from concealing their identities through multiple Internet Protocol addresses or email addresses to conduct multiple transactions;
- (e) investigates any misuse of www.ticketmaster.ca;
- (f) assists law enforcement officials with the prosecution of any individual found to be in violation of Ticketmaster's Terms of Use; and
- (g) discourages misuse of www.ticketmaster.ca, including any activity designed to circumvent ticket purchase limits per transaction.

37.40. These representations were false, misleading or deceptive under s. 4 of the *BPCPA* in that:

- (a) they were promises that Ticketmaster blatantly did not adhere to, or alternatively was wilfully blind to;
- (b) they were in regards to a standard, quality or grade that the Plaintiff and Class could expect from Ticketmaster's adherence to its own Terms of Use and Purchase Policy;
- (c) they were exaggerations as to Ticketmaster's facilitation of a fair and equitable marketplace in which Plaintiff and Class could obtain event tickets at face value; and
- (d) such other ways as will be proven at trial.

38.41. As a result of these representations, the market for event tickets that originated from Ticketmaster was distorted, leading to higher prices for event tickets.

39.42. These representations were unconscionable under s. 8 of the *BPCPA* in that:

- (a) the Plaintiff and Class relied on the Ticketmaster's knowledge and expertise, to their detriment;
- (b) Ticketmaster virtually monopolizes the event ticket sale industry, which leave consumers with few options other than purchasing event tickets from www.ticketmaster.ca;
- (c) the price of event tickets marketed and sold on www.ticketmaster.ca as Secondary Sales grossly exceeded the price at which similar goods were readily available; and
- (d) such other ways as will be proven at trial.

40.43. These are unfair practices, and as a result, the Plaintiff and Class are entitled to recovery pursuant to s. 171 the *BPCPA*. Further or alternatively, the Plaintiff and

Class are entitled to an order pursuant to s. 172(1)(a) for a declaration that the Ticketmaster engaged in an act or practice in contravention of the *BPCPA*, s. 172(1)(b) for an injunction restraining Ticketmaster from contravening the *BPCPA*, and s. 172(3)(c) for an order that Ticketmaster advertise to the public particulars of any judgment, declaration, order or injunction granted.

44. Further or alternatively, the Plaintiff and Class are entitled to an order pursuant to s. 172(3)(a) of the *BPCPA* requiring Ticketmaster restore to them the increased portion of fees paid resulting from the distortion of the market caused by Ticketmaster's contravention of the *BPCPA*.

Unjust Enrichment

45. Further, or in the alternative, the Plaintiff and Class are entitled to claim and recover based on equitable and restitutionary principles.

46. Ticketmaster has been unjustly enriched by allowing and encouraging professional ticket brokers to violate its Terms of Use and Purchase Policy so that Ticketmaster could collect additional fees by virtue of Ticketmaster's distortion of the market, through Secondary Sales. The Plaintiff and Class have suffered corresponding deprivation by paying these additional fees when purchasing through Secondary Sales.

47. Since these additional fees received by Ticketmaster from the Plaintiff and Class resulted from Ticketmaster's wrongful and unlawful acts, which include contraventions of the *Competition Act* and the *BPCPA*, there is and can be no juristic reason justifying Ticketmaster retaining any part of it.

Disgorgement

48. The Plaintiff and the Class are entitled to disgorgement of revenues, or alternatively profit, from Ticketmaster due to Ticketmaster's breaches of the *Competition Act* or unjust enrichment.

Unconscionability

41.49. The Terms of Use and Purchase Policy on www.ticketmaster.ca include Limitation of Liability clauses which took advantage of the unequal bargaining power of users of the website. The Limitation of Liability clauses are substantially unfair given their one-sided nature. The clauses are therefore void or unenforceable because they are unconscionable.

Punitive Damages

42.50. The Plaintiff and Class assert that the Ticketmaster's conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful and in contumelious disregard of the Plaintiff's rights and the rights of the Class, and as such renders Ticketmaster liable to pay punitive damages.

Statutes Relied Upon

43.51. The Plaintiff and Class plead and rely on the Competition Act, the *BPCPA*, *Class Proceedings Act*, the Supreme Court Civil Rules, and such further and other legislation as this Honourable Court may permit.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN

#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

44.52. The plaintiff, David Gomel, claims the right to serve this pleading on the defendants, outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiff and members of the Class plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "CJPTA") in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e) - (h) of the *CJPTA* because this proceeding:

- (a) concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- (b) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (c) concerns a tort committed in British Columbia; and
- (d) concerns a business carried on in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from the deceptive, false, and misleading business practices relating to the marketing and sale of event tickets in Canada, including in British Columbia. During the Class Period, the defendants encouraged or, alternatively, were wilfully blind to the proliferation of the use of ticket bot software designed to purchase mass quantities of event tickets with the intent of subsequently reselling these tickets at a significant markup. The Defendants represented these activities were expressly prohibited on its website, but took no steps to curtail said activities. The Defendants have reaped substantial profits from the ticket scalping scheme described above. The plaintiff and Class suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship

- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Competition Act, RSC 1985, c 34;*

1.2. *Business Practices and Consumer Protection Act, SBC 2004, c 2 and other consumer protection legislation in other provinces and territories; and*

2.3. *Class Proceedings Act, RSBC 1996, c 50.*