

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

Grubhub Holdings Inc.
Grubhub Inc.

Defendants.

COMPLAINT

RECEIVED
JUL 29 2021
SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

I. INTRODUCTION

1. The Commonwealth of Massachusetts enacted a statutory limit on the fees that third-party delivery companies could charge covered establishments¹ while the state of emergency to address the COVID-19 outbreak remained in effect.² The new legislation limited such fees to 15% of the purchase price of an online order.³ Grubhub Holdings Inc. and Grubhub Inc. (together “Grubhub”) repeatedly violated this fee limit and charged covered establishments fees in excess of 15%. Grubhub’s practice damaged restaurants financially during the declared COVID-19 emergency, often raising restaurant costs by thousands of dollars. Grubhub

¹ A covered establishment is a restaurant or other eating or drinking establishment offering same-day food or drink for sale in a single commercial transaction through any third-party delivery service platform, with less than 25 retail locations within the Commonwealth.

² The state of emergency was lifted on June 15, 2021 and the statute expired on that day.

³ The purchase price means “the menu price publicly offered on the third-party delivery service platform by a covered establishment. The purchase price shall not include any taxes, gratuities or other fees that may make up the total cost charged to the customer for an online order.” Session law 2020, Ch. 358, Sec. 98(a).

knowingly violated the statute, and its conduct violated G.L. c. 93A's bar on unfair and deceptive acts or practices.

2. The Commonwealth seeks to obtain restitution from Grubhub in the amount of fees paid above the statutory cap. The Commonwealth also seeks civil penalties of \$5,000 per violation together with the costs of investigating and prosecuting this action, including reasonable attorneys' fees.

II. JURISDICTION AND VENUE

3. The Attorney General is authorized to bring this action pursuant to G. L. c. 93A, § 4.

4. This Court has jurisdiction over the defendants pursuant to G. L. c. 223A, § 3.

5. The Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4.

6. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5, and G. L. c. 93A, § 4.

7. On May 20, 2021, the Attorney General's Office sent the Defendants a letter in accordance with the provisions of G.L. c. 93A, § 4, paragraph 2.

III. THE PARTIES

8. The Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest.

9. Defendants Grubhub Holdings Inc. and Grubhub Inc. are Delaware corporations, headquartered in Chicago, Illinois.

10. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation, the reference means that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business affairs.

IV. STATEMENT OF FACTS

A. Grubhub's Business

11. Grubhub is a delivery platform through which customers order restaurant food for delivery or pickup. Restaurants contract with Grubhub to use its services, which include advertising the restaurant's menu, accepting and processing orders, transmitting those orders to the restaurant, and delivering orders to customers that request delivery.

12. In most circumstances, once a restaurant has signed a Grubhub contract, Grubhub posts a restaurant's menu to Grubhub's webpage and the Grubhub mobile app.⁴ Consumers interested in ordering food from the restaurant and seeking delivery via Grubhub can order the food through either of these access points. After the order is prepared, Grubhub facilitates the delivery of the food. Customers pay for the food through Grubhub's website or mobile app. When a consumer pays for food and associated delivery, Grubhub processes the customer's credit card and pays the restaurant for the orders. Grubhub pays the restaurant the menu price that it receives from customers, net of fees assessed to the restaurant by Grubhub.⁵

B. Massachusetts Delivery Fee Cap Statute

13. On January 14, 2021, the Commonwealth enacted Session law 2020, Ch. 358, Sec. 98 (the "Delivery Fee Cap Statute"), which limited the fees that third party delivery services, such as Grubhub, could impose on restaurants and other covered establishments to 15% of each order's purchase price. Specifically, the statute states:

no third-party delivery service company...shall charge a covered establishment **a delivery fee per online order for the use of its services and fees other than a delivery fee** that totals more than 15 per cent of the purchase price of the online order. (emphasis added)

14. The Delivery Fee Cap Statute became effective on January 14, 2021 and remained in effect for the duration of the state of emergency declared by the Governor on March 10, 2020 in order to address the

⁴ References to "app" in the complaint mean the Grubhub mobile application available for the iphone or the android operating system.

⁵ In addition to the menu price, Grubhub also pays the restaurant the sales tax on the order, which the restaurant remits to the taxing authority.

COVID-19 outbreak (“State of Emergency”). The State of Emergency ended on June 15, 2021, and the Delivery Fee Cap Statute expired.

15. The Delivery Fee Cap Statute provides that is an unfair and deceptive trade practice in violation of Chapter 93A of the General Laws to violate the Delivery Fee Cap Statute.

C. Grubhub Charges Restaurants Fees for its Services that Exceed the Cap

16. After the Delivery Fee Cap Statute became effective on January 14, 2021, Grubhub continued to charge covered establishments fees in excess of the 15% limit.

17. Specifically, Grubhub charged “marketing and delivery” fees equaling 15% of the order’s price plus an additional 3+% fee for “collecting payments, fraud monitoring, customer care.” As a result, Grubhub charged covered establishments 18% or more of the order’s purchase price, in violation of the Delivery Fee Cap Statute. Grubhub charged these fees for restaurants, regardless of whether the restaurant signed up for Grubhub’s services before or after the Delivery Fee Cap Statute went into effect.

18. Grubhub continued to charge fees above the 15% limit, even after covered establishments complained to it that its fees did not comply with the Delivery Fee Cap Statute.

19. After the Delivery Fee Cap Statute became effective on January 14, 2021, two other major third-party delivery companies, Uber Eats and Door Dash, changed their practices and charged covered establishments fees within the 15% limit while the Delivery Fee Cap Statute was in effect.

V. CAUSE OF ACTION
(Violation of G. L. c. 93A)

20. The Commonwealth repeats and realleges paragraphs 1 through 19 of the Complaint.

21. Grubhub engaged in unfair or deceptive acts or practices in violation of G. L. c. 93A, § 2 by charging covered establishments fees in excess of 15% of the purchase price of the online order.

22. Grubhub repeatedly charged covered establishments these excessive fees.

23. Grubhub engaged in these overcharges as a routine and general practice in Massachusetts.

24. Grubhub continued to apply these overcharges, despite complaints from restaurants informing Grubhub that the practice did not comply with the law while the Delivery Fee Cap Statute was in effect.

VI. RELIEF REQUESTED

WHEREFORE, the Commonwealth requests that this Court:

- A. Order Grubhub to refund to affected restaurants and other covered establishments all fees that Grubhub charged for its service between January 15, 2021 and June 15, 2021 that were above 15% of purchase price of the online order.
- B. Order Grubhub to disgorge all monies that it collected as a result of violating the Delivery Fee Cap Statute.
- C. Order Grubhub to pay the Commonwealth civil penalties of \$5,000 for each violation of G. L. c. 93A, § 2, and costs, including reasonable attorneys' fees, pursuant to G. L. c. 93A, § 4.
- D. Grant such other and further relief as this Court deems just and proper.

Dated:

7/29/2021

COMMONWEALTH OF MASSACHUSETTS
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