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4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 SHARON FEHRS, individually and on behalf  
of all other persons similarly situated,

7 Plaintiff,

8 v.

9 STUBHUB, INC., a Delaware corporation, and  
10 eBAY INC., a Delaware corporation,

11 Defendants.

Case No. 0801-00515

**DEFENDANTS EBAY INC.'S AND  
STUBHUB, INC.'S RULE 21 MOTIONS**

**Oral Argument Requested  
(20 minutes)**

12 **UTCRC 5.010**

13 Counsel for Defendants certifies that they conferred with Plaintiff's counsel by telephone  
14 on February 12, 2008, but were unable to reach an agreement regarding the matters posed in this  
15 motion.

16 **UTCRC 5.050**

17 Defendants requests 20 minutes for oral argument and appearance in person. The names  
18 and telephone numbers of all parties served with this motion are set forth in the attached  
19 Certificate of Service. Official court reporting services will be provided and arranged by  
20 Defendants' counsel.

21 **FIRST MOTION**

22 Defendants eBay Inc. ("eBay") and StubHub, Inc. ("StubHub") (collectively,  
23 "Defendants")<sup>1</sup> move to dismiss Plaintiff's complaint for lack of standing and failure to state a  
24 claim upon which relief may be granted. Defendants' motion to dismiss is supported by the  
25

26 <sup>1</sup> StubHub is an eBay company. These motions are brought on behalf of both parties.

1 concurrently-filed memorandum in support.

2 **SECOND MOTION**

3 In the event Defendants' first motion is not granted, Defendants move pursuant to  
4 ORCP 21D for an order requiring Plaintiff to make more definite and certain:

5 (1) paragraphs 6, 11, and 12 of the complaint to specifically allege the particulars of  
6 Defendants' alleged conduct in offering tickets for sale on their Web sites,

7 (2) paragraph 12 of the complaint by alleging how Defendants' conduct caused Plaintiff  
8 harm, and

9 (3) paragraphs 13 and 28 of the complaint regarding the facts that support the claim of  
10 tortious interference.

11 Defendants' motion to make more definite and certain is supported by the concurrently-  
12 filed memorandum in support and the attached pages of the complaint, marked as required by  
13 UTCR 5.020(2).

14 DATED this 13th day of February, 2008.

15 DAVIS WRIGHT TREMAINE LLP

16  
17 By 

18 Everett W. Jack, Jr., OSB #892684

19 everettjack@dwt.com

20 Derek D. Green, OSB #042960

21 derekgreen@dwt.com

22 Telephone: 503-241-2300

23 Facsimile: 503-778-5260

24 Of Attorneys for Defendants

25 StubHub, Inc. and eBay Inc.

26 Trial Attorney: Everett W. Jack, Jr.

ENTERED  
JAN - 9 2008  
IN REGISTER BY LR

FILED  
2008 JAN -9 PM 3:59  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

SHARON FEHRS, individually and on  
behalf of all other persons similarly  
situated,

Plaintiff,

v.

STUBHUB, INC., a Delaware corporation,  
and eBAY INC., a Delaware corporation,

Defendants.

**00515**

Case No. **0801-00515**

COMPLAINT FOR CLASS ACTION  
(Public Nuisance, Statutory Tort, Tortious  
Interference, and Other Claims)

**CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION**

For her complaint, on her behalf and on behalf of the class of persons described  
below, plaintiff alleges as follows:

1

Plaintiff is now and at all relevant times was an individual residing in Oregon and  
entitled to the benefits and protections of Portland City Code § 14A.50.060. That provision  
prohibits any person from offering for sale any ticket for an event at the Rose Garden Arena at a  
price greater than the retail price printed thereon. Violations of the provision are deemed a  
public nuisance.

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StubHub, Inc., is now and at all relevant times has been a duly organized  
Delaware corporation doing business in Oregon ("StubHub").

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eBay Inc. is now and at all relevant times has been a duly organized Delaware corporation doing business in Oregon ("eBay"). StubHub is a subsidiary of eBay.

4

When Bruce Springsteen and the E-Street Band announced their 2007-2008 tour, Portland, Oregon, was not a listed venue. Several months later, Springsteen and the E-Street Band announced that they would perform at the Rose Garden in Portland, Oregon, on March 28, 2008. Tickets for the performance would be offered for sale from the official venue over the Internet beginning at 10 a.m. PST on December 8, 2007.

5

Plaintiff wanted to attend the Portland performance with friends. Beginning promptly at 10 a.m. PST on December 8, 2007, plaintiff, through her computer, sought to purchase four premier tickets to the Portland performance. Despite repeated effort to do so, plaintiff was unable to purchase four premier tickets for the performance through the official ticket outlet.

6

Plaintiff did notice that despite her inability to obtain premier tickets, defendant StubHub almost immediately offered for sale on its Web site numerous premier tickets to the Portland performance. Those tickets were offered at prices greatly exceeding the price at which the tickets were officially offered for sale through the official on-line ticket purchasing site. At or about the same time, defendant eBay had similar offerings.

7

It has been widely reported that untold others have experienced a similar inability to purchase premier tickets from official Web sites for performances at various venues but that such tickets are readily available from defendants' Web sites at prices greatly in excess of official prices.

Portland City Code § 14A.50.060 now provides, and at all relevant times has provided, as follows:

**"14A.50.060 Resale of Tickets to Events at Municipal Facilities at a Premium Price Prohibited.**

"Tickets to all events at municipally-owned facilities, including the Memorial Coliseum, PGE Park, and the public plaza at the Rose Quarter, and tickets to all events at the Rose Garden Arena other than season tickets, shall have printed thereon the retail price thereof. It shall be unlawful for any person to sell or offer for sale any ticket for an event at any municipally-owned facility, or for any event at the Rose Garden Arena, at a price greater than the retail price printed thereon or at a price greater than the original retail price. Notwithstanding the above, this Section shall not be construed to prohibit service fees or charges imposed or collected by ticket outlets where service fees or charges are specifically authorized by the management of the facilities."

Portland City Code §§ 1.01.140 and 14A.20.050(A) now provide, and at all relevant times have provided, that a violation of the Code is a public nuisance.

Portland City Code § 14A.20.050(B) now provides, and at all relevant times has provided, that aiding and abetting a violation of the Code is deemed a violation of the Code.

Defendants intentionally are now maintaining, and at all relevant times have maintained, Web sites on which they offer for sale tickets to events at the Rose Garden at prices in excess of the retail price of the ticket. Defendants' conduct constitutes, at the least, the act of aiding and abetting a violation of the Code.

Plaintiff has suffered a special injury from defendants' conduct. She has been unable to purchase premier tickets as a result of defendants' conduct and will be unable to do so in the future if defendants are permitted to continue their conduct alleged herein.

In addition, defendants have intentionally interfered with plaintiff's prospective advantage. Plaintiff has a right to an equal ability to purchase premier tickets for performances at the Rose Garden and other venues. Defendants' maintenance of their Web sites directly and substantially facilitates the deprivation of plaintiff's equal ability to purchase premier tickets. As a result, plaintiff has suffered injury, and defendants have been unjustly enriched.

**CLASS ALLEGATIONS**

Plaintiff seeks to bring this action as a class action on behalf of herself and all other persons who have sought to purchase premier tickets for events at the Rose Garden (or other municipal venues) for the six years prior to commencement of this action (the "Class").

**NUMEROSITY**

The proposed Class is so numerous that joinder of all members is impractical. On information and belief, thousands of persons fall within the definition of the Class.

**COMMON QUESTIONS OF FACT OR LAW**

There are questions of law and fact common to the Class, including:

- (a) Whether defendants have violated the Code;
- (b) Whether defendants have tortiously interfered with prospective advantage of members of the Class;
- (c) Whether Class members have a right to damages or restitution as a result of defendants' conduct or whether defendants should be required to disgorge their unlawfully obtained profits; and
- (d) Whether defendants should be enjoined from operating their Web sites as alleged herein.

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The court should declare that defendants' conduct as alleged herein is the maintenance of a public nuisance. The court should further enjoin defendants from maintaining a Web site in a manner that violates the Code as alleged herein.

26

To the extent that defendants have profited from their maintenance of a public nuisance, they should be required to disgorge all such profits, with interest.

**SECOND CLAIM**

27

Plaintiff realleges and incorporates by reference paragraphs 1 through 26 of the complaint and further alleges as follows:

28

Defendants have tortiously interfered with plaintiff's prospective advantage and that of the members of the Class and will continue to do so unless enjoined.

WHEREFORE, plaintiff demands judgment as follows:

- (1) That the court declare that defendants' conduct as alleged herein is wrongful;
- (2) That the court enjoin defendants and each of them from the conduct complained of herein;
- (3) That defendants be required to disgorge their profits, and interest thereon, obtained as a result of the conduct alleged herein;
- (4) That plaintiff be awarded her reasonable attorney fees and costs and disbursements; and

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served a true copy of the foregoing **DEFENDANTS EBAY**  
3 **INC.'S AND STUBHUB, INC.'S RULE 21 MOTIONS** on:

4 John F. Neupert, OSB #783168  
5 Miller Nash LLP  
6 111 SW 5th Avenue, Suite 3400  
7 Portland, OR 97204  
8 Telephone (503) 205-2461  
9 Facsimile (503) 224-0155  
10 Email john.neupert@millernash.com

11 Of Attorneys for Plaintiff Sharon Fehrs

12  by mailing a copy thereof in a sealed, first-class postage prepaid envelope,  
13 addressed to said attorney's last-known address and deposited in the U.S. mail at Portland,  
14 Oregon on the date set forth below;

15  by causing a copy thereof to be hand-delivered to said attorney's address as  
16 shown above on the date set forth below;

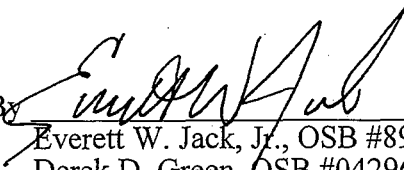
17  by sending a copy thereof via overnight courier in a sealed, prepaid envelope,  
18 addressed to said attorney's last-known address on the date set forth below;

19  by faxing a copy thereof to said attorney at his/her last-known facsimile number  
20 on the date set forth below; or

21  by emailing a copy thereof to said attorney at his/her last-known email address as  
22 set forth above.

23 Dated this 13th day of February, 2008.

24 DAVIS WRIGHT TREMAINE LLP

25 By   
26 Everett W. Jack, Jr., OSB #892684  
Derek D. Green, OSB #042960  
Of Attorneys for Defendants  
StubHub, Inc. and eBay Inc.

Trial Attorney: Everett W. Jack, Jr.