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StubHub To Pay Over \$9.5M To End State Virus Refund Probes

By **Hannah Albarazi**

Law360 (September 15, 2021, 9:44 PM EDT) -- StubHub agreed to pay upwards of \$9.5 million in cash refunds to consumers in 10 states and the District of Columbia Tuesday to end a multi-state investigation into allegations that the behemoth ticket reseller wrongfully denied refunds for live events canceled due to the COVID-19 pandemic.

San Francisco-based StubHub Inc. entered consent judgments with the states of Arizona, Arkansas, Colorado, Indiana, Maryland, Minnesota, New Hampshire, Ohio, Virginia and Wisconsin and the District of Columbia in order to resolve a multi-state investigation into StubHub's alleged refusal to refund customers for canceled events.

The states alleged that with the eruption of the COVID-19 pandemic and the mass cancellations of events that ensued, StubHub reneged on its "FanProtect Guarantee" policy on March 25, 2020, and began denying customers' requests for refunds. StubHub opted instead to give customers credits equal to 120% of their purchases to be used for future events.

The consent judgments entered Tuesday shed light on why StubHub reneged on its promise to its customers and waited until May 2021 — over a year — to agree to give them back their money.

"StubHub contends that it was unable to refund all eligible buyers prior to May 3, 2021 due to the unforeseen impact that the COVID-19 pandemic had on its business and the live in-person event industry, including a near complete loss of revenue, an inability to recoup cash refunds from ticket sellers, and an order from the United Kingdom's Competition and Markets Authority preventing StubHub from merging or even communicating about StubHub's business with its new parent company, Viagogo, which purchased StubHub in February 2020," the consent judgments state.

Many of the attorneys general who reached settlements with StubHub had strong words for the ticket reseller Tuesday.

"By refusing to issue full refunds on cancelled events during the pandemic, StubHub not only violated its policy but also violated the trust of its consumers," said Washington, D.C., Attorney General Karl A. Racine.

And Virginia Attorney General Mark R. Herring said "...the COVID pandemic should not be used as an excuse to withhold refunds owed to customers for cancelled events."

Meanwhile, Indiana Attorney General Todd Rokita said Tuesday, "Hoosiers have suffered enough from the pandemic without having to pay admission to events canceled due to circumstances quite outside their control. They have every right to expect these refunds..."

Likewise, Colorado Attorney General Phil Weiser said, "consumers should not be out of their money when a service they paid for was never provided."

StubHub has agreed to refund over \$3.6 million to District of Columbia consumers, over \$3.1 million to Colorado consumers, nearly \$2 million to Arizona consumers, over \$420,000 to Maryland consumers and over \$382,000 to Indiana consumers.

Some states didn't list the total monetary value of the refunds covered in their settlements, but

rather how many consumers were impacted. The settlements state that over 12,000 Ohio consumers, 8,300 Virginia consumers, 2,000 Arkansas consumers and 2,175 New Hampshire consumers were impacted by StubHub's actions and are entitled to receive refunds under the agreements.

As of Wednesday, neither Minnesota nor Wisconsin had announced details about the scope of their settlements with StubHub.

A StubHub spokesperson said in a statement to Law360 Wednesday that "putting fans first has always been central to the StubHub business" and that "adjusting our refund policy for canceled events during the pandemic was a difficult decision, but a necessary one at the time."

"As soon as circumstances allowed, StubHub achieved its goal of providing impacted customers the choice to keep the 120% credit they were issued when their event was canceled or receive a cash refund," the spokesperson said.

"We appreciate the patience of our customers, partners and regulators as we worked toward providing that choice, and we appreciate the ongoing dialogue with the states as we worked to formalize the actions StubHub voluntarily took beginning in May 2021 through this multi-state agreement," the StubHub spokesperson said.

StubHub faces civil penalties in each state if it fails to comply with the consent judgments.

The states' actions against StubHub are among many lawsuits that have sprung up over ticket resellers' refund policies since the pandemic began that are making their way through the courts.

For instance, Arizona reached a \$71 million settlement with StubHub rival, Ticketmaster, in October, securing refunds for consumers who purchased tickets to hundreds of Arizona events that were canceled, postponed, or rescheduled because of COVID-19.

In a separate case, Ticketmaster and its parent Live Nation Entertainment Co. **successfully argued** last year that a California ticket buyer must arbitrate his refund claims. Also in 2020, Ticketmaster, StubHub and Live Nation **escaped some claims** brought by Major League Baseball fans.

This spring, an Illinois federal judge ruled that Ticketmaster **could force arbitration of claims** that it characterized events as "postponed" instead of canceled to avoid issuing refunds during the pandemic, finding Ticketmaster's terms of use clearly reserve all questions of arbitrability for the arbitrator.

Over the summer, a Florida federal judge held that a ticket buyer suing StubHub's parent company — Switzerland-based Viagogo — over its pandemic-related refund policy can't bring a class action representing ticket buyers in over 50,000 transactions, finding that the case would be unwieldy.

The states are represented by their respective attorney general's offices.

StubHub is represented by Orrick Herrington & Sutcliffe LLP and Latham & Watkins LLP.

--Editing by Ellen Johnson.