Legal Implications of Reselling Tickets Above Face Value

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A number of professional sports teams are now engaged in various practices that allow tickets to be resold above face value. Such practices, which generate additional revenue for teams, are often the result of a relationship between teams and online entities such as StubHub. In one instance, a professional sports team and a ticket broker are vertically integrated. Some professional teams involved in these practices include the Seattle Mariners, San Francisco Giants, Arizona Diamondbacks, Los Angeles Clippers, Detroit Lions, Dallas Stars, and Phoenix Coyotes (Reese & Snyder, 2004).

In this article, the legality of these ticketing practices is addressed from both a civil and criminal perspective. Also, the underlying financial implications and influence on ticket policy development is examined. Finally, the impact on fan identification and loyalty is discussed and recommended controls are proposed.

Legal Analysis

In terms of civil liability, Cavoto v. Chicago Nat'l League Ball Club, Inc., addresses the legality of a ticketing strategy developed by the Tribune Company. In June 2002, Wrigley Field Premium Ticket Services, Inc. (Premium), a ticket-brokering firm, opened in downtown Chicago. Premium is located one block from Wrigley Field, home of the Chicago Cubs. The one unique feature that distinguishes Premium from all other ticket brokers in the nation is that it is owned by the parent company of a professional sports franchise. Premium does not advertise its affiliation with the Tribune Company, the parent company of both Premium and the Chicago Cubs. Many of the most desirable tickets at Wrigley Field are not sold to the general public; rather, they are sold by the Cubs to Premium at face value. All of these tickets are subsequently sold by Premium to fans at prices higher than face value. Some tickets have sold for $1,500, more than 33 times face value (Simon, 2004).

In Cavoto, a class action lawsuit was brought in Cook County Circuit Court, Chancery Division, alleging that the Cubs and Premium violated Illinois ticket scalping laws. The trial court found in favor of the defendants holding that the Illinois Ticket Scalping Act did not prohibit an entity like the Tribune Company from owning a professional sports team and a ticket brokerage company, nor did it prohibit the team from selling its tickets to its sister company. The case is currently on appeal to the Illinois Appellate Court, First District, Fifth Division.

The morning after the conclusion of the Cavoto trial, the outcome was barely mentioned in the Chicago Tribune (Cushman, 2003), the main publication of the Tribune Company. Even more ironically, in 1992 the Cubs revoked the season tickets of seat holder and ticket broker Eric Soderholm for selling his tickets above face value (Couch, 2003). Soderholm received a letter from the Cubs that stated in part, “The Chicago Cubs will not sell tickets to people who resell tickets at inflated prices. Our security reports indicate that your tickets have been repeatedly sold at above face value prices" (Soderholm v. Chicago Nat'l League Ball Club, Inc., p.1). Since season tickets to sporting events are sold as revocable seat licenses by most professional sports franchises (Reese, 2004), the Cubs successfully prevented Soderholm from reacquiring his 18 season tickets (Soderholm).

In contrast to Cavoto, State of Washington v. Charlesworth suggests that some courts might view these types of ticketing schemes as a form of ticket scalping. In Charlesworth, a man who was selling tickets above face value outside Safeco Field, home of the Seattle Mariners, was arrested and charged with ticket scalping (SMC 5.40.060). At the same time, the Seattle Mariners were allowing season ticket holders to resell their tickets above face value on the team's official Web site through a relationship with software vendor LiquidSeats, doing business as StubHub. In Charlesworth, the judge dismissed the criminal charges on the basis of equal protection, determining that the ticket scalping law was selectively enforced by prosecuting the defendant while simultaneously ignoring the ticket practices utilized by the Mariners and their partners. Implicit in this holding is the finding that such ticketing practices constitute ticket scalping as defined under SMC 5.40.060.

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A review of these cases suggests that, to date, there is no definitive legal benchmark that can be uniformly applied to these types of ticketing practices. It remains unclear as to whether such practices will be subject to civil liability or deemed illegal under criminal statutes. These types of cases should be scrutinized in the future to gain a greater sense of how such situations will be dealt with by the courts.

Marketing Implications

Even assuming these ticketing practices were determined to be legal and not subject to civil liability, there are still numerous reasons why these kinds of relationships are unsatisfactory for fans and professional sports in general.

The ticketing practices utilized by the Chicago Cubs allow the Cubs to understate revenue to Major League Baseball, to the economic benefit of the Tribune Company. Since Premium and the Cubs are separate entities, the Cubs are required to report only the revenue generated by the sale of tickets at face value to Premium. Premium and Tribune capitalize on the additional revenue generated by selling the tickets above face value. In essence, the relationship sets Premium up as a "straw man" for the team, enabling the Cubs to sell the most desirable tickets at greatly inflated prices through its relationship with Premium, without having to report the additional revenue to the league. Since the Tribune Company owns both businesses, this arrangement gives the Cubs a distinct financial advantage over every other team in professional baseball, adversely impacting the collective bargaining agreement and revenue-sharing across the league (Simon, 2004).

Under this ticketing structure, the Cubs have the ability to control which seats are distributed to the broker and which remain for season ticket holders, to the detriment of average fans. If this system is permitted to continue, it is reasonable to assume that the best seats at Wrigley Field would never again be sold to season ticket holders, and would likely end up at Premium to be sold at inflated prices.

In addition, there would be a significant impact on the seat improvement process and season ticket wait list. Since seat locations previously used to improve the seats of season ticket holders would now be under the control of Premium, the seat improvement process and ability of fans on the wait list to get season tickets would be undermined (Reese, Nagel, & Southall, 2004).

Finally, the perception of avarice on the part of the Cubs could erode fan identification and loyalty. Although the Tribune Company has found a way to exploit the lucrative secondary market, estimated at between $20 and $38 billion annually, it may have done so at the expense of generations of loyal fans (Simon, 2004).

Recommendations

To avoid the detrimental consequences associated with selling tickets above face value, the following measures are proposed. First, sport organizations that allow tickets to be resold should limit resale to face value. Second, teams should charge minimal transaction fees for providing the administrative service of allowing fans to resell tickets online. Third, teams should craft policies to curtail the selling of tickets to scalpers and brokers, and aggressively enforce such policies. The enforcement of ticket scalping policies is often not a priority due to the expense and lack of revenue generated. These measures will ensure the integrity of the ticketing process and may enhance the personal commitment and emotional involvement fans have toward the organization.

References


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