

Friday 3 March 2017

Mr Scott Gregson Acting Chief Operations Officer Australia Competition and Consumer Commission Via email

RE: Complaint against ticket resellers Viagogo and Ticketmaster Resale

The following complaint outlines three areas where CHOICE believes Viagogo and Ticketmaster Resale have breached the Australian Consumer Law by engaging in misleading and deceptive conduct in relation to the resale of event tickets:

- 'Fast selling events', 'last tickets remaining' and 'cheapest ticket' misleading claims (Viagogo)
- Misleading refund claims (Ticketmaster)
- Drip pricing practices (Viagogo)

CHOICE is of the view that the issues raised in this letter are a clear breach of the Australian Consumer Law's prohibitions against misleading and deceptive conduct (s18) and false and misleading representations (s29). We encourage the ACCC to take action, and are happy to offer any assistance needed.

Kind regards,

Matt Levey
Director, Campaigns, Content & Communications



Misleading 'last remaining tickets', 'last chance' and demand claims on Viagogo

Viagogo deliberately misleads consumers into thinking that tickets are almost sold out, sold out on other platforms or in high demand to persuade consumers to make an immediate purchase on their platform.

Case study: Trombone Shorty at the Metro Theatre, Sydney

CHOICE visited the Viagogo and Ticketek websites on Thursday 2 March to compare the prices of tickets for 'Trombone Shorty & Orleans Avenue" a music act playing in Sydney in April.

Music act Trombone Shorty is playing at the Metro Theatre in Sydney on April 10, 2017. Tickets are available through the Ticketek platform and general admission tickets were available for purchase at the time of this complaint. Tickets are available for general admission at a price of \$73.30 + \$5.30 fee for delivery of tickets.

At the time of this complaint, tickets for this show were also available on ticket reseller platform Viagogo. No tickets were available for resale on Ticketmaster Resale for this concert. The listed price for tickets on Viagogo at the time of viewing was \$349.00, which was then increased to \$441.20 to include VAT, booking fee and 'Secure Ticket Handling'.

The booking process appears to be deliberately designed to confuse consumers on the availability and cost of tickets. Viagogo makes multiple misleading claims throughout the booking process, including:

- "LAST CHANCE! To see Trombone Shorty in Sydney"
- "You've just scored the cheapest ticket in Section: General Admission"
- "Tip: These are the last tickets left at this price, don't wait until it's too late!"
- "Tickets for Trombone Shorty & Orleans Avenue are in high demand"
- "*warning sign* Last ticket in this section!"

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¹ See Appendix A for screenshots of the booking process where these claims are made



- "*warning sign* Less than 1% of tickets left for this event"
- "*warning sign* Only 1 tickets [sic] left"
- "*warning sign* Only a few tickets left"

Given that tickets were easily available on the original ticket seller's website (Ticketek), it seems highly unlikely that the Viagogo claims above were accurate. Making these claims is used for the sole purpose of pushing the consumer to purchase the resale ticket. Any claims about price should reflect that the cheapest available price is for Viagogo only, in order to not mislead consumers.

Case study: ADELE, 'cheapest tickets in town'

CHOICE visited the Viagogo and Ticketmaster websites on March 3, 2017 to compare the prices of tickets to ADELE on Sunday 5 March, 2017 at The Gabba in Brisbane.³

At the time of searching, there were still tickets available for purchase on the original ticket seller's website, Ticketmaster. The cheapest ticket on Ticketmaster was listed at \$105.95 (D Reserve).

On the same day, D reserve tickets on Viagogo were listed for ADELE on Sunday 5 March at \$143.40 plus an additional \$45.05 booking fee. Viagogo advertised these tickets as the "Cheapest in Brisbane!".

The site should clearly indicate that the tickets are the cheapest available on their website, rather than the cheapest available in a given city as tickets were still freely available on the original seller's website. As tickets on the original seller's website are 66% of the Viagogo listed price, 'Cheapest in Brisbane' is a misleading claim.

Misleading refund claims

Ticketmaster Resale makes claims that their tickets are guaranteed. Should a consumer
encounter a problem using their ticket, they are lead to believe they'll be protected in all
instances:

³ See Appendix B



"Ticketmaster promised you will receive valid tickets in time for your event when purchased through the Ticketmaster Resale Marketplace, or you'll get your money back."4

However, CHOICE found that Ticketmaster Resale has a specific term that prohibits consumers from contacting a venue directly to check the validity of tickets, highlighted in section 3.7 of the Ticketmaster Resale Buyer Agreement:

"3.7 Queries and Ticket Validity. All queries relating to tickets purchased via the Website must be directed to Ticketmaster Resale at resale.service@ticketmaster.com.au rather than to the relevant venue, promoter or producer. Subject to the applicable ticket, promoter/producer and venue terms and conditions, if a ticket You purchase via the Website does not give You entrance to the applicable event, We will refund 100% of the purchase price You paid for that ticket as part of our Ticketmaster Guarantee. However, if You breach the applicable ticket, promoter/producer or venue terms and conditions (or if You breach the Agreement including, without limitation, by directing any queries relating to the tickets to the venue or promoter/producer rather than Ticketmaster Resale) and as a result are not able to gain entry to the event, then You are not entitled to receive any refund under the Ticketmaster Guarantee."5

Where tickets originally sold through Ticketmaster are listed on Ticketmaster Resale, Ticketmaster has ticket verification processes in place to protect consumers. Where tickets have originally been purchased through other outlets, Ticketmaster Resale is not able to fully guarantee that the end buyer will be able to access an event, particularly if the terms of the original ticket sale prohibit onselling, despite making claims that tickets are guaranteed.

Ticketmaster Resale does not disclose which listings are for "verified" tickets originally sold through Ticketmaster, and which were bought from other outlets, creating confusion for consumers.

⁴ See Appendix C

⁵ Ticketmaster Resale Buyer Agreement: https://resale.ticketmaster.com.au/Legal/Legal?content=BuyerAgreement, accessed 02/03/2017



The best way for a consumer to know in advance if their ticket is valid is to contact the venue to check the ticket. However, because on-selling may breach the terms and conditions of the original ticket sale, this may result in the venue voiding the onsold ticket.

In the first instance, the customer contacting the venue regarding their on-sold ticket means that they are no longer covered by Ticketmaster's guarantee in the event that they are refused entry to the event. In the second instance, where the purchasing of the ticket through an unofficial channel has "breach[ed] the applicable ticket, promoter/producer or venue terms and conditions", this again means that they are not covered by Ticketmaster's guarantee if refused entry.

In effect, where the terms and conditions of a ticket sale prohibits on-selling, the very act of using Ticketmaster Resale's service will render a ticket invalid, and allow Ticketmaster to disclaim refund responsibilities under their own guarantee.

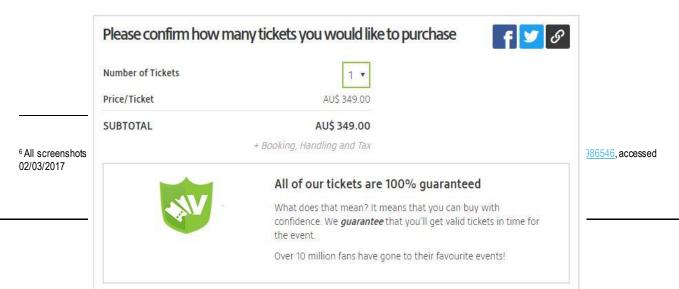
Drip pricing

Viagogo also uses drip pricing tactics to trick consumers into paying large fees for resale tickets. Viagogo is advertising the cost of the ticket without disclosing specific, unavoidable booking fees until the end of the booking process. The following example illustrates how a consumer is not aware of the exorbitant 25% VAT and Booking Fee until the point of payment.

Case study: Viagogo drip pricing, Trombone Shorty ticket

Ticket selection confirmation:

The ticket fee of \$349 is the only cost displayed, with a disclaimer stating '+ Booking, Handling and Tax'.

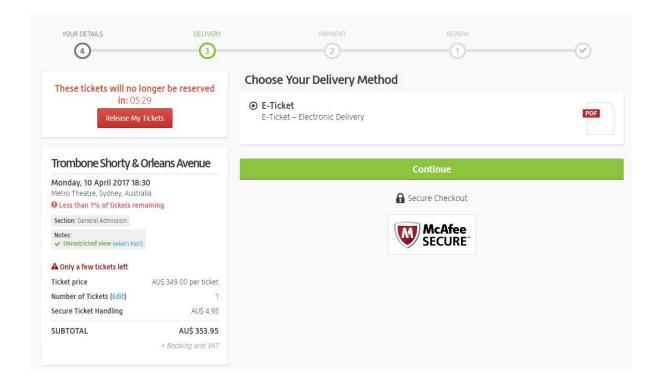


THE AUSTRALIA



Ticket delivery method:

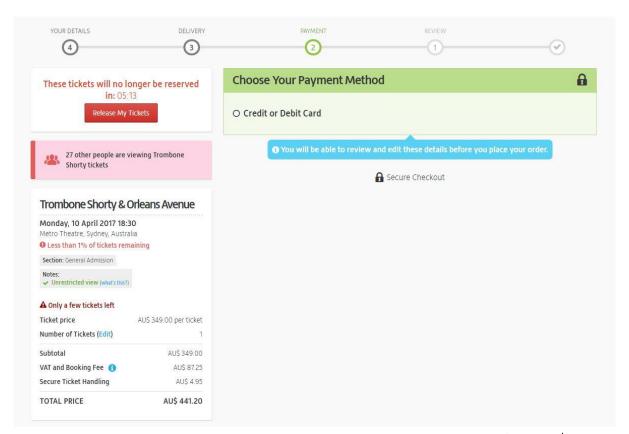
At this point in the booking process a 'Secure Ticket Handling' fee is added, at \$4.95.



Payment method:

At this next stage an additional \$87.25 is added to the ticket price (25% of original listed ticket price).





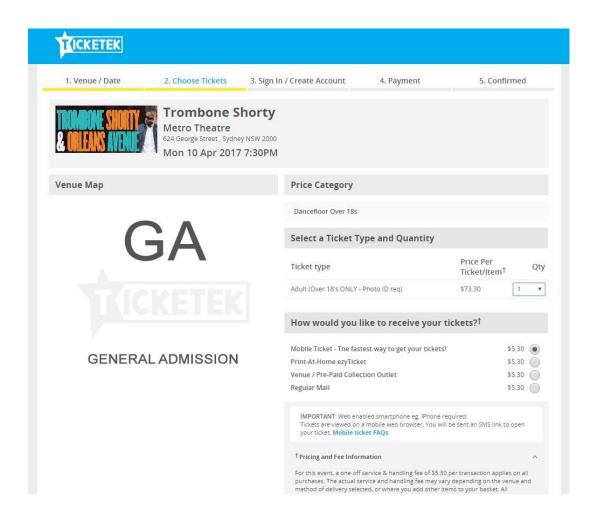
Viagogo does not disclose with consumers that their unavoidable additional fees are \$4.95 and 25% of the ticket cost respectively. Viagogo drips these costs to the consumer, attempting to mislead consumers into purchasing the ticket at an inflated cost.

Viagogo should disclose their fees in the first stage of ticket selection, instead of incrementally.



Appendix A: Viagogo resale of Trombone Shorty, Sydney

Official concert listing on Ticketek Australia®

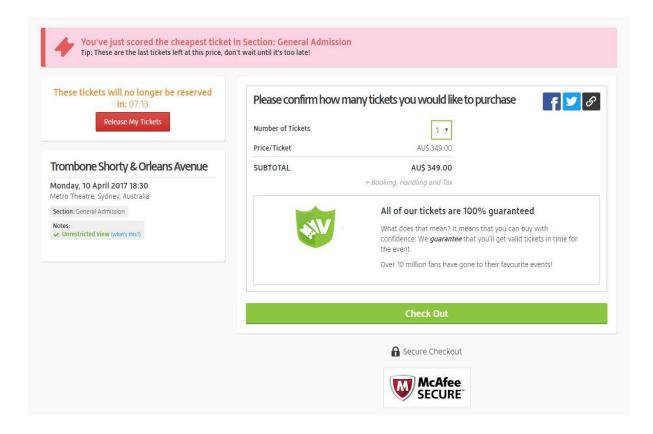


⁷ All screenshots obtained through the booking process at http://www.viagogo.com/Concert-Tickets/Jazz-and-Blues/Trombone-Shorty-Tickets/E-1986546, accessed 02/03/2017

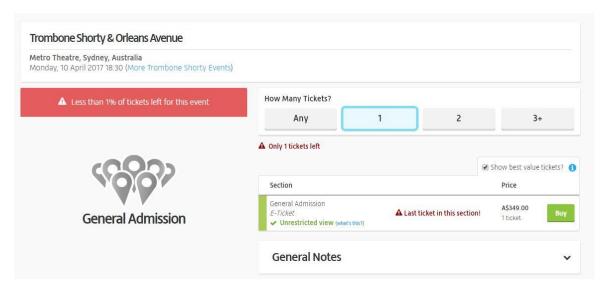
⁸ Trombone Shorty original seller page, Ticketek https://premier.ticketek.com.au/shows/show.aspx?sh=TROMBONE17, accessed 02/03/2017



Viagogo: cheapest ticket claim:



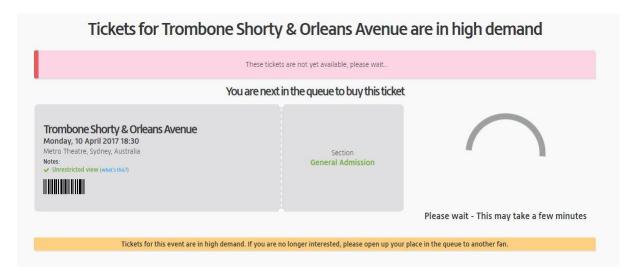
Viagogo: only 1 ticket left claim:



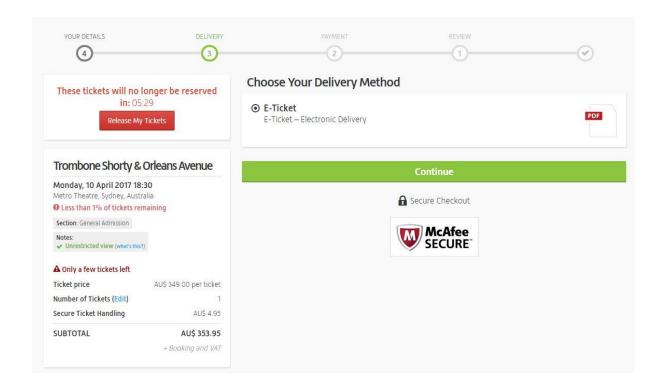
WWW.CHOICE.COM.AU **E** CAMPAIGNS@CHOICE.COM.AU
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Viagogo: tickets in high demand claim:

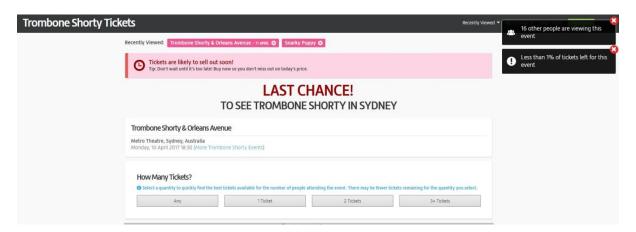


Viagogo: only a few tickets left claim:





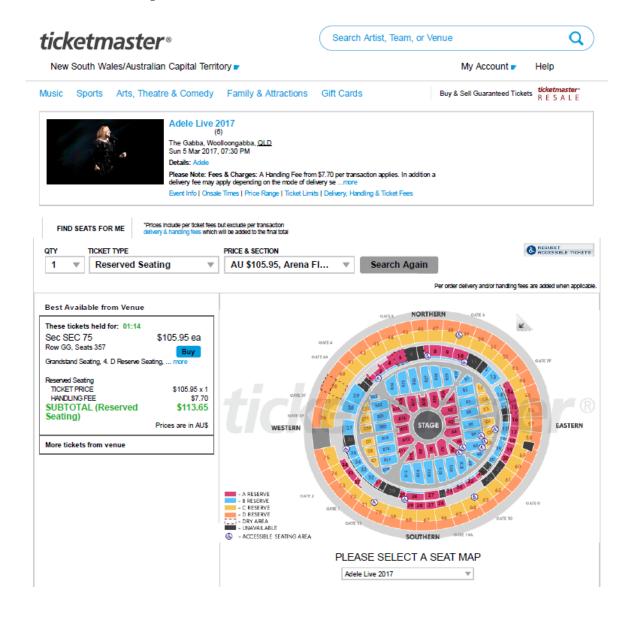
Viagogo: last chance, likely to sell out claim:





Appendix B: Viagogo resale of ADELE, Brisbane

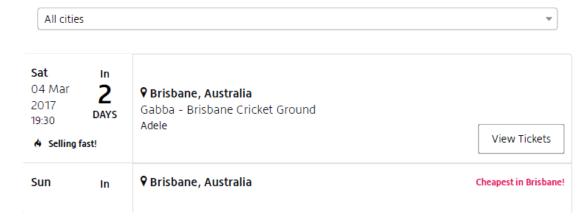
Official concert listing on Ticketmaster:





Viagogo: Cheapest in Brisbane!

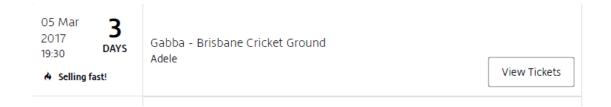
Search by location



3/03/2017 3:01 PM

e Tickets | Adele Tour 2017 and Concert Tickets - viagogo

http://www.viagogo.com/Concert-Tickets/Alternative-and-Indie/Adele-Ti...





Appendix C: Ticketmaster Resale Guarantee

Our commitment to you as a Buyer

close ⊗



Ticketmaster promises you will receive valid tickets in time for your event when purchased through the Ticketmaster Resale Marketplace, or you'll get your money back.

If a problem arises you won't have to deal direct with the seller. Ticketmaster Resale will step in on your behalf to source replacement tickets that are comparable or better – at no additional cost to you.

In the unlikely event we can't get the seller to deliver your original tickets or we can't source replacements on your behalf, we promise that you will get 100% of your money refunded.

We're here for you when you need us. Contact us anytime with questions or problems. Our fan support team is here to ensure you have an incredible experience.

The details

If you have a problem with your tickets – if they've not arrived, are the wrong ones or you receive correct tickets but experience problems entering the event, then all you need to do is contact our fan support team and we'll take it from there. There's no additional cost to you for this – it's all part of Ticketmaster Resale's service, committing to create a safe and transparent marketplace for buyers and sellers of tickets.

You can reach us at 1300 651 607 or resale.service@ticketmaster.com.au or by writing to Ticketmaster Resale at Level 5, 364 Lonsdale Street, Melbourne, Victoria 3000. If you're contacting us before the event has taken place use phone or email to make sure we have time to try to source alternative tickets

Contact us at any time prior to the event, although please note if it's within 5 days of the event taking place it may be more difficult to source alternative tickets and your options may be limited to receiving a refund. If you are contacting us after the event has taken place because you experienced problems with your tickets, you must do so within 5 days of the event to make sure we can take the issue up with the seller in good time. However, please note that if you received incorrect tickets but didn't contact us before the event took place you won't be able to claim under the Ticketmaster Guarantee. You should check your tickets carefully when they arrive to make sure they match the ones you purchased.

This commitment is given to you by Ticketmaster Resale in addition to your rights and remedies as a consumer under applicable law (including the Australian Consumer Law) in respect of goods and services supplied by Ticketmaster Resale or third parties. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be acceptable quality and the failure does not amount to a major failure.