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Changing Attitudes Regarding Ticket “Rights”

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Abstract

Over the past decade, the majority of facility managers' worries regarding customers typically involved on-site behavior issues and the application of risk and security management procedures. However, the modern age of ticketing has evolved to now often address facility and customer concerns regarding the right to acquire and transfer tickets and, in some cases, for customers to pursue opportunities to profit from their ticket "investments." In addition, recent issues regarding freedom of speech and expression have also elicited criticism by customers who have felt that their behavior has been unfairly restricted. This article provides an overview of some of the recent legal issues that have arisen in the ticketing industry.

Changing Attitudes Regarding Ticket "Rights"

On January 8, 2011 Greg Demery approached a ticket scalper about a potential sale and purchase of tickets to the University of North Carolina versus University of Virginia men's basketball game at John Paul Jones Arena in Charlottesville, Virginia (Friedman, 2011). Demery had planned to bring his wife to the game, but when she declined to attend, Demery legally sold his two previously purchased tickets (scalping is legal in Charlottesville) and acquired one ticket located two rows behind the University of Virginia bench. As a North Carolina fan, Demery was dressed in a "Carolina-blue" coat, tee-shirt and hat. As he settled into his seat, Demery was approached by a facility security staff member who informed him that he could not sit in that section of the arena if he wore University of North Carolina clothing. Within a few minutes, University of Virginia associate athletic director Jason Bauman escorted Demery from "his" seat to another seat located within the lower bowl of the arena, but one that was farther away than his initial location (Eisenberg, 2011). Demery later noted his disgust with the situation, "I couldn't believe it. I'm sitting there hoping to enjoy the game courtside ... and in a matter of 15 minutes, it changed ... How are they allowed to get away with this (Eisenberg, 2011, para. 5)?"

The Demery "case" elicited a variety of responses. In most cases, fans complained that Demery should have been able to remain in the seat he had purchased, even though it was later revealed that the seat—which was part of a section that was exclusively to be utilized by University of Virginia athletic department staff—had been improperly "released" to the public (Friedman, 2011). Despite the negative publicity, Bauman and the University of Virginia athletic department noted that they have a strict policy—which is similar to many other athletic departments—against customers displaying opposing team apparel in selected sections of

the facility. Though Demery has not elected to file a lawsuit, a variety of legal scholars, including Michael McCann, director of the Sports Law Institute at Vermont Law School, noted that customers legally purchasing a ticket might have a case against facilities that restrict the right to free speech or expression, particularly if the ticket does not expressly contain language explaining the facility's policy regarding fan behavior, particularly in regards to attire (Eisenberg, 2011).

Although the Demery "case" has likely already been forgotten by most sports fans and members of the media, it has continued a recent trend in facility management involving fan behavior and the "rights" that ticket holders retain or believe that they should retain. While most fan "incidents" 10 or more years ago involved unruly behavior, today's customer disputes often involve a misunderstanding of facility rules or a blatant attempt by a customer to circumvent facility policies. During the 2000 Summer Olympic Games in Sydney, a group of fans attending a beach volleyball match "created" a Nike Swoosh in the stands by matching their tee-shirts. The facility had strict anti-scalping rules against expressions designed to upstage the official event sponsors. Critics noted that members of the group who "ambushed" the Olympic Games may have had an argument that merely wearing a nondescript shirt (at least when viewed individually) was different than carrying a sign. In 2010, 36 women dressed in orange mini-dresses were removed by Johannesburg police from a World Cup match between Denmark and the Netherlands. Though there was certainly not a facility rule against wearing orange, and in fact orange is the traditional Dutch color, the facility deemed the group activity to be an effort by beer maker Bavaria to ambush official sponsor Budweiser even though there were no logos on the mini-dresses

(“FIFA bans Dutch babes ...,” 2010). Though charges were eventually dropped against the “leaders” of the Bavaria women, the case elicited strong opinions regarding the extent to which facilities could act to restrict ambush marketing by spectators (Palmer, 2010).

These incidents illustrate the rapidly changing perceptions of “ticket rights” among many customers. Over the past decade, the majority of facility managers concerns regarding customers typically involved on-site behavior issues and the application of risk and security management procedures. However, the modern age of ticketing has evolved to now often address facility and customer concerns regarding the right to acquire and transfer tickets and, in some cases, for customers to pursue opportunities to profit from their ticket “investments.” Many of the current concerns in ticketing are a byproduct of marketing and promotional activities by the facilities and their tenants, and customer complaints will occasionally continue to develop into lawsuits in the future.

Revocable License

Tickets to live sport and entertainment events have typically been considered revocable licenses. Gonzaga University’s athletic department website mimics a variety of other college and professional sport websites in regards to its language concerning customers:

Your ticket is a revocable license, and may be withdrawn anytime at the sole discretion of Gonzaga University Athletics. All tickets are subject to the rules, regulations and policies of Gonzaga University. Your tickets may be revoked for reasons including, but not limited to the following: failure to meet renewal / payment deadlines, violating the Unruly Behavior / Sportsmanship clause including drunk or disorderly conduct, scalping or resale of tickets above face value, obscene behavior and ownership disputes ... You are personally responsible for the tickets which are associated with your season tickets. Please be careful to whom you distribute your tickets. (“Gonzaga Ticketing,” n. d., para 1 & 8)

Among the numerous cases where fans have misbehaved and lost “their” tickets, one of the most prominent was *Yarde Metals, Inc. v. New England Patriots* (2003; 2005). On October 13, 2002, Yarde Metals, Inc. gave its allotment of six tickets to some of its customers. Unfortunately, during the Patriots’ game against the Green Bay Packers, Mikel LaCroix used a

women’s restroom and was arrested by police. Once it was determined that LaCroix had obtained the tickets from Yarde Metals, Inc. the Patriots rescinded Yarde Metals’ right to purchase future season tickets. Yarde Metals was unsuccessful in its lawsuit against the Patriots to have its season tickets reinstated (2003; 2005).

Despite the belief of many sports fans, season ticket holders retain no legal claims to “their” current seats; though, for marketing purposes, most teams reward repeat customers with the right of first refusal on season ticket renewals in the same location. However, when a team moves to a new facility, it is under no obligation to offer the “exact” same seat when a season ticket is renewed. Steven Maslow was unsuccessful in his lawsuit against the National Football League’s (NFL) Philadelphia Eagles when his seat location was “moved” from the abandoned Veterans Stadium into the new Lincoln Financial Field (“Ticket holder sues Eagles...,” 2003). Similar lawsuits resulted in the Cincinnati Bengals (*Reedy, Curry, Ashmore, Davis, Wagner, & Wilhelmy v. Cincinnati Bengals*, 2001) and Pittsburgh Steelers (*Yocca v. Pittsburgh Steelers*, 2002) successfully defending their decisions regarding season ticket holder seat locations in a new facility. More recently, Toronto Raptors season-ticket holder Mark Michalkoff announced a lawsuit against Maple Leaf Sports and Entertainment (parent company of the Raptors) because “his” courtside seats had become second row seats when the Raptors put in new seats. Michalkoff noted that the Raptors initially sold him his seats in 2007 with the understanding that they would be “Jack Nicholson” courtside seats (“Season-ticket holder ...,” 2011).

An interesting and pertinent side note in the Michalkoff-Raptors’ dispute is the claim by Maple Leaf Sports and Entertainment that Michalkoff was utilizing the seats as an investment and that he actively sold those tickets on the open market, something the Raptors do not allow. Despite the Raptors’ stance, scalping laws in the majority of jurisdictions have dramatically changed over the past 15 years. Where once reselling tickets for a profit was frowned upon in most states and local municipalities, it is now often perceived as a legitimate business, with potential profits being taxed. Perhaps no better example of the change in perception in ticket scalping activity can be seen in Chicago, where the Cubs once banned a season ticket holder for reselling his tickets for a profit (*Soderholm v. Chicago Nat’l League Ball Club*, 1992), but then actively utilized a “separate” subsidiary to resell select Cubs tickets on the secondary market less than 15 years later (*Cavoto*

v. *Chicago National League Ball Club*, 2006). Though the Cubs experienced some backlash from fans desiring to acquire these seats to games at Wrigley Field (as well as some concern from the Major League Baseball Players Association regarding a potential circumvention of the revenue sharing calculations) without having to pay a considerable markup on the secondary ticket market, the practice of reselling of tickets at a premium has widely become an accepted and legitimate practice.

In many cases, the resale of tickets by season ticket holders is permitted if a Personal (or Permanent) Seat License (PSL) has been issued. Modeled after “big-time” college athletic departments that utilize “forced” donations for customers to become eligible to purchase season tickets, a PSL typically grants “ownership” rights to the purchaser. Once the upfront costs of the PSL have been paid, the PSL holder typically has the right of first refusal on purchasing future tickets in the facility in that seat. In some cases, the right may extend beyond the primary purpose of the PSL purchase (such as to have season tickets for a National Basketball Association franchise) to every event that occurs in the facility. In most cases, PSLs specifically explain the purchasers’ rights to transfer their PSL to another party. In some cases, an open transfer system is established whereby the PSL holder can give or sell the right to the seat to anyone he chooses. This obviously establishes a mindset among PSL purchasers that they “own” the seat and the rights to distribute “their” tickets, or their actual “place” in the team’s season ticket database, as they would any other asset. In a limited transfer system the PSL holder may be restricted in regards to who is eligible to receive the transferred rights to the tickets (Reese, Nagel, & Southall, 2004). Typically, transfers are restricted to select family members.

When a PSL system is not in place, potential concerns regarding the transfer of season ticket rights may arise. It is critical that facilities clearly establish what transfers are permitted and to whom the tickets can be transferred to. For instance, the Gonzaga Athletic Department website clearly establishes criteria for season ticket transfers:

The opportunity to renew season tickets is a privilege granted by the Gonzaga Athletic Department. Season ticket renewal privilege is extended only to the name(s) printed on the season ticket invoice and may, at Gonzaga University’s sole discretion, only be transferred in the event of death, to the surviving spouse or children of that season

ticket holder. (“Gonzaga Ticketing,” n. d., para 10)

In Denver, tickets to the NFL’s Broncos are a cherished commodity. In the 1990s, the Broncos utilized an open transfer process whereby season ticket holders could transfer their “spot” in the teams’ database to another person. Each year, some season ticket holders would openly advertise the sale of their “spot” in the teams’ database. This caused considerable concern as many season tickets were not being “returned” to the team which limited the Broncos’ ability to offer patrons on the season ticket waiting list an opportunity to purchase seats. In addition, the team was limited in its ability to execute seat improvements because so many season tickets were sold on the open market rather than being “returned.” Recognizing a potential problem, and having a concern that some season ticket holders were utilizing their tickets as an investment, the Broncos changed their open transfer policy to a limited transfer system. However, the team eventually was sued by season ticket holders who claimed that they had purchased Broncos’ season tickets as an investment and the changing of the transfer rules restricted their investment (*Brinkhaus, Coppage, Coppage, and CAM-AS, Inc. v. PDB Sports d/b/a Denver Broncos*, 1996). The Broncos’ eventually settled out of court and compensated affected members of the class action lawsuit. Though the team maintained throughout the preliminary proceedings that they retained the rights to control the distribution of their season tickets, there was enough concern that the tickets might be considered property rights of the purchasers that they settled out of court.

A ticketing distribution case that had potential wide-ranging implications was filed in Indiana state court by the National Collegiate Athletic Association (NCAA) against Coors Brewing Company in 2002. The NCAA disputed Coors’ right to distribute Final Four tickets as part of a promotion (McKelvey, 2007). Though it disagreed with the NCAA’s primary contention—especially since it never specifically mentioned the NCAA in its ticket giveaway promotion—Coors agreed to settle out of court for \$75,000. The case elicited strong reactions regarding potential ambush marketing implications if Coors, which was not an official sponsor of NCAA events, had won the case.

Conclusion

The majority of cases have indicated that tickets are a revocable license. However, there are indications that facilities do not have a complete right to revoke tickets at their discretion. The marketing activities of profession-

al franchises and intercollegiate athletic departments often focus upon the fans' experience with "their" team. This perception of fan ownership is further enhanced with the sale of PSLs that often tout ownership of tickets. In the case of the Broncos, the team was concerned enough to settle a lawsuit when their decision to alter their season ticket transfer process was questioned. It is likely that lawsuits will be filed in the future, especially as the value of many tickets continues to skyrocket.

Just as the Broncos' case prompted other sport franchises to establish and/or strengthen the language regarding season ticket transfers, Greg Demery's experience at the University of Virginia may prompt future changes to language regarding fan behavior that appears on the back of tickets. Tickets to live events have noted the responsibility of fans to adhere to facility rules regarding interaction with players, coaches, performers, facility administrations and other patrons. In the future, however, they might explicitly state what a patron may wear or say. How that will be received by fans will be interesting, especially if the fan, much like Demery, is unaware of the behavior restrictions prior to arriving at the facility.

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