



Take That! You Secondary Ticketers

Prof Dr Winfried Bullinger and *Kai Manuel Hermes*, lawyers with CMS Hasche Sigle, Berlin, update us on action taken against secondary ticketers...

THE GERMAN PROMOTER MCT AGENTUR PRESENTED three concerts of the Take That tour in Germany in late July 2011. MCT was also responsible for the Robbie Williams tour in 2006, during which all 13 concerts in Germany were sold out and tickets were traded on the secondary ticket market for up to €1,000. To prevent the unauthorised trade in Take That tickets and to ensure an equitable pricing structure with no ticket being sold for more than €100, MCT decided to conduct the stadium tour entirely with personalised tickets. This required restrictive general terms and conditions (GTC) which effectively had to be included in every contract.

“By maintaining complete access control and taking comprehensive action against infringements, MCT has shown the market that the concept is serious, vital and can be enforced.”

The tickets were sold by the official distributor, Smart Tickets, on their online platform Tickets.de, where it was technically impossible to purchase more than six tickets per transaction. By maintaining complete access control and taking comprehensive action against infringements, MCT has shown the market that the concept is serious, vital and can be enforced.

Presently, the majority of unauthorised ticket traders are extremely professional and use the internet. They exploit the fact that the authorised sales platform does not necessarily land in the top position on search engines. By positioning themselves above the official platform the unauthorised dealers confuse customers as to where the tickets can be bought officially.

The main targets of our actions were commercial dealers with their own websites, offers on internet sales platforms and ticket exchanges. Private individuals were not targeted. Since commercial dealers were often disguised as private individuals, it was important to clarify whether a commercial dealer or a private person was acting. This was quite difficult because the dealers used numerous prohibited methods to circumvent technical boundaries, such as fantasy names, straw men and so on. In the end, we could prove that several thousand tickets were bought by commercial dealers directly at Tickets.de. In most cases, detected violations were prosecuted successfully, ie traders have been issued a cease and desist declaration and paid a penalty to MCT.

More problematic are ticket exchanges. Here, the seller's data will not be disclosed by the exchange even if the tickets have already been purchased. Therefore, test purchases will not help much. Instead, customer complaints about improperly personalised, overpriced or counterfeit tickets are very helpful. MCT launched a test case against one of the largest European ticket exchanges and received a preliminary injunction by the regional court of Hamburg, which forbade the exchange to enable the commercial trade of personalised tickets. This injunction was confirmed by a court ruling and because of the issuance of the final declaration by the ticket exchange, the ruling is now the final settlement in this matter.

The legal prohibition not only had judicial consequences (eg as a precedent and as a basis for a fine for the defiance of the court's order), but also generated a lot of publicity. Personalised tickets have a completely different legal structure than normal tickets. In German law, they are so-called 'assigned tickets' which means that entrance to the concert is only granted to the person who has obtained the right of access and whose name is printed on the ticket. If someone wants to transfer his ticket he needs to assign the right of access; it is not enough to just sell it.

As a promoter, you have the advantage of providing conditions for this assignment in your GTC with which you can make sure that the GTC applies to the subsequent sales. In the Take That case, we defined that the contract as a whole must be transferred together with the GTC and that the consent of the promoter is necessary. According to the GTC, the consent of assignment was refused in certain clearly defined cases, such as commercial or overpriced sales.

There can be several reasons for a promoter to apply restrictions, especially given his interest in combatting the secondary ticket market, thereby guarding his reputation against ticket buyers associating him with the overpriced sale. But there are also advantages for the buyers. Using personalised tickets, the promoter deters commercial dealers from jeopardising his equitable pricing structure. It is in the buyer's interest that tickets are not oversold. Moreover, there are no disadvantages for private buyers because they can still sell their tickets according to the GTC if they want to and get their money back.

All in all, MCT believes that the concept was a success and will continue to use personalised tickets for major events. ●