

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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YUM RESTAURANT SERVICES GROUP, LLC,
TACO BELL CORP., KFC CORPORATION and
PIZZA HUT, LLC,

Index No. _____/2020

COMPLAINT

Plaintiffs,

– against –

GRUBHUB HOLDINGS INC.,

Defendant.

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Plaintiffs, by their attorneys, Mayer Brown LLP, for their Complaint against defendant Grubhub Holdings Inc. (“Grubhub”), respectfully allege:

Preliminary Statement

1. On Tuesday, June 2, 2020 – without warning or justification – Grubhub repudiated a five-year contract with Plaintiffs. That contract obligated Grubhub to process orders for and deliver food from thousands of KFC and Taco Bell restaurants across the United States at preferred pricing and agreed service levels. On Friday, June 5, Plaintiffs demanded that Grubhub revoke its improper termination and enter into good-faith negotiations. Grubhub instead moved to implement its repudiation of the contract, and on Monday, June 8, Grubhub wrote directly to Plaintiffs’ franchisees unilaterally imposing a new pricing structure.

2. Grubhub’s improper efforts to rid itself of a deal it no longer wanted and to line its pockets will cause enormous harm to consumers at a time when they can least afford it.

Many consumers remain reluctant to leave home or to eat in restaurants in the midst of a global pandemic. Grubhub's brazen action will result in an increase of nearly 40% in the fees consumers pay for Grubhub delivery of Plaintiffs' products.

3. Grubhub's repudiation of the contract will also result in an array of harms to Plaintiffs and most especially to their hundreds of franchisees, many of whom are small businesses confronting that same pandemic. This action is a reluctant but necessary step to seek redress for the damages Grubhub has caused Plaintiffs and their franchisees.

Parties

4. Plaintiff Yum Restaurant Services Group, LLC ("Yum") is a Delaware limited liability company whose principal place of business is in Louisville, Kentucky.

5. Plaintiff Taco Bell Corp. ("Taco Bell") is a California corporation whose principal place of business is in Irvine, California.

6. Plaintiff KFC Corporation ("KFC") is a Delaware corporation whose principal place of business is in Louisville, Kentucky.

7. Plaintiff Pizza Hut, LLC ("Pizza Hut") is a Delaware limited liability company whose principal place of business is in Plano, Texas.

8. Yum, Taco Bell, KFC and Pizza Hut are all subsidiaries of Yum! Brands, Inc. Taco Bell, KFC and Pizza Hut are the U.S. system operators for the iconic restaurant brands whose names they share. Yum, among other things, provides services to its operating affiliates.

9. Grubhub is a Delaware corporation whose principal place of business is in Chicago, Illinois. Grubhub operates predominantly in the United States. Grubhub has recently described itself as "a leading online and mobile food-ordering and delivery marketplace with the largest and most comprehensive network of restaurant partners."

The MSA

10. In February 2018, Grubhub and the Plaintiffs entered into a written contract called the Master Services Agreement (the “MSA”). Announcement of the MSA was a major industry event and drew media attention.

11. A principal goal of the MSA was to drive incremental, profitable growth for Plaintiffs’ U.S. franchisees.

12. The vast majority of Taco Bell and KFC franchisees in the United States agreed to participate in the arrangement contemplated by the MSA. Participating franchisees (the “Franchisees”) expressed their agreement by signing franchisee participation agreements. The MSA and the franchisee participation agreements authorize Yum to enforce Franchisee rights, and the enforcement of Franchisee rights is a key goal of this action.

13. The MSA appointed Grubhub to provide order taking services, order delivery services and various forms of consumer support, all at highly negotiated “Service Levels” specified in the MSA. The MSA also required Grubhub to create and operate an online ordering website for KFC, and required Grubhub to pay royalties to Plaintiffs and to provide them with marketing credits and other commercial benefits.

14. The MSA guaranteed advantageous pricing for delivery and other services, both for consumers and for Yum-branded restaurants.

15. The MSA protected Yum by providing for a \$50 million termination fee payable to Plaintiffs should Grubhub, presently an independent public company, come to be controlled by a third party owning or operating a business that competes with Plaintiffs’ business, as defined in the MSA. (Given Grubhub’s announcement yesterday that it has

agreed to be acquired by Just Eat Takeaway.com N.V., that \$50 million fee may well be relevant.)

16. In short, the MSA provided many industry-leading benefits for Plaintiffs and the Franchisees, but of course Grubhub benefitted as well.

17. Among the MSA's benefits to Grubhub were six enumerated commercial, marketing and operational exclusivities at Taco Bell and KFC. (No exclusivities apply to Pizza Hut.) For example, the MSA granted Grubhub exclusivity in Taco Bell and KFC nation-wide advertising, and for two years now Taco Bell and KFC have promoted Grubhub in nation-wide advertising. Grubhub also received the exclusive right to integrate with the Taco Bell and KFC "point-of-sale" systems through which orders are entered into restaurant computers.

18. The MSA was crystal clear, however, that Taco Bell and KFC would be authorized to use other "Third Party Service Providers" (as defined in the MSA) as long as the six enumerated restrictions were followed.

19. As authorized by the MSA, over the course of 2020, Yum, Taco Bell and KFC worked to expand the availability of their products to consumers through delivery services from other Third Party Service Providers. This process accelerated once the pandemic took hold. The pandemic increased the importance, for consumers and small-business restaurant owners alike, of reliable and accessible delivery across every part of the country.

20. In their arrangements with the other Third Party Service Providers, Yum, Taco Bell and KFC carefully adhered to the requirements of the MSA.

Grubhub's Regret and Underperformance

21. It has been clear for some time that Grubhub regrets the economics of the MSA.

22. This regret has been expressed verbally and has been demonstrated in Grubhub's actions.

23. Grubhub consistently failed to make the investments necessary to meet the Service Levels the MSA required.

24. In the midst of the pandemic, Grubhub improperly and in breach of the MSA "paused" or "blacked out" restaurants that were open for business and ready to accept delivery orders.

25. Grubhub repeatedly insisted on (and sometimes extracted) payment for services the MSA required it to provide at no additional cost to Plaintiffs.

26. In February 2020, Grubhub established a subscription service called Grubhub+. Grubhub+ customers make a monthly subscription payment and in exchange receive unlimited free delivery from restaurants participating in Grubhub+. In breach of the MSA, Grubhub refused to allow Taco Bell and KFC to participate in Grubhub+ unless they paid Grubhub an additional fee for each order well in excess of the maximum delivery fee contemplated by the MSA.

The Grubhub Note

27. On Tuesday, June 2, 2020, Grubhub's CEO, Matt Maloney, personally emailed a PDF document to Yum. That document, the "Grubhub Note," is reproduced as Exhibit A.

28. The Grubhub Note is an odd document. Undated, unaddressed and unsigned, it is labeled "Privileged and Confidential, Attorney Work Product." It more resembles a lawyer's draft talking points for a client than any sort of formal corporate communication or notice.

29. The words of the Grubhub Note are nevertheless quite clear, stating that "the MSA is of no further force and effect." It then lists benefits Plaintiffs and Franchisees

enjoyed under the MSA (including limits on customer fees, agreed service levels for care and operations, as well as market coverage and marketing obligations) and states that they “no longer apply.”

30. The Grubhub Note concludes by unilaterally imposing onerous “new terms” that will “immediately apply” to Plaintiffs and Franchisees.

31. On Monday, June 8, 2020, Grubhub emailed hundreds of Franchisees (without forewarning) to inform them of the unilateral changes, noting euphemistically that “a few changes are coming to our relationship.” Samples of these documents (the “Franchisee Notes”) are reproduced in Exhibit B. In the Franchisee Notes, Grubhub for the first time notified Franchisees of many of the unilaterally imposed new terms, including a substantial increase in fees, but reassuring Franchisees not to worry as “all fees will be paid by the diner.” Grubhub has also sent messages threatening to increase pricing at Pizza Hut; these messages make no sense because Pizza Hut pricing is regulated by separate agreements Grubhub has never attempted to terminate or to claim had been breached.

32. As the basis for terminating the MSA, the Grubhub Note alleges that “direct technological integrations” and “integration of operations and logistics” have taken place between Yum and two other Third Party Service Providers, Uber Eats and Postmates, and these (alleged) actions constitute breaches of the MSA.

33. These allegations are false. Nothing Yum, Taco Bell or KFC has done with Uber Eats or Postmates violated the MSA. On the contrary, Yum, Taco Bell and KFC painstakingly structured their arrangements with other Third Party Service Providers to conform to the requirements of the MSA. But even if some aspect of those arrangements

had been inconsistent with the MSA, Grubhub would still have had no right to terminate the contract unilaterally and immediately.

34. Instead, if Grubhub believed a breach had occurred, its only choice was to issue a notice, triggering a 30-day cure period. The cure period was not required in only one circumstance: if a breach were “not capable of being cured.” In an apparent nod to that requirement, the Grubhub Note alleges that “the breadth and depth of the integration” renders the breach “incurable.” That allegation is absurd. Anything in Plaintiffs’ arrangements with other service providers could have been modified or curtailed before the end of the cure period, if that were necessary to comply with the MSA.

Harms

35. Grubhub’s unilateral and unjustified repudiation of the MSA will harm consumers by dramatically increasing the amounts they pay for Grubhub delivery of Plaintiffs’ products. Increasing consumer charges by nearly 40% (during a pandemic no less) will reduce options for many consumers.

36. The repudiation will also harm Plaintiffs and the Franchisees in a number of important ways, including lost sales and reputational damage to Plaintiffs and Franchisees. The Taco Bell, KFC and Pizza Hut brands are known for, and pride themselves on, providing consumers with great value, so they are at particular risk for reputational harm from unilaterally imposed price increases. Various fees and credits are also due and payable to Plaintiffs.

Cause of Action

Total Breach of Contract – Anticipatory Repudiation

37. The allegations of paragraphs 1-36 are incorporated as if set forth at length.

38. Grubhub's words and deeds are unequivocal. Grubhub has unilaterally repudiated its contractual duties under the MSA prior to the time designated for performance and before all of the consideration has been fulfilled. This repudiation entitles the Plaintiffs to claim for themselves and for the Franchisees damages for total breach.

WHEREFORE, Plaintiffs demand judgment awarding them damages in an amount to be proven at trial, plus the costs and disbursements of this action, and such other, further and different relief as to the Court appears just and proper.

Dated: New York, New York
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