

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ROCK THE OCEAN PRODUCTIONS, LLC,)

and TMF2013, LLC,)

Plaintiffs,)

v.)

TICKETFLY, INC.,)

Defendant.)

Case No. _____

COMPLAINT FOR DECLARATORY JUDGMENT

Rock the Ocean Productions, LLC (“Rock the Ocean”) and TMF2013, LLC (“TMF2013”) allege as follows for their Complaint against Ticketfly, Inc. (“Ticketfly”):

Summary of Controversy

1. Ticketfly is threatening to try to disrupt a major annual music festival based on the frivolous assertion that the owner of that festival, TMF2013, and its parent entity, Rock the Ocean, are contractually bound to sell tickets to the festival exclusively through Ticketfly. In fact, neither plaintiff is party to any existing contract with Ticketfly. Because festival passes for the April 2018 iteration of the festival are already on sale, a speedy hearing and resolution of this controversy is necessary.

Parties and Jurisdiction

2. Rock the Ocean is a limited liability company organized under the laws of Tennessee. Rock the Ocean’s principal place of business is in Davidson County, Tennessee. Rock the Ocean’s sole member, Chris Stacey, is a citizen of Tennessee.

3. TMF2013 is a limited liability company organized under the laws of Tennessee. TMF2013's principal place of business is in Davidson County, Tennessee. Rock the Ocean is TMF2013's sole member.

4. Ticketfly is a corporation organized under the laws of Delaware. Ticketfly's principal place of business is in a state other than Tennessee.

5. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. Section 1332. This judicial district is a proper venue for this action under 28 U.S.C. Section 1391(b).

Facts Establishing Actual Controversy

6. The Tortuga Music Festival has taken place in Ft. Lauderdale, Florida each April since 2013. TMF2013 has owned the Tortuga Music Festival since late 2012.

7. From November 2012 until September 2017, Rock the Ocean co-owned TMF2013 – first, until December 2013, with Huka Productions, LLC (“Huka”), and then with H1 Events, LLC (“H1”). Before September 2017, Rock the Ocean was a minority owner of TMF2013. Since September 2017, Rock the Ocean has owned 100% of TMF2013.

8. Huka's business includes producing and promoting concerts, music festivals, and other events.

9. Ticketfly's business includes selling tickets to concerts, music festivals, and other events.

10. On November 6, 2017, in-house litigation counsel for Eventbrite, Inc., the corporation that owns Ticketfly, sent Chris Stacey of Rock the Ocean a letter (the “Ticketfly Threat”). A copy of the Ticketfly Threat, which for some reason is devoid of any company's letterhead or logo, is attached as Exhibit 1.

11. The Ticketfly Threat asserts that Ticketfly entered into a two-year exclusive services agreement *with Huka* in July 2013 (the “Ticketfly/Huka Contract”); that Ticketfly *and Huka* later amended the Ticketfly/Huka Contract to extend that agreement for another four years, through September 2019; and that Ticketfly paid *to Huka* a \$1 million signing bonus as part of the amendment. The Ticketfly Threat then asserts that *Rock the Ocean and TMF2013* will be in breach of the Ticketfly/Huka Contract if they use any ticketing provider other than Ticketfly for the April 2018 Tortuga Music Festival. The Ticketfly Threat asserts that, if Rock the Ocean and TMF2013 use any ticketing provider other than Ticketfly, Ticketfly will pursue breach of contract claims against Rock the Ocean and TMF2013 (as well as Huka and H1) and seek injunctive relief to try to force TMF2013 to use Ticketfly’s services.

12. Notably, none of the contract documents referred to in the Ticketfly Threat was enclosed with the Ticketfly Threat. Upon information and belief, the author of the Ticketfly Threat did not enclose those documents because they clearly show that neither Rock the Ocean nor TMF2013 is a party to those documents.

13. Huka’s Chief Operating Officer during the period 2012 to 2014, Jeff Kreinik, was also the Head of Festivals for Ticketfly from 2014 to October 2016. Ticketfly has at all times known (a) that TMF2013 and Huka are distinct companies, and (b) that TMF2013 – not Huka – owns the Tortuga Music Festival. Indeed, Ticketfly previously recognized this distinction. For example, effective November 7, 2014, Ticketfly and TMF2013 entered into a Ticketfly Services Agreement that was specific to the April 2015 Tortuga Music Festival. Upon information and belief, that is the only contract TMF2013 has ever had with Ticketfly. Rock the Ocean has never been party to any contract with Ticketfly.

14. Rock the Ocean and TMF2013 responded to the Ticketfly Threat in writing on November 7, 2017 (the “Response”). A copy of the Response is attached as Exhibit 2. As the Response states:

- Ticketfly has no contract with either TMF2013 or Rock the Ocean to sell tickets for any upcoming installment of the Tortuga Music Festival;
- Ticketfly’s own Director of Sales and Head of Festivals, Neal Gilbreath, recently admitted that Ticketfly has no contract with TMF2013; and
- Ticketfly in August 2017 sent TMF2013 a *proposed* contract for the April 2018 Tortuga Music Festival – something Ticketfly obviously would not have done if TMF2013 were already obliged to use Ticketfly for that event.

The Response requested that, given these and other undisputed facts, Ticketfly reconsider its effort to try to disrupt the April 2018 Tortuga Music Festival by making frivolous breach of contract claims against Rock the Ocean and TMF2013.

15. Notwithstanding the Response, and the undisputed facts stated in the Response, Ticketfly continues to threaten action against Rock the Ocean and TMF2013 should TMF2013 use any ticketing provider other than Ticketfly for the upcoming Tortuga Music Festival. A lawyer for Ticketfly recently stated that Ticketfly contends that TMF2013 can be held liable for breach of the Ticketfly/Huka Contract under an “alter ego” theory.

16. Passes for the April 2018 Tortuga Music Festival went on sale in late November 2017. TMF2013 has engaged a ticketing services provider other than Ticketfly for the event. Ticketfly’s on-going threats, while completely without merit, are creating an atmosphere of uncertainty.

17. An actual controversy, as contemplated by 28 U.S.C. Section 2201, exists. The requested declaratory judgment will settle the legal relations at issue and eliminate the controversy among the parties to this action.

For the foregoing reasons, Rock the Ocean and TMF2013 respectfully pray that this Court:

1. Order a speedy hearing of this action pursuant to Federal Rule of Civil Procedure 57;
2. Enter a judgment that resolves the controversy at issue by declaring that (a) neither Rock the Ocean nor TMF2013 is a party to any existing contract with Ticketfly; and (b) neither Rock the Ocean nor TMF2013 has any obligation to use Ticketfly's services in connection with the Tortuga Music Festival; and
3. Grant such further relief as the Court finds just.

Respectfully submitted,

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