



729 SEVENTH AVENUE T 212-764-1122  
5TH FLOOR F 212-944-2136  
NEW YORK, NY 10019 BROADWAYLEAGUE.COM

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COUNSEL  
JEFFREY A. HORWITZ, ESQ.

November 6, 2023

**Re: New York City Department of Consumer and Worker Protection, Comment on Proposed Rules: Disclosure of Total Ticket Costs in Advertisements**

Dear Commissioner Mayuga,

The Broadway League has been the principal trade association for the commercial theatre industry in New York City for over 90 years. Our productions are among New York's largest tourist attractions and had a fiscal impact of approximately \$14.7 billion on the local economy during the '18/'19 theatre season (the last season for which we have complete data). During that period, our shows recorded 14.8 million admissions, averaging 284,615 per week – exceeding that of every major NY sports team *combined* – while supporting approximately 96,900 full-time jobs.

We thank the Department for this opportunity to comment on proposed rules governing penalties with respect to Subchapter B of chapter 6 of title 6 of the Rules of the City of New York (§ 6-87 Disclosure of Total Ticket Costs in Advertisements). We would like to respectfully raise the following concerns and request reconsideration prior to the final publication of the rules.

**Distinct Advertisement and Exposed to the Public**

The proposed rule (RCNY § 6-87) states: “Each distinct advertisement that fails to include the required information shall constitute a separate violation. For the purposes of determining the total civil penalty, each day on which a violating advertisement is exposed to the public shall constitute a separate violation.” (Emphasis supplied.)

We respectfully request that the proposed rule be amended to describe more clearly what constitutes a “distinct advertisement” and what is meant by “each day [such advertisement] is exposed to the public.” Furthermore, we respectfully believe that the New York City Council intended that a given element of an advertising or marketing campaign, taken as a whole, would, potentially constitute a single violation, as opposed to counting violations by number of copies, number of impressions, or number of persons exposed, etc.

NYC Admin. Code §§ 20-880 et seq. applies to producers of entertainment, operators of places of entertainment, and their agents while selling admission tickets. The variability of the conduct is immense. Ticket advertising practices vary for small venues with general admission, large concert venues where an artist plays a limited run, massive stadiums where sports teams play a full season, movie houses, and Broadway theatres which present different productions which may run a determined number of weeks or an open period based entirely on ticket sales.

\* Executive Committee  
† Former Chair

In the Broadway industry, a theatrical production, the venue operators and marketing consultants will often advertise tickets in numerous ways, including direct mail campaigns, print advertisements, radio, TV, online advertisements on third parties' websites (not under the control of the production, venue, or marketing consultants), and online advertisements on websites under the principal parties' control. In addition, brokers and other resellers will conduct their own campaigns entirely outside the purview of the principals.

As drafted, the proposed rule leads to the following:

- A theatre producer buys an advertisement in the New York Times. The advertisement copy reads "Tickets Start at \$25", when in fact the lowest price ticket available is \$30 (inclusive of all fees and taxes that must be paid in order to purchase the ticket). Under the proposed rule, each day such copy was "exposed to the public" would constitute a separate violation; without further clarification of the proposed rule, that could mean that an ad that is published once and remains available for the public to see (potentially sitting on a park bench for an indefinite period), would result in daily violations for an indefinite period. **We propose that the conduct described herein constitutes a single violation; and only if the producer bought an additional advertisement with the New York Times which continued to state "Tickets Start at \$25" would the advertisement constitute a second, or additional violation.**
- A theatre producer engages in a direct mail campaign, with flyers that contain the statement "Tickets Start at \$25" when the lowest price ticket available is \$30 (inclusive of all fees and taxes that must be paid in order to purchase the ticket). Under the proposed rule, without further clarification, that could mean each day any such flyer is "exposed to the public" (perhaps it simply has not been placed in the trash) is a separate violation, with the number of violations essentially dependent on when individuals open their mail and how long they hold mail before throwing it away. **We propose that the conduct described herein constitutes a single violation; and only if, the producer does a second direct mail campaign with flyers that continue to state that "Tickets Start at \$25" would there be additional violations.**
- A theatre producer launches the website for an upcoming show; and the website contains the statement "Tickets Start at \$25" when the lowest price ticket made available is \$30 (inclusive of all fees and taxes that must be paid in order to purchase the ticket). The producer corrects the misstatement the following day; however, thousands of visitors to the site see the ad before it is corrected. Under the proposed rule, it is unclear if the producer would have committed violations equal to the number of visitors to the website before the website text was updated (since it could be argued that each such visitor is fed a "distinct advertisement"). **We propose that the conduct described herein constitutes a single violation; and only if additional days elapse before the website update would there be additional violations (and in such case each such day would constitute only one additional violation).**

The proposals we make in the context of the scenarios described above are intended to avoid excessively penalizing theatrical producers, theatre operators and marketing personnel for conduct in the ordinary course of commerce in the theatre and advertising industries. Under our proposals, a violation is triggered by the purchase or pursuit of an advertising or marketing campaign that contains false or deceptive information. However, the same ad fed to multiple persons does not become a "distinct advertisement" as to each such person; and "exposed to the public" becomes a bright line rule dependent on an affirmative act by the violating party, as opposed to a rule dependent on the vagaries of how long each individual media-item may be "exposed" to one or another person outside of the violating party's control.

We note that this comports with the New York City Council's April 11, 2023, Committee Report on bill Introduction Number 8-A – the bill that created the statutory provisions at NYC Admin. Code §§ 20-880 et seq., which the proposed rule seeks to implement. There the Committee states: "Each advertisement that

violates this subchapter, **and is recognizably different in nature**, would constitute a separate violation. A copy of the same advertisement produced on the same day would not constitute a separate violation. For example, one advertisement published in a newspaper would constitute a single violation—despite the number of copies of that newspaper printed and sold on that day, it would still constitute only a single violation.” (Emphasis supplied.)

Under our proposal, a producer, theatre, or marketing consultant is civilly liable for making false statements about prices when they knew or should have known those statements were false. Accordingly, the print or digital advertisement stating “Tickets Start at \$25” purchased or sent for publication when, at such time, no such tickets exist, creates a violation; and each such day said advertisement is published creates an additional violation.

We note finally that without a version of the proposed rule that recognizes the realities of the theatre and advertising businesses in all media the result devolves to impracticability: Producers and marketers will simply stop advertising prices, as the risk of saying something that is false (given the potentially unlimited liability), and the cost of pulling, redesigning, resubmitting and republishing marketing material in print and online media becomes too expensive in an industry in which nearly eighty percent of productions fail to recoup costs to begin with. This cannot be the City Council or the Department of Consumer and Worker Protection’s goal. Nor can it be in the consumer’s interest to have no information about prices in advertisements.


### **Second and Third Violations**

As proposed, “Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).”

We suggest that two years is an inordinately lengthy period for tallying subsequent violations of this nature and respectfully propose that one year is an appropriate term.

Thank you for this opportunity to comment on these proposed rules. As one of the City’s largest advertisers of event tickets, we wish to ensure that these rules accurately reflect the intentions of the City Council and ensure they are enforced in an equitable manner. We would be happy to discuss our concerns with your office in more detail.

Yours truly,

  
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Charlotte St. Martin, President