

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA a municipal corporation 441 4th Street, N.W. Washington, DC 20001,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>GRUBHUB HOLDINGS, INC. 111 W. Washington Street, Suite 2100 Chicago, IL 60602,</p> <p>and</p> <p>GRUBHUB, INC. 111 W. Washington Street, Suite 2100 Chicago, IL 60602</p> <p style="text-align:center">Defendants.</p>	<p>Case No. _____</p> <p>COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF</p> <p>JURY DEMANDED</p>
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Plaintiff, the District of Columbia (the “District”), through the Office of the Attorney General, brings this action against Defendants Grubhub Holdings, Inc. and Grubhub, Inc. (collectively “Grubhub”) for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.* In support of its claims, the District states as follows:

INTRODUCTION

1. This consumer protection enforcement case seeks to remedy, and put an end to, Grubhub’s deceptive trade practices with respect to its food delivery services in the District of Columbia. Grubhub is a food delivery company that owns and operates a software platform connecting consumers (who place food delivery orders from restaurants)

with third-party drivers (who deliver food from restaurants to consumers). In 2020 alone, Grubhub generated approximately \$1.8 billion in revenue.

2. Grubhub derives most of its revenue from two sources—restaurants and consumers. The company enters into agreements with restaurants, known as “Partner Restaurants,” to appear on its website (www.grubhub.com) and its mobile application (“app”). In addition, some Partner Restaurants also contract with Grubhub for marketing and delivery services. Grubhub charges Partner Restaurants commissions for appearing on its platform, as well as for its marketing and delivery services. Consumers who use Grubhub to place food and beverage orders from Partner Restaurants are charged certain fees to Grubhub, including a “Delivery fee,” “Service fee,” and, for orders under \$10, a “Small order fee.” Grubhub also offers consumers a subscription-based service called Grubhub+ for \$9.99 per month, which purports to offer certain benefits, such as “unlimited free delivery.”

3. In an apparent effort to optimize its revenue, Grubhub has employed a number of unfair and deceptive practices with respect to the advertising and promotion of its services to District of Columbia consumers.

4. *First*, Grubhub has listed on its platform over a thousand restaurants available for delivery to District of Columbia consumers that in fact had no contractual relationship with Grubhub, without those restaurants’ consent, and without adequately disclosing to consumers its lack of relationship with those restaurants. This deceptive conduct significantly impacted District of Columbia consumers, as the menu offerings, prices, and hours for Non-Partner Restaurants were more likely to be out-of-date or incorrect, and there was a greater likelihood that orders from those restaurants would take

longer to fill, would be filled incorrectly, would be delivered cold, or would eventually be cancelled altogether.

5. *Second*, despite representing to consumers that their platform reflects local restaurants' menus, Grubhub's website and app often contain prices for menu items that are higher than the prices for the same exact menu items elsewhere, including at the restaurant and on the restaurant's own website, without adequately disclosing that fact to consumers. Because Grubhub already charges consumers several different types of fees for its services, such as a "Delivery fee" and a "Service fee," consumers expect that the menu prices listed on Grubhub are the same prices offered at the restaurant or on the restaurant's website—an expectation Grubhub fails to correct through sufficient disclosures.

6. *Third*, Grubhub engages in a bait-and-switch scheme by misrepresenting to consumers that the only fee that they would have to pay Grubhub for delivery is a "Delivery fee," while deceptively obscuring its "Service fee" and "Small order fee" (if applicable) by failing to disclose those fees until the end of the ordering process at the checkout page, after consumers have already invested their time in searching for a restaurant and selecting menu items that they want to order. Moreover, until recently, even when consumers got to the checkout page, Grubhub further obscured those fees by combining them in the same line item as "taxes." Because only the "Delivery fee" was prominently disclosed at the beginning of the process, Grubhub led consumers to believe that was the only Grubhub fee that would be charged. This practice constitutes a digital "dark pattern"—i.e., a design feature that deceives, coerces, or manipulates consumers into making choices that are either not what they intended, or not in their best interests—as described in more detail below.

7. *Fourth*, Grubhub deceptively advertises to consumers that they can “order online for free,” even though this promise only applies to pickup orders. Consumers who place online orders through Grubhub for delivery cannot in fact “order online for free,” as they are still subjected to Grubhub’s “Service fee,” “Small order fee” (if applicable), and “Delivery fee.”

8. *Fifth*, Grubhub deceptively advertises to consumers that if they subscribe to Grubhub’s subscription service, Grubhub+, consumers will get “unlimited free delivery” at their favorite restaurants on eligible orders. However, consumers who enroll in Grubhub+ do not get unlimited free delivery because they still must pay Grubhub’s “Service fee” for delivery orders.

9. *Sixth*, until recently, Grubhub assigned certain of its Partner Restaurants “Routing Telephone Numbers”—Grubhub-generated telephone numbers listed on the restaurants’ menu pages, and often featuring local area codes, such that consumers would believe they were the restaurants’ own official phone numbers. In reality, Grubhub tracked orders placed through these Routing Telephone Numbers and charged its Partner Restaurants a separate commission for such orders without adequately disclosing that fact to consumers, thus limiting consumers’ ability to choose to place a telephone order directly with a local restaurant without the restaurant being subjected to Grubhub’s commissions.

10. *Seventh*, for hundreds of its Partner Restaurants in the District of Columbia, Grubhub created websites, known as “microsites,” made to look like the restaurants’ own official websites—often using the restaurants’ own logos, menus, and photos of actual menu items—without adequately disclosing to consumers that the sites are made and run by Grubhub. Consumers who attempt to place orders through these microsites, by clicking

on the “ORDER NOW” button, are transferred directly to Grubhub to complete their orders, thus making it seem that Grubhub is the only or preferred method of placing an online order with the restaurant. Again, this practice limits consumers’ ability to bypass Grubhub and deal directly with local restaurants without subjecting those restaurants to unnecessary commissions.

11. *Eighth*, Grubhub deceptively marketed its “Supper for Support” promotion to consumers as a way for them to save money, while at the same time supporting local independent restaurants that had been affected by the decline of business due to the Covid-19 pandemic. The promotion advertised that consumers who placed orders from 5 p.m. to 9 p.m. each day, during the promotion, with any of Grubhub’s participating Partner Restaurants would receive \$10 off their orders of \$30 or more. However, contrary to its advertisements, this promotion did not actually support restaurants—as the restaurants, not Grubhub, were required to foot the full cost of the \$10 off promotion (with the exception of a small \$250 credit that Grubhub eventually provided restaurants after public backlash), and those restaurants were further responsible for paying Grubhub commissions on the full (non-discounted) price of the food total rather than the amount that the customer paid. Yet again, this practice limited consumers’ ability to bypass Grubhub and deal directly with local restaurants without subjecting those restaurants to higher costs.

12. Each of the above practices are separate violations of the CPPA. These multiple CPPA violations reflect a disregard by Grubhub of District of Columbia consumers’ right to truthful information at every step of the process when they use Grubhub’s services. Accordingly, the District brings this case to permanently enjoin these deceptive business practices and secure restitution, civil penalties, and other relief.

JURISDICTION

13. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code § 11-921 and D.C. Code § 28-3909.

14. This Court has specific personal jurisdiction over Grubhub pursuant to D.C. Code § 13-423(a).

PARTIES

15. Plaintiff, the District, a municipal corporation that is authorized to sue and be sued, is the local government for the territory constituting the seat of the government for the United States of America. The District brings this action through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

16. Defendant Grubhub, Inc. is a Delaware corporation with its headquarters and principal place of business at 111 W. Washington Street, Suite 2100, Chicago, IL, 60602.

17. On June 15, 2021, Grubhub, Inc., together with its subsidiaries, was merged with and into Checkers Merger Sub II, Inc. pursuant to an acquisition agreement with Just Eat Takeaway.com N.V. ("Just Eat Takeaway"), a public entity incorporated under the laws of the Netherlands. In connection with the merger, the name Checkers Merger Sub II, Inc. was changed to Grubhub, Inc. Pursuant to the merger, the new Grubhub, Inc. entity

(formerly known as Checkers Merger Sub II, Inc.) is a wholly owned subsidiary of Just Eat Takeaway and holds all debts, liabilities, and duties of the original Grubhub, Inc. entity.

18. Defendant Grubhub Holdings, Inc. (doing business as Grubhub), a wholly owned subsidiary of Grubhub, Inc., is a Delaware corporation with its headquarters and principal place of business at 111 W. Washington Street, Suite 2100, Chicago, IL 60602.

DEFENDANTS' CONDUCT GIVING RISE TO THE DISTRICT'S CLAIMS

A. The Grubhub Delivery App and Website.

19. Grubhub is an on-demand food delivery company that operates an online platform connecting consumers with local restaurants for delivery via the Grubhub website and app. Grubhub works by matching two types of users with one another: (1) consumers (who pay Grubhub to place delivery orders) and (2) delivery drivers (who Grubhub pays to deliver these orders). Grubhub also allows its Partner Restaurants, with which it has contractual relationships, to be listed on its app and website even without using Grubhub's delivery service—i.e., for pickup orders or self-delivery orders (where the restaurant uses its own delivery drivers).

20. Grubhub is one of the largest food delivery companies in the District of Columbia metropolitan area.

21. To use Grubhub's services, consumers register for a Grubhub account by providing the company with their name, email address, and mobile phone number. Alternatively, consumers can sign up via Facebook or Google. Once a consumer is logged into their account and has provided payment information, such as a credit or debit card, they can place an order with numerous local restaurants through the Grubhub website or app.

B. Grubhub Deceives Consumers About its Lack of Contractual Relationships with Non-Partner Restaurants Listed on its Platform.

22. Grubhub’s partnerships with local independent restaurants, as well as large national restaurant chains, are a central feature of the Grubhub platform and one that consumers have come to expect. The “more than 300,000 restaurant partners in over 4,000 U.S. cities” that Grubhub promises consumers depends on these partnerships. Without the permission of restaurants to be listed on Grubhub, as well as the restaurants’ cooperation in fulfilling orders placed through Grubhub, consumers cannot be assured that they are receiving accurate, up-to-date information about the restaurants’ hours, menu items, and pricing, as well as adequate service.

23. Grubhub has repeatedly emphasized its partnerships with local restaurants in its marketing to consumers. For example, in a July 12, 2021, press release announcing its “Grubhub Guarantee,” Grubhub’s CEO, Adam DeWitt, stated, “Restaurants work incredibly hard to create the best experience for diners, and we are helping to safeguard the reputations of our restaurant partners through Grubhub Guarantee.” Also, in a June 10, 2021, press release announcing its “We Serve Restaurants” marketing campaign, Grubhub stated that the new marketing campaign “builds on recent product updates and partnerships,” and was “created out of Grubhub’s commitment to put restaurants and their needs first.”

24. Grubhub also promoted its support for its restaurant partners during the early months of the COVID-19 pandemic. In a July 30, 2020, press release, Grubhub announced that it spent \$85 million to support restaurants by “driving more orders to restaurants through coupons we funded, reduced diner fees, and increased advertising.”

25. Grubhub's preference has been to have more Partner Restaurants listed on its platform rather than Non-Partner Restaurants, because Partner Restaurants pay lucrative marketing commissions to Grubhub, while Non-Partner Restaurants do not pay such commissions. However, because restaurants were not signing up as partners with Grubhub fast enough, Grubhub began exploring adding Non-Partner Restaurants to its platform, through which Grubhub could at least recoup fees paid by diners.

26. Sometime in October 2019, Grubhub began listing Non-Partner Restaurants on its platform without having any contractual relationship with those restaurants, and without those restaurants' consent. In a February 5, 2020, letter to shareholders, Grubhub explained that it more than doubled its restaurant inventory from 140,000 to more than 300,000 nationwide in just three months, noting that "much of this increase is driven by the rapid addition of non-partnered restaurants."

27. Since October 2019, Grubhub has listed over a thousand Non-Partner Restaurants located in the District of Columbia metropolitan area on its website and app available to District of Columbia consumers without adequately disclosing that these restaurants did not have a contractual relationship with Grubhub, or that the restaurants did not consent to be listed on Grubhub's platform.

28. By listing Non-Partner Restaurants on its website and app, Grubhub misrepresented to District of Columbia consumers that the Non-Partner Restaurants had some type of business relationship with Grubhub, thereby authorizing such restaurants to be listed on Grubhub, and that Grubhub was authorized to fulfill the delivery and/or pickup of the restaurants' menu items.

29. At no point during the ordering process on its platform did Grubhub sufficiently inform District of Columbia consumers that Non-Partner Restaurants listed on Grubhub did not have a contractual relationship with Grubhub, or that such restaurants did not consent to be listed on Grubhub's platform—and thus that the consumer experience may be negatively affected by that lack of relationship. For example, the menu items, prices, and hours for Non-Partner restaurants listed on Grubhub may be out-of-date or incorrect. Also, because Non-Partner Restaurants were not necessarily working cooperatively with Grubhub—particularly considering that Grubhub uses those restaurants' information without their consent—there is a much greater likelihood that orders would take longer to fill, would be filled incorrectly, would be delivered cold, or would eventually be cancelled altogether.

30. Despite this material difference in the consumer experience, both Partner Restaurants and Non-Partner Restaurants were listed on Grubhub in the same manner. Grubhub did not distinguish how Partner Restaurants and Non-Partner Restaurants appeared on its platform, nor did Grubhub specify which restaurants were Partner Restaurants and which were Non-Partner Restaurants. As such, consumers had no way of knowing just by looking at the restaurant listings on the Grubhub website or app whether a particular restaurant was a Partner Restaurant.

31. In fact, when Grubhub listed Non-Partner Restaurants on its platform, it often used the same logos, menus, or photographs of menu items that were found on the restaurants' own official websites. Grubhub simply obtained this information from external sources, such as the restaurant's own website, Google, and Restaurantdata.com.

32. Consumers often never learned that the restaurant they placed an order from on Grubhub was a Non-Partner Restaurant. Often, the only way for a consumer to determine whether a particular restaurant listed on Grubhub was a Partner Restaurant was for the consumer to either contact the restaurant directly, or by going to the restaurant's official website, which would sometimes list their official third-party delivery partners, if any, or would redirect the consumer to the third-party delivery partner's website when the consumer tried to place an order.

33. Grubhub's practice of listing Non-Partner Restaurants on its website and app had allowed it to significantly increase its revenues, to the detriment of consumers.

C. Grubhub Deceives Consumers Into Paying Prices That Are Often Higher Than Those Listed by the Restaurant for the Same Exact Menu Items.

34. Through its advertising, Grubhub tells consumers that they can “[f]ind great meals fast with lots of local menus” on Grubhub, suggesting that its platform accurately reflects restaurants' menu items and pricing. In reality, the prices listed for a restaurant's menu items on Grubhub's platform are often higher than the prices for those same exact menu items on the restaurant's dine-in menu and on the restaurant's own website for delivery and takeout. Depending on the restaurant and the menu item, the difference in price for a particular menu item can be significant.

35. For example, Young Chow, an Asian restaurant located at 312 Pennsylvania Avenue, S.E., Washington, DC 20003, is listed on Grubhub with a variety of soups, salads, appetizers, sides, entrees, drinks, and desserts for delivery. The prices for its menu items on Grubhub's platform are higher than the prices for these same exact items on Young Chow's official website, as shown by the screenshots below comparing Grubhub's version of the menu against the restaurant's own website:

Grubhub Young Chow Menu Page - Beginning of Menu Page

2:44 PM Wed Dec 29 grubhub.com

GRUBHUB Home - 400 6th St NW Q chinese Hi, Michael! 86



Young Chow
 GH+ 312 Pennsylvania Ave SE (301) 485-4701
 ★★★★★ 2860 ratings 88% Food was good 92% Delivery was on time 95% Order was correct Start group orc

Menu About Reviews

Delivery, ASAP
 Delivered in 45-55 mins
[Change order settings](#)

Grubhub Young Chow Menu Page – On the Grill Menu

2:46 PM Wed Dec 29 grubhub.com

GRUBHUB Home - 400 6th St NW Q chinese Hi, Michael! 86

Menu About Reviews

On the Grill
 Cooked on a rack over a grill.

Grilled Lemongrass Chicken	\$17.95	Grilled Honey Peanut Chicken	\$18.95
		Comes with honey peanut sauce over egg noodles.	
Grilled Honey Peanut Tofu	\$17.95	Grilled Chicken Teriyaki	\$18.95
Golden tofu with honey peanut sauce on a bed of egg noodles.		Comes with a tasty teriyaki sauce.	
Grilled Honey Peanut Jumbo Shrimp	\$19.50	Grilled NY Steak Teriyaki	\$19.95
Comes with honey peanut sauce over egg noodles.		Marinated or glazed in a soy based sauce.	
Grilled Salmon Teriyaki	\$18.95	Grilled Seafood Teriyaki	\$20.95
Comes with tasty teriyaki sauce.		Marinated or glazed in a soy based sauce.	
Grilled Honey Peanut Seafood	\$20.95		
Egg noodles.			

Young Chow's Official Website Home Page

2:48 PM Wed Dec 29

youngchowdc.com

Delivery Menu | Order Online | 312 Pennsylvania Ave SE Washington | Grubhub

Young Chow | Washington, DC 20003 | Menu



Home Menu Location Gallery Reviews About Us Order Online

Menu

All Day Menu

- Cold Appetizers Salads >
- Hot Appetizers >
- Soup >
- Duck >
- Asian Noodles Fried Rice >
Vegetable versions available
- Chow Mein Or Egg Foo Young >
- Chicken >
- Beef >
- Pork >
- Shrimp >
- On the Grill >
- Vegetarian Meat >
Made with soy bean with no animal fat or preservatives, we served the fresh vegetables in special sauce, this completely vegetarian, vegetarian menu is dedicated for anyone who loves dining vegetarian.
- Vegetable Corner >

Click to Order Online

Young Chow's Official Website Menu Page – On the Grill Menu

The screenshot shows a mobile website interface for Young Chow. At the top, the time is 2:49 PM on Wednesday, December 29, and the URL is beyondmenu.com. The page is titled 'On The Grill' and lists several menu items with their prices:

Item	Price
Grilled Chicken Teriyaki Chicken breast grilled to perfection & glazed with tasty teriyaki sauce	\$15.95
Grilled Lemongrass Chicken Marinated chicken with skewers of grilled veg. & fresh lemon juice	\$15.95
Grilled Honey Peanut Chicken Marinated chicken breast with honey peanut sauce over egg noodles	\$15.95
Grilled Steak Teriyaki Grilled NY steak with homemade teriyaki sauce	\$16.95
Grilled Salmon Teriyaki Fillet of fresh salmon with tasty teriyaki sauce	\$16.95
Grilled Honey Peanut Jumbo Shrimp Marinated jumbo shrimp w/ honey peanut sauce on a bed egg noodle	\$16.95
Grilled Honey Peanut Tofu Golden Tofu with honey peanut sauce bed of egg noodle	\$15.95
Grilled Seafood Teriyaki Jumbo shrimp, scallops, squid, and fresh salmon grilled with homemade teriyaki sauce	\$17.95

On the right side of the page, there is a delivery cart section for Young Chow. It shows options for Takeout, Delivery (selected), and Dine-in. Below this, it says 'ASAP' and 'Set your Delivery Address...'. The cart is currently empty, with a message 'Your cart is empty'. A note indicates 'Deliver 2 miles around restaurant.' and a prompt to 'Add items to cart before checkout!'. A 'Checkout' button is visible at the bottom of the cart section.

36. Based on this example alone, Grubhub's inflated menu prices could cause a family of four ordering dinner to pay substantially more for the same food if they use Grubhub's platform instead of ordering directly from Young Chow's website, even before Grubhub's delivery and service charges are added. For instance, one dinner for four¹ from Young Chow on Grubhub costs \$143.45, before taxes and fees. This same family, however,

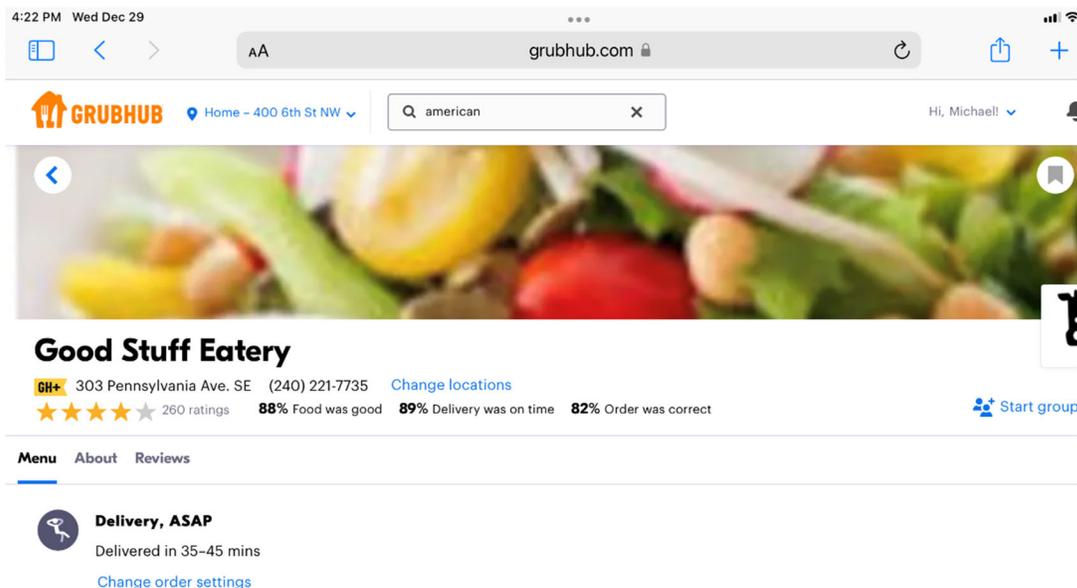
¹ For illustrative purposes, the following mix of salads, soups, appetizers, entrees, and drinks are used in this paragraph for a typical dinner for four: Bali To Fu, Cold Sesame Noodles, Wonton Soup, Miso Soup, Thai Crispy Calamari, Fried Pork Wonton, Peking Duck with Pancake, Chicken with Green Broccoli, Beef with Asparagus, Grilled Chicken Teriyaki, and four bottled sodas.

would only pay \$120.10, before taxes and fees, if they placed the same order directly with the restaurant.

37. Grubhub’s inflated menu prices can also inflate the “Service fee” Grubhub collects on the order. That “Service fee” is usually 5-15% of an order’s subtotal, which is directly based on the menu items’ subtotal. As a result, consumers pay higher “Service fees” because of these inflated prices listed on Grubhub.

38. Grubhub uses this deceptive practice across the District of Columbia. Another example is Good Stuff Eatery, an American restaurant located in Southeast D.C. The prices for menu items on Grubhub are higher than the prices for these same exact items on Good Stuff Eatery’s website, as shown by the screenshots below:

Grubhub’s Good Stuff Eatery Menu Page - Beginning of Menu Page



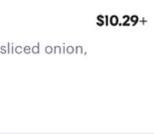
Grubhub's Good Stuff Eatery Menu Page – Burger Menu

4:22 PM Wed Dec 29 grubhub.com

GRUBHUB Home - 400 6th St NW Q american Hi, Michael!

Menu About Reviews

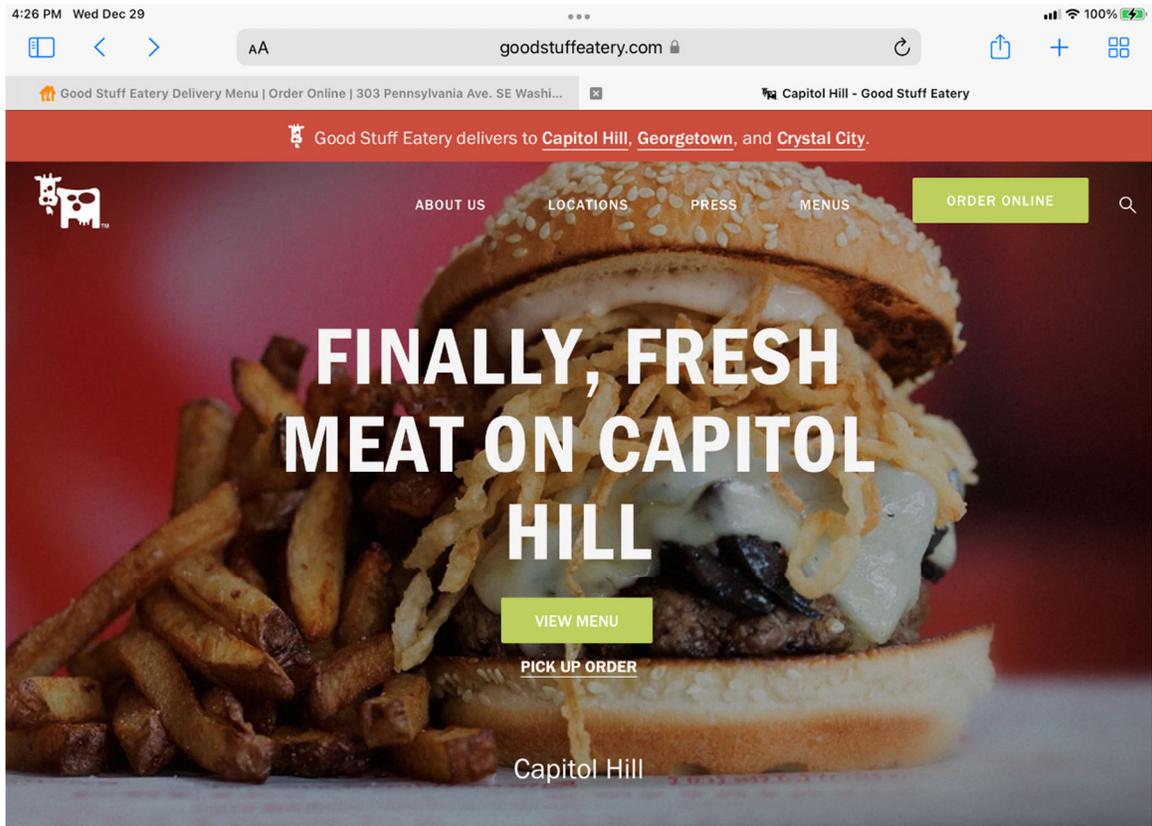
Handcrafted Burgers

Farmhouse Burger Natural farm raised beef. 1, 3 lb. natural farm raised beef. Our farmhouse burgers are topped with farm-fresh ruby red tomatoes, thinly sliced...	 \$9.14+	Farmhouse Cheese Burger Dairy fresh American cheese. 1/3 lb. natural farm raised beef. Our farmhouse burgers are topped with farm fresh ruby red tomatoes, thinly sliced...	 \$9.78+
Farmhouse Bacon Cheese Burger Applewood bacon and American cheese. 1/3 lb. natural farm raised beef. Our farmhouse burgers are topped with farm fresh ruby red tomatoes,...	 \$10.29+	Cluck-it Grilled Chicken, farm fresh ruby red tomatoes, thinly sliced onion, lettuce and Pickles. Served on a Dutch Bun	 \$10.29+

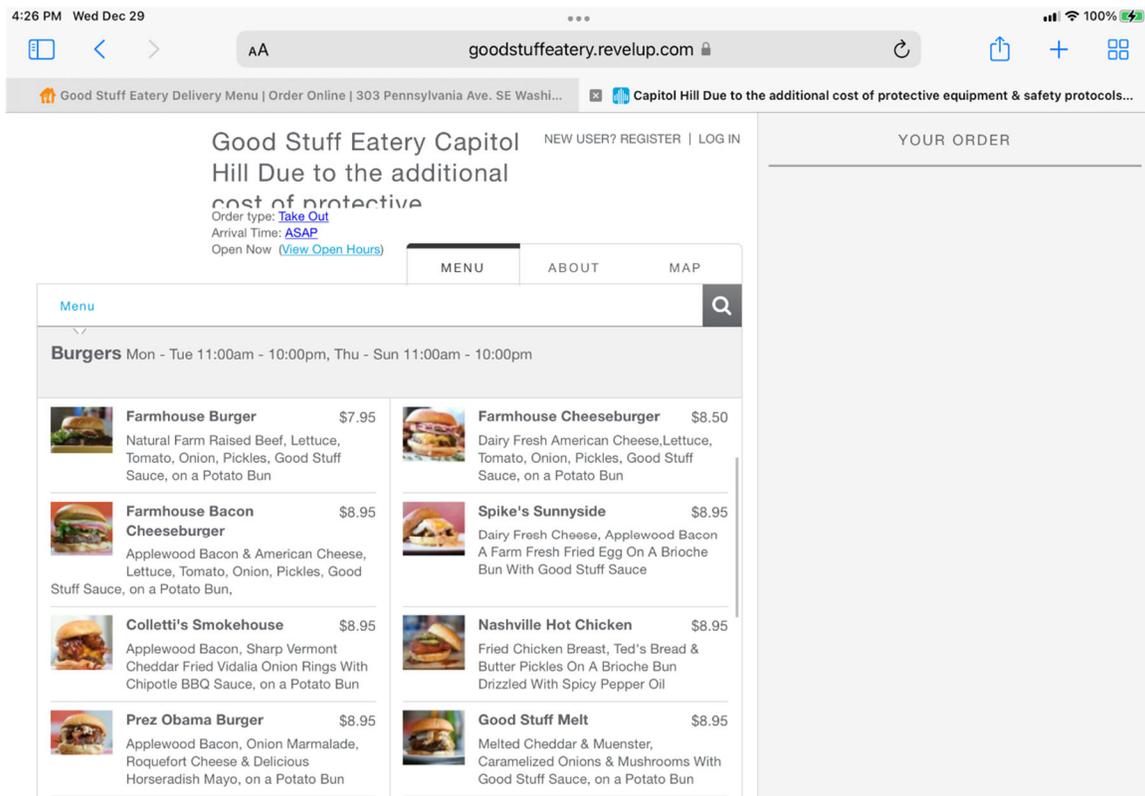
Original Burgers

Colletti's Smokehouse Burger Applewood bacon, sharp Vermont cheddar and fried vidalia onion rings with chipotle onion rings with chipotle BBQ sauce. 1/3 lb. of natural farm...	 \$10.29+	Prez Obama Burger Applewood bacon, onion marmalade, roquefort cheese and delicious horseradish mayo sauce. 1/3 lb. of natural farm raised beef.	 \$10.29+
Fried Green Tomato Veg Fried green tomato, fresh ruby red tomato, sliced avocado, dreamfarm goat cheese, peppery arugula and cilantro with smokey chipotle mayo.	 \$10.29+	Spikes Sunnyside Dairy fresh cheese, applewood bacon and a farm fresh fried egg on a brioche bun with good stuff sauce	 \$10.29+

Good Stuff Eatery's Official Website Menu Page – Beginning of Menu Page



Good Stuff Eatery's Official Website Menu Page – Burger Menu



39. Here again, a family of four placing a dinner order from Grubhub for food and drinks from Good Stuff Eatery could pay substantially more for the same order, even before taxes and fees, than if they ordered the same meal directly from the restaurant. Using one combination of items, the family would spend \$130.35 on Grubhub versus \$113.36 from the restaurant.²

40. A consumer would not anticipate these inflated prices, particularly given Grubhub's representations that consumers can peruse "local menus" on its platform. Moreover, Grubhub already charges consumers a separate Service fee and Delivery fee to

² For illustrative purposes, the following mix of salads, burgers, fries, drinks, and desserts are used in this paragraph for a typical dinner for four: Greek Salad, Good Stuff Farmhouse Salad, Caesar Salad, Cobb Salad, Steakhouse Burger, Free Range Turkey Burger, Good Stuff Melt, Big Stuff Bacon Meltdown, four Village Fries, four bottled sodas, and four Oatmeal Cookies.

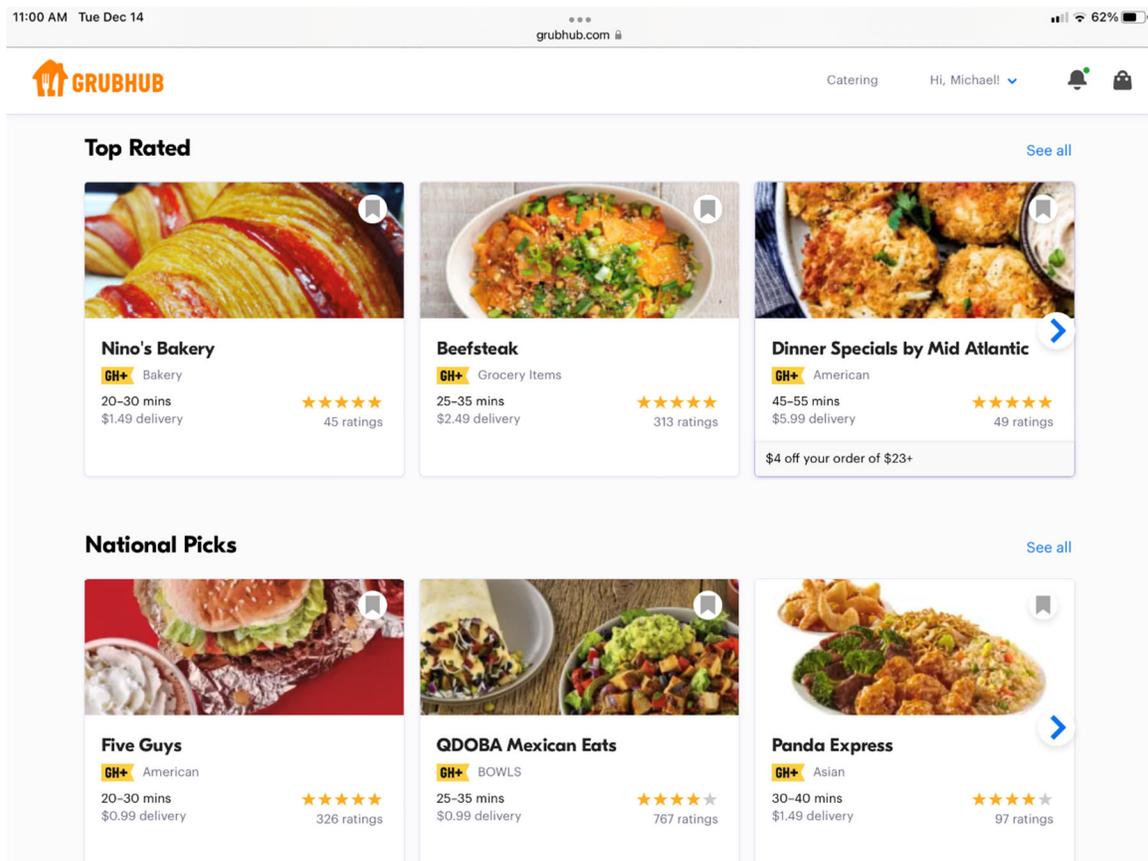
cover its operating costs. Grubhub even charges a separate “Small order fee” of \$2 to cover its costs for handling orders under \$10. Consumers would therefore expect that the prices of the menu items on Grubhub would be the same as the prices for these same exact items in the restaurant or on the restaurant’s own website.

41. Grubhub fails to correct the false expectation it created in any meaningful way. At no point during the ordering process are consumers sufficiently informed that the prices for menu items may be higher than the prices offered elsewhere, as there is no such disclosure on either the restaurant’s menu page or any of the checkout pages. Instead, this possibility is referenced only in Grubhub’s lengthy “Terms of Use,” which is located on a webpage that consumers are unlikely to ever see—as it is entirely separate from the menu webpage or the checkout screen flow, and can be reached only if a consumer scrolls past dozens of restaurant listings to the bottom of the Grubhub website or app, or past all the menu items on a particular restaurant’s webpage, and then clicks on the “Terms of Use” button. And even this inadequate disclosure was not included in Grubhub’s Terms of Use until December 14, 2021. Prior to then, from January 2020 to December 2021, the Terms of Use included only the vague and uninformative statement that Grubhub “reserves the right to consolidate or otherwise incorporate fees and/or surcharges into the prices listed for restaurant food and beverage items.”

42. Grubhub’s practice of listing higher menu prices without properly disclosing this fact to consumers allows Grubhub to significantly increase its revenues through, for example, higher “Service fees,” and it also deprives consumers the ability to make informed choices, all to the detriment of District of Columbia consumers.

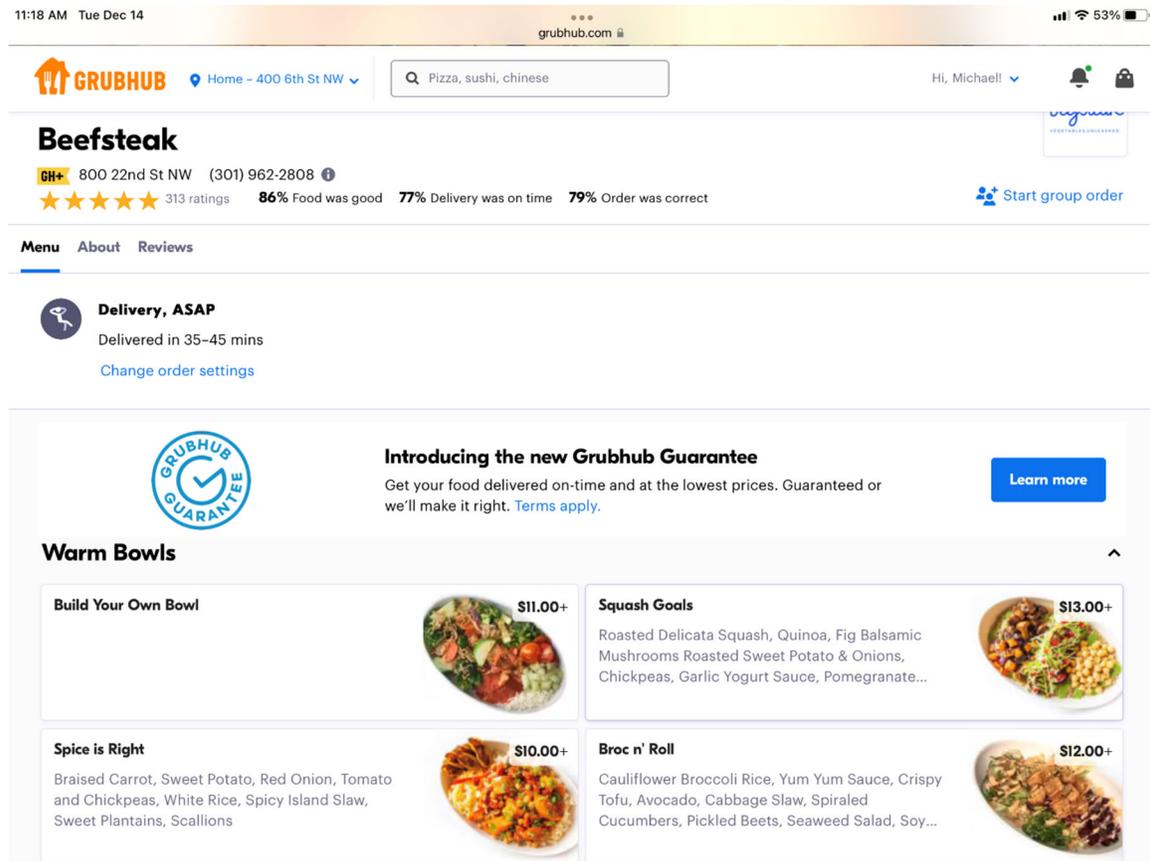
D. Grubhub Misrepresents That its Delivery Fee is the Only Fee Consumers Pay for Using Grubhub, and Deceptively Obscures its Other Fees by Combining Such Fees with Taxes on its Checkout Pages.

43. When consumers first initiate a search for a restaurant on Grubhub, they are presented with a list of restaurants in their area that are available for delivery. Each listed restaurant contains its name, rating, approximate time for delivery, and the amount of Grubhub’s “Delivery fee,” if applicable. No other fees are listed, even though Grubhub later adds a “Service fee” and, in some instances, a “Small order fee.” An example of a listing of restaurants on Grubhub is shown in the screenshot below:



44. By only listing a “Delivery fee” in its listings of restaurants, Grubhub represents to consumers that this is the only additional fee that they will have to pay if they want to use Grubhub for delivery.

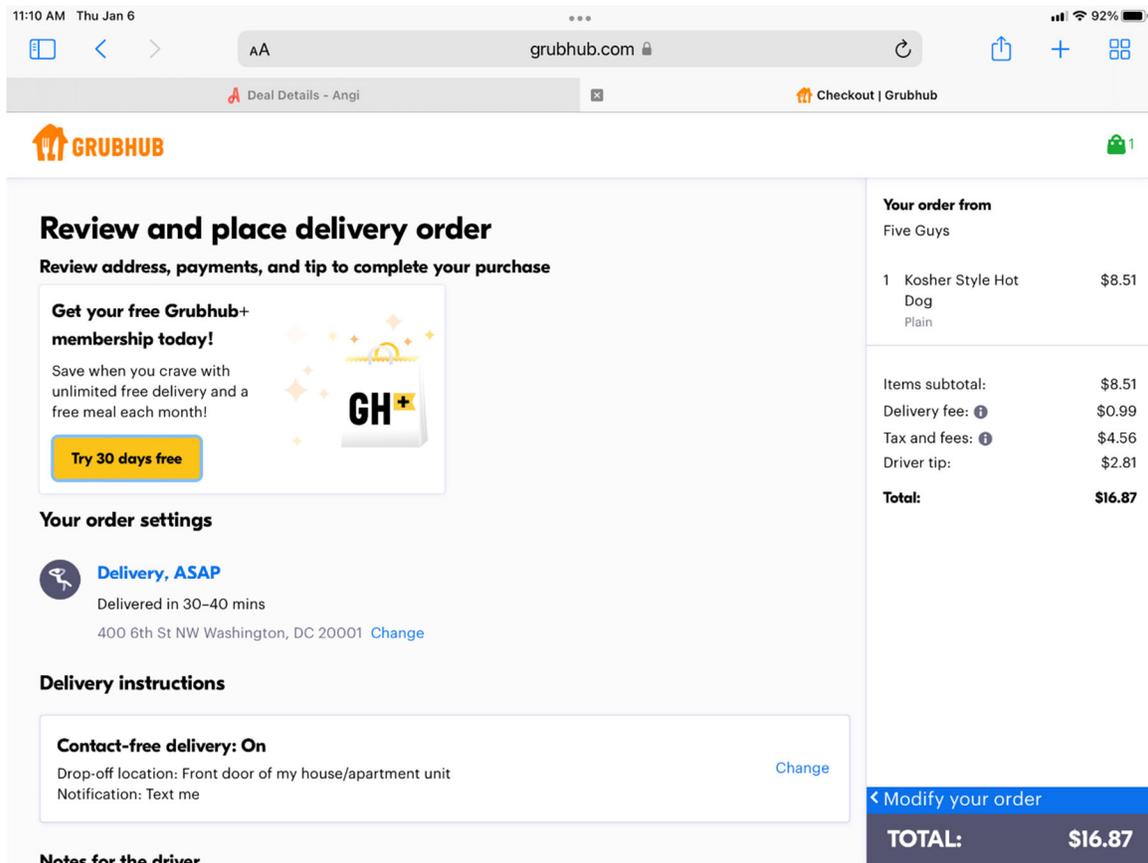
45. Even when consumers select a restaurant, they are not informed of any other fees at this stage. Instead, they are presented with the restaurant’s contact information, estimated delivery time, and the full menu. An example of a restaurant’s menu page on Grubhub is shown in the screenshot below:



46. Grubhub certainly has space on its menu page (e.g., to the right of the delivery information) to provide consumers with specific information about the full range of fees, such as the percentage of its “Service fee” and what the threshold is necessary to purchase to avoid the “Small order fee,” or even a general disclaimer that additional fees will apply at checkout.

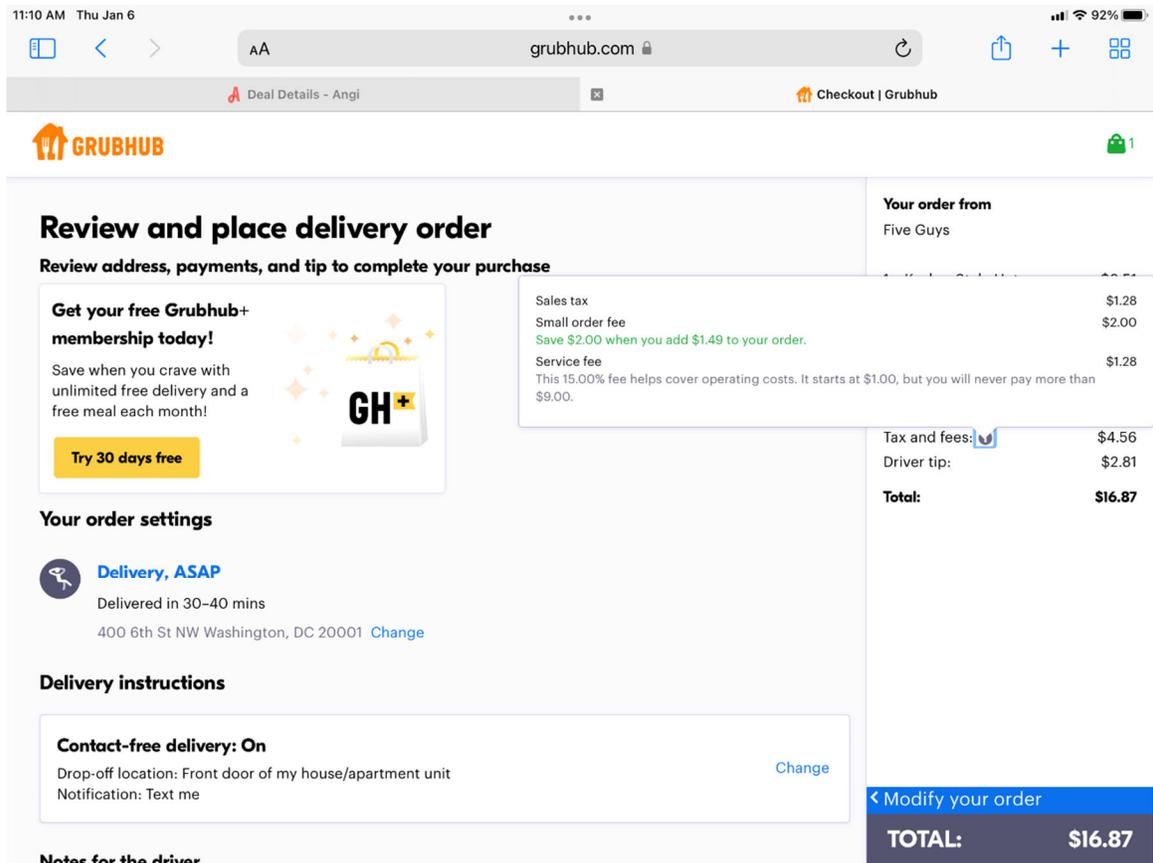
47. It is not until after consumers have selected a restaurant, chosen menu items, and clicked on the “Proceed to Checkout” button, that they are presented any information about additional fees.

48. Until recently, once consumers arrived at the checkout page, they were presented with key information about their order, including a summary of the selected menu items and their prices, as well as an itemized list of charges, such as the items subtotal, the “Delivery fee,” and the “Tax and fees,” as is shown by the screenshot below:



49. The “Tax and fees” line item was listed as a single amount that combined taxes with certain fees charged by Grubhub, such as a “Service fee” and a “Small order fee,” if applicable. Only by clicking on the small circle with an “i” inside, which is located to the right of the listing for the “Tax and fees,” would a consumer then be presented with

a pop-up box that had an itemized listing of the fees and estimated tax. In the example below, featuring an order from Five Guys, a restaurant located at 808 H Street, N.W., Washington, DC 20001, that click brought up a pop-up box that revealed a “Small order fee” and a “Service fee,” as is shown by the screenshot below:



50. Sometime in early 2022, Grubhub started listing its “Service fee” as a separate line-item on the checkout page for certain large orders over \$10, as shown by the screenshot below:

12:44 PM Mon Feb 7 grubhub.com 87%

GRUBHUB 🛒 2

review address, payments, and tip to complete your purchase

Save \$2.19 on this order with Grubhub+

Crave. Save. Repeat! Score dollars off every order and more

Save \$2.19 today



Your order settings

Delivery, ASAP
 Delivered in 30-40 mins
 400 6th St NW Washington, DC 20001 [Change](#)

Delivery instructions

Contact-free delivery
 Driver should drop off order, then notify me.

Drop-off location:

Notification:

[Invite friends](#) and order together

Your order from
Seoulspice

1 KOREAN FEAST FOR 2	\$30.00
<small>White Rice, Chicken (Organic, Local), 1 - Cucumbers, 2 - Korean Radish, 3 - Bean Sprouts, 6 - Kimchi</small>	
1 Grilled Spicy Pork (sweet-spicy-chili) (per pound)	\$12.00

Items subtotal:	\$42.00
Delivery fee: ⓘ	\$1.99
Service fee: ⓘ	\$5.55
Tax:	\$4.46
Driver tip:	\$10.80
Promo (\$5 off):	-\$5.00
Total:	\$59.80

51. However, even after Grubhub implemented this change, it continues to obscure its “Service fee” and “Small order fee” for orders under \$10. Although these fees are no longer combined with taxes, they have simply been moved to another line-item charge ambiguously called “Other fees.” As with the previous iteration under “Tax and fees,” consumers still must click on the small circle with an “i” inside next to “Other fees” to reveal what these other fees represent, as shown by the screenshot below:

12:49 PM Mon Feb 7 grubhub.com 86%

GRUBHUB

Review address, payments, and tip to complete your purchase

Get your free Grubhub+ membership today!

Save when you crave with unlimited free delivery and a free meal each month!

Try 30 days free



Your order from
McDonald's

Small order fee	\$2.00
Save \$2.00 when you add \$5.11 to your order.	
Service fee	\$1.00
This 10.00% fee helps cover operating costs. It starts at \$1.00, but you will never pay more than \$9.00.	
Total:	\$11.00

Your order settings

Delivery, ASAP
Delivered in 25-35 mins
400 6th St NW Washington, DC 20001 [Change](#)

Delivery instructions

Contact-free delivery

Driver should drop off order, then notify me.

Drop-off location: Front door of my house/apartment unit

Notification: Text me

52. In short, Grubhub lures consumers into the ordering process with an artificially low “Delivery fee”—the “bait” in Grubhub’s bait-and-switch scheme. But that fee is false, and Grubhub never intends to charge only that amount for delivery. Grubhub waits until the end of the ordering process to disclose that the consumer will in fact be charged *additional* fees for delivery—namely, the “Service fee” and, if applicable, the “Small order fee.” Grubhub therefore misrepresents the “Delivery fee” as the entire charge for delivery, when it is merely the first in a series of charges the consumer may be required to pay for delivery.

53. This practice is also deceptive because a consumer would expect that all applicable Grubhub fees—not just the “Delivery fee”—would be disclosed at the outset of the order, before the consumer has taken the time and effort to make restaurant and menu selections. Moreover, at the end of the ordering process, a consumer would have expected taxes to be listed separately from Grubhub’s fees, as they were separate types of charges.

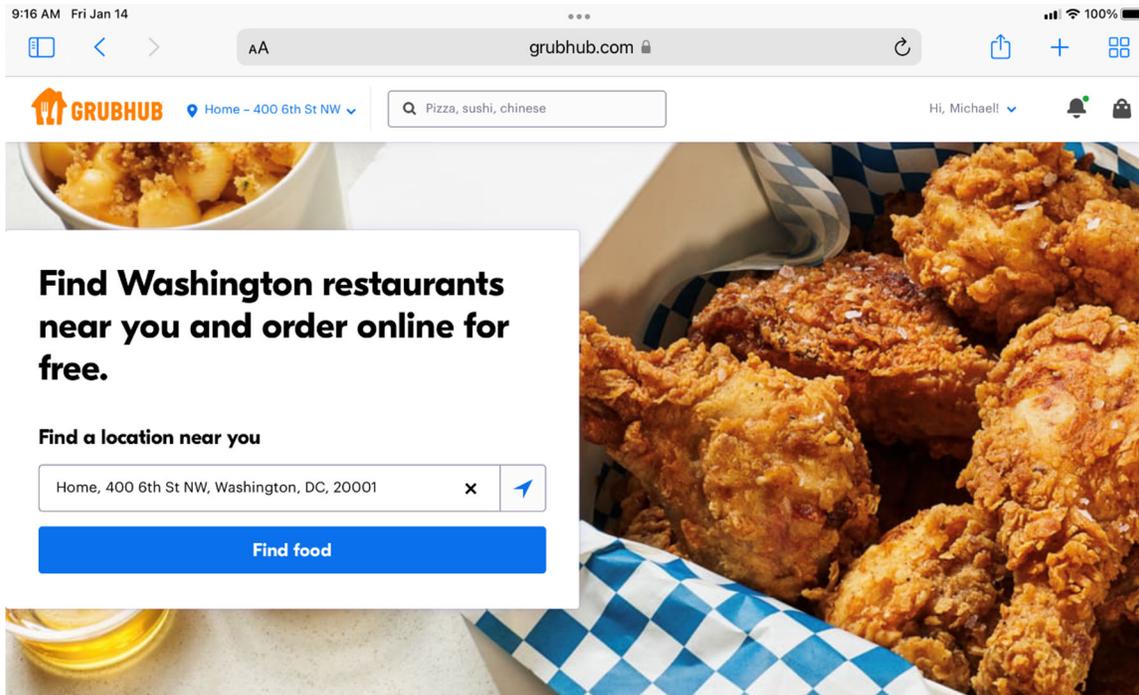
This is especially the case because Grubhub already has listed and continues to list its “Delivery fee” as a separate itemized charge. Although Grubhub provided separate itemized charges for taxes and fees (and now “Other fees”), this information was only made available to consumers if they took the extra step of clicking on the small circle with the “i” inside of it. This circle is not obvious to consumers, as it is small and not in a contrasting color to set it apart.

54. Grubhub’s practice of failing to disclose its fees until late in the ordering process—after consumers have invested time and effort—and even then, failing to clearly disclose certain fees by obscuring them with taxes, or in a category called “Other fees,” is otherwise known as a digital “dark pattern.” This term has been used by the Federal Trade Commission to describe a range of potentially manipulative user interface designs used on websites and mobile apps that deceive, coerce, or manipulate users. Grubhub’s practice of waiting until the final stage step of the checkout flow to disclose the “Service fee” represents a type of dark pattern known as “hidden costs,” in which additional costs or fees are introduced at the end of the checkout process. Moreover, Grubhub’s previous practice of bundling the “Service fee” with taxes, and its current practice of bundling the “Service fee” with “Other fees” for orders under \$10, represents a type of dark pattern known as “misdirection,” under which confusing or ambiguous design and language distract or confuse the consumer.

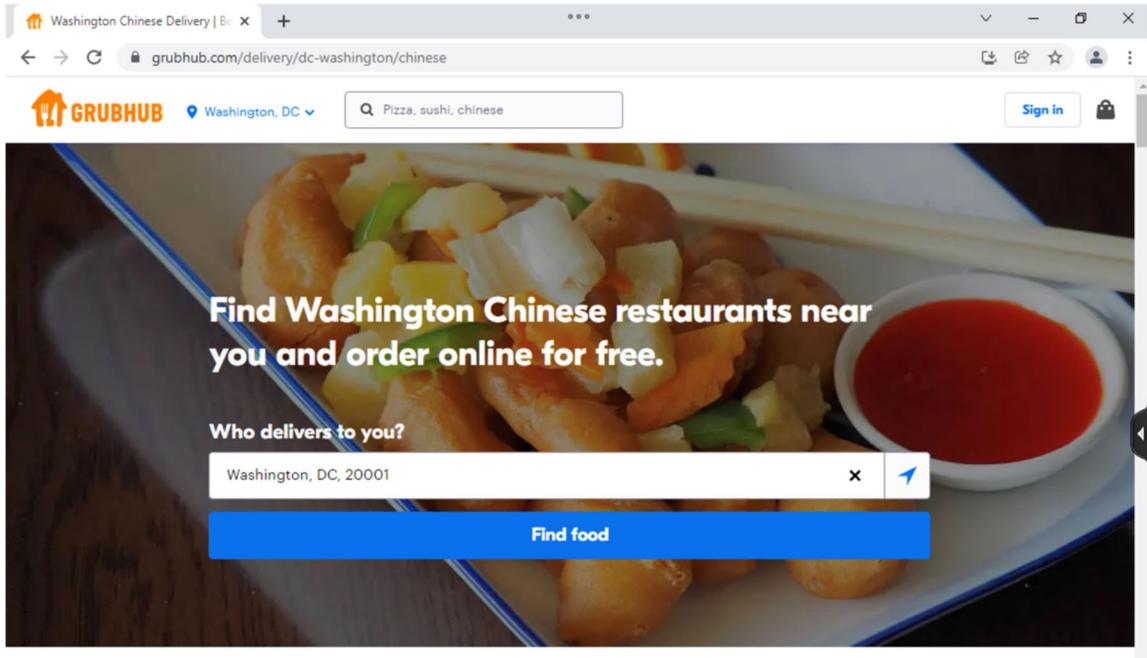
55. Grubhub’s use of dark patterns has benefited the company through the collection of inadequately disclosed fees and has deprived consumers of the ability to make informed purchasing decisions.

E. Grubhub Misrepresents to Consumers that Online Ordering is Free.

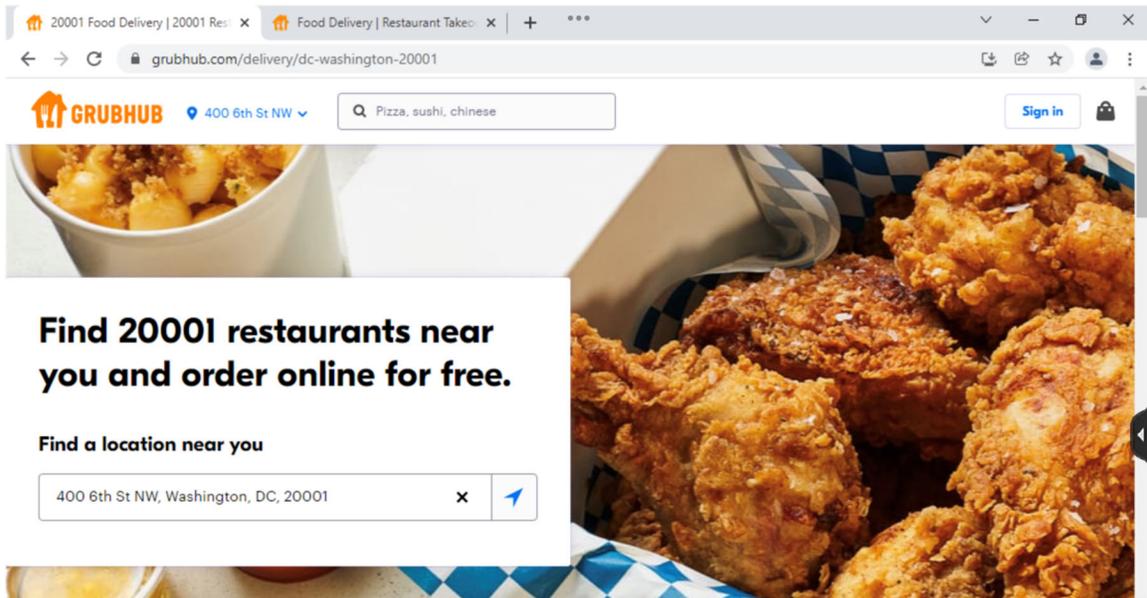
56. Grubhub advertises throughout its website that consumers can find restaurants in the District of Columbia where they can “order online for free.” For example, when conducting a search in Google for “Grubhub DC,” clicking on the link for the Grubhub website, which is one of the search results, reveals the following landing page, as is shown by the screenshot below:



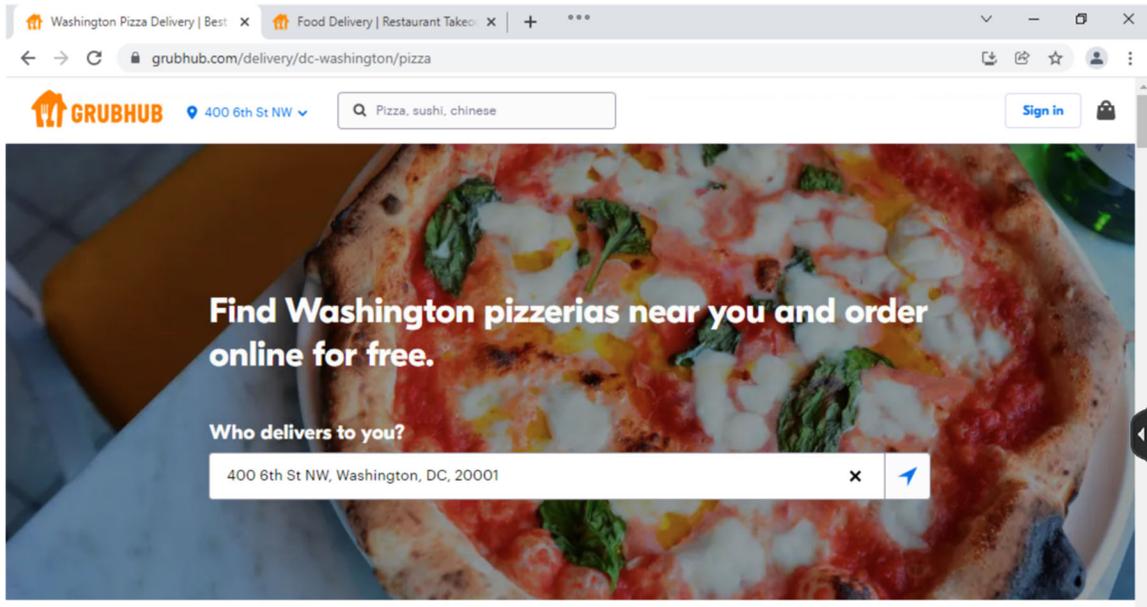
57. Grubhub makes this same deceptive statement when consumers click on any of the different cuisines listed under “Top Cuisines” on the initial landing page, such as “Chinese,” as is shown by the screenshot below:



58. Grubhub also makes this same deceptive statement on its webpages tailored to a specific zip code, such as “20001” in the District of Columbia, as is shown by the screenshot below:

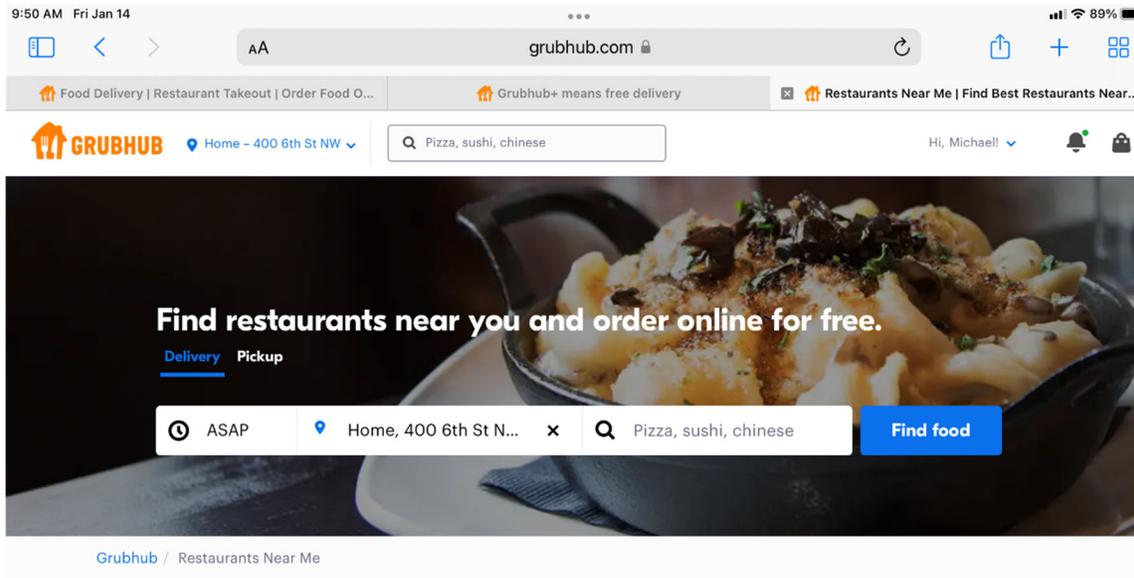


59. Grubhub includes the same deceptive language next to search boxes to search for specific restaurants offering delivery through Grubhub, as is shown by the screenshot below:



60. By including the “order online for free” statement above a search box that will answer the question of “Who delivers to you?”, Grubhub misleads consumers into believing that ordering delivery through the Grubhub website is free, when that is not the case.

61. Indeed, on Grubhub’s webpage that encourages consumers to search for restaurants near them, the “order online for free” statement is located just above a search box in which “Delivery” is selected, as is shown by the screenshot below:



62. Nowhere in any of its advertisements where the “order online for free” statement is used does Grubhub disclose to consumers that they will be subject to certain fees for placing online delivery orders through Grubhub.

63. Indeed, in one of Grubhub’s questions and answers in its FAQ section on its homepage, Grubhub provides a detailed answer to the question of how much it costs to use Grubhub, as is shown by the screenshot below:

So, what’s it cost to use Grubhub?

Grubhub is free to use. You’ll have to pay for the food and, if you opt for delivery, you may notice that the restaurant charges a fee for delivery. In that case, the fee is set by the restaurant or the delivery service the restaurant utilizes and would apply even if you placed your order by phone.

64. Even for the subset of consumers who happen to navigate to and read this FAQ, those consumers would likely conclude that if they placed a delivery order through the Grubhub website that there would not be any fees charged by Grubhub, and that the only fee that may apply would be a separate delivery fee charged by the restaurant. Like its “order online for free” advertisements, Grubhub fails to disclose to consumers in its FAQ section that delivery orders are subject to an additional “Service fee” and “Small order

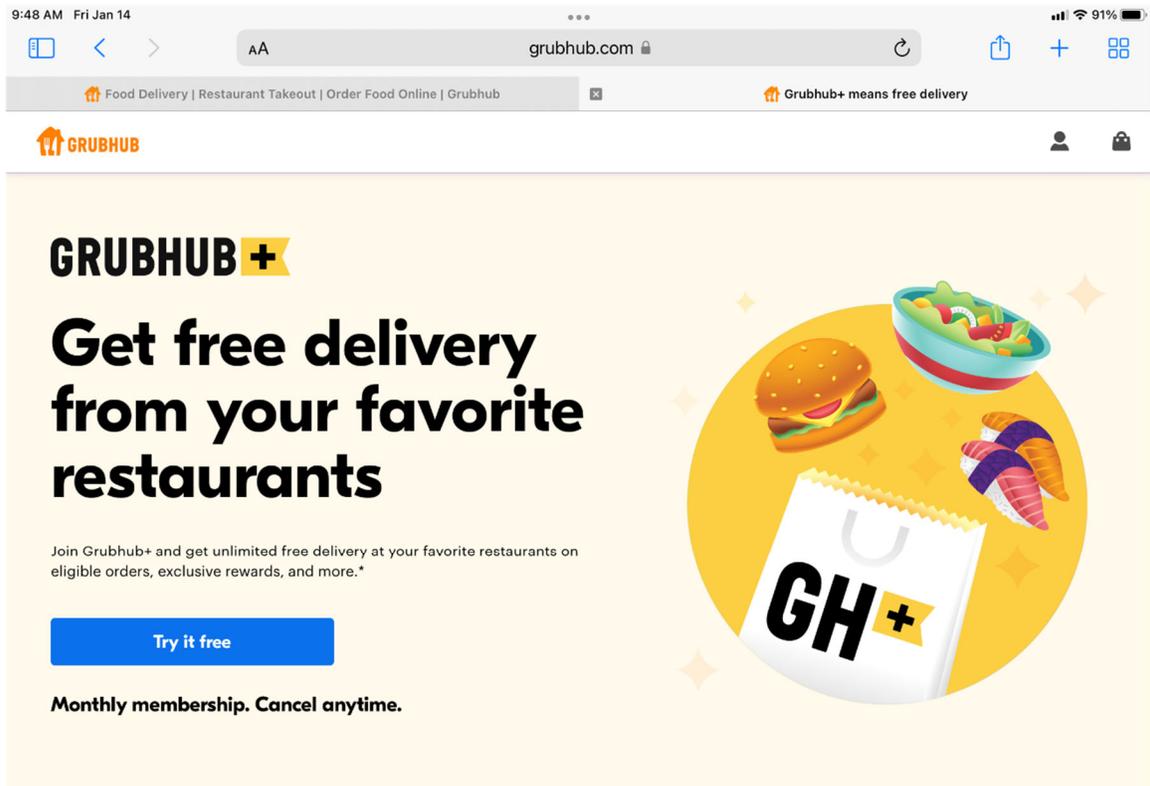
fee.” As discussed in Section D, *supra*, Grubhub does not disclose these fees to consumers until checkout, and even then, they are obscured.

65. Although consumers *can* order online for free on the Grubhub website if they use pickup instead of delivery, this simple fact is not clearly disclosed. Instead, Grubhub fails to differentiate between pickup and delivery orders in its advertising to consumers that they can “order online for free.” Moreover, the option of “delivery” is already preselected on the Grubhub website by default when a consumer initiates a search.

F. Grubhub Misrepresents to Consumers that its Grubhub+ Subscription Service Includes Free Delivery.

66. In addition to its regular food delivery service, Grubhub offers consumers a subscription service called “Grubhub+,” which is available to consumers throughout the United States, including in Washington, DC, at a current charge of \$9.99 per month (plus applicable tax).

67. Grubhub+ is marketed to consumers as providing “unlimited free delivery at your favorite restaurants on eligible orders.” Grubhub promotes Grubhub+ on both its website and app. The following is an example of one of these promotions, as shown by the screenshot below:



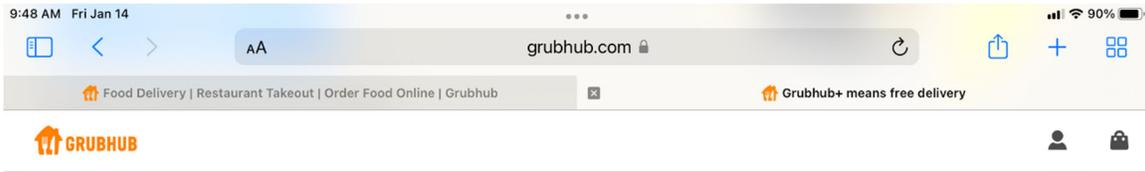
68. Grubhub touts that Grubhub+ subscribers are not charged “Delivery fees” on orders over \$12 that are placed with eligible restaurants. However, subscribers who place delivery orders fulfilled by Grubhub’s drivers are still charged “Service fees” for those deliveries.

69. Grubhub’s advertisements promoting Grubhub+ do not adequately disclose to consumers that they are still subject to “Service fees” for delivery orders if they enroll in Grubhub+. Indeed, Grubhub mentions “free delivery” at several points at the top and middle of the webpage promoting Grubhub+, including representations next to a large blue button encouraging consumers to “Try it free”:



Join Grubhub+ and get free delivery starting today

[Try it free](#)



Free delivery, Perks, and more



Unlimited free delivery

Get free delivery on orders of +\$12 from GH+ restaurants



Exclusive Perks

Enjoy exclusive Perks and rewards with every order



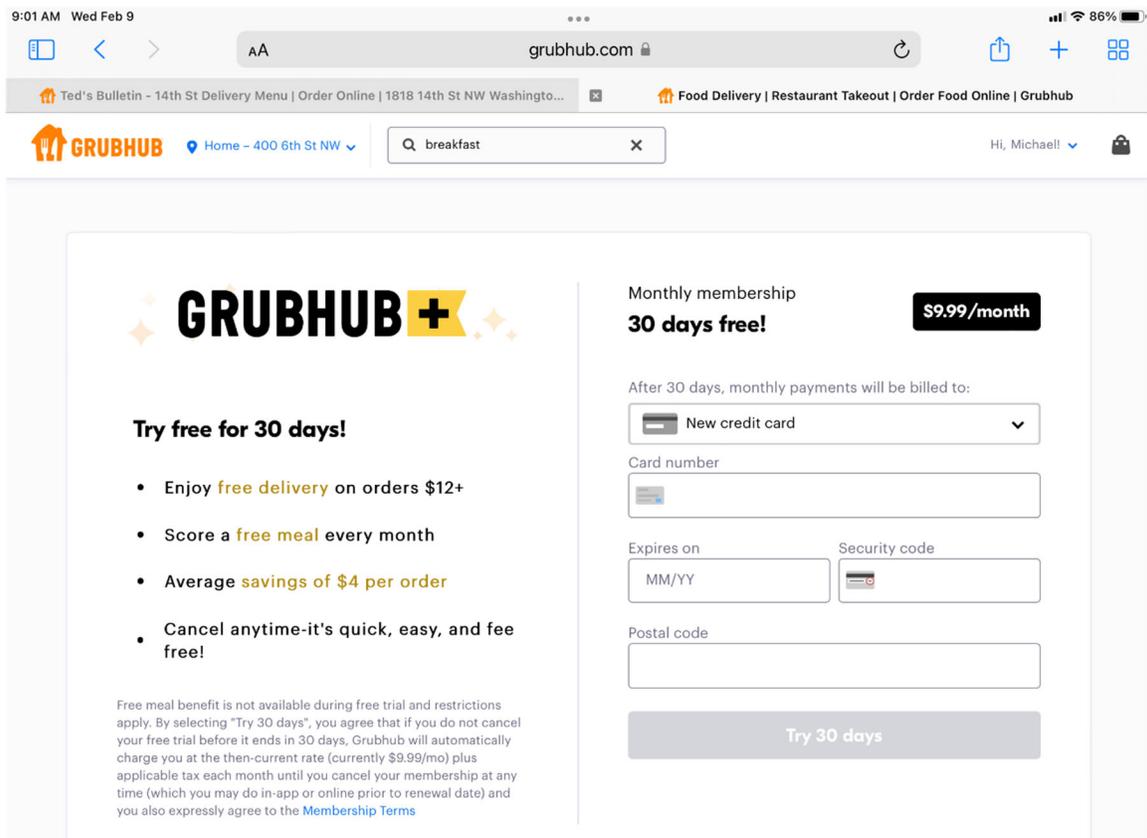
Donation match

Donate your change to charity at checkout on GH+ orders, and we'll match every cent

70. Only by scrolling to the very bottom of this webpage are consumers presented with an inconspicuous disclaimer in fine print stating, among other things, that: “Additional fees (including, a service fee) may apply and vary on orders.” Because this disclaimer is far removed from the large blue button at the top of the webpage, which encourages consumers to try Grubhub+ for free, consumers are unlikely to see (and even

less likely to read) this disclaimer. Moreover, even for consumers who do read the disclaimer, Grubhub’s use of the word “may” suggests that there are instances where Grubhub+ subscribers would not be subject to a “Service fee” for delivery. That suggestion is misleading because “Service fees” are always charged when delivery is performed by Grubhub’s third-party delivery drivers.

71. When consumers click on one of the large blue buttons to “Try it free,” they are presented with a new webpage where they can enter their payment information and enroll in the 30-day free trial, as shown by the screenshot below:



72. Although there is a disclaimer in fine print at the bottom left-hand side of the webpage, this disclaimer does not mention the “Service fee” at all. Instead, it provides terms and conditions related to the 30-day free trial.

73. Only by clicking on the link in the disclaimer for “Membership Terms” are consumers presented with a new webpage that contains the full “Membership Terms of Use.” The “Membership Terms of Use” for Grubhub+ is a lengthy document that most consumers are unlikely to find, let alone read. However, even if a consumer were to find and read the document, the relevant language about “Service fees” is located about a quarter of the way down, past legal language that most consumers would find hard to comprehend. Indeed, the language about “Service fees” is complex and confusing, stating that “Unless otherwise expressly stated in a Membership Offer, other fees, including small order fees, driver benefits fees, and service fees, may apply and vary, and will not be affected or discounted as a result of your membership.” As stated above, Grubhub’s use of the word “may” remains misleading because a “Service fee” is always charged when placing an order for delivery using Grubhub’s third-party delivery drivers, even with Grubhub+.

74. After enrolling in Grubhub+, a subscriber placing a delivery order does not actually see the “Service fee” until checkout, similar to a consumer using the non-subscription Grubhub checkout process, as discussed in Section D, *supra*. This practice is deceptive, as a consumer would expect that all applicable Grubhub fees—not just the “Delivery fee”—would be disclosed at the outset of the order, before the consumer has taken the time and effort to make restaurant and menu selections.

75. Grubhub’s practice of representing that Grubhub+ provides “unlimited free delivery,” while failing to disclose its “Service fee” until late in the ordering process—after consumers have invested time and effort—and even then, obscuring it with other taxes or

fees, has benefited Grubhub through its enrollment of consumers into a subscription-based service and has deprived consumers of the ability to make informed purchasing decisions.

G. Grubhub Uses Deceptive Phone Numbers on Its Website and App in Order to Collect Extra Commissions.

76. From January 2016 until August 23, 2021, Grubhub generated its own telephone numbers for certain of its Washington, D.C.-based Partner Restaurants, presenting those phone numbers to the public as if they were the restaurants' own direct numbers, while secretly taking commissions from orders placed through calls made to those numbers.

77. Grubhub purchased these "Routing Telephone Numbers" from business telephone systems companies, then generated and assigned them to Grubhub's Partner Restaurants that either chose to facilitate their own delivery (i.e., self-delivery Partner Restaurants) or that did not provide delivery to diners (i.e., pickup only Partner Restaurants). Grubhub then listed the Routing Telephone Numbers, which often featured local area codes to suggest to consumers that they reflected the restaurants' direct phone numbers, on the Grubhub platform's menu pages for the Partner Restaurants.

78. On the Grubhub platform, the Routing Telephone Numbers appeared in two separate places. The first was near the top of the webpage, under the restaurant's name next to the address. The second was near the bottom of the webpage, under the restaurant's "Menu Info" section.

79. However, Grubhub failed to adequately disclose to consumers on both its app and website that the Routing Telephone Numbers were controlled by Grubhub and that Grubhub took commissions from Partner Restaurants for orders placed through those numbers. This also was not disclosed when consumers called the numbers. Although an

automated message typically was played at the beginning of those calls—for example, to inform the consumer that the call would be recorded—the vast majority of those messages did not mention Grubhub, and none of them disclosed the fact that Grubhub would charge commissions to the restaurant. This limited consumers’ ability to choose to place a telephone order directly with a local restaurant so that the restaurant would not be subjected to Grubhub’s commissions.

80. Grubhub charged Partner Restaurants a commission for each order that a consumer placed through a Routing Telephone Number—either a flat fee or a percentage of its average sale. Grubhub did not directly monitor calls placed through Routing Telephone Numbers to calculate commissions. Instead, it used a computer algorithm to determine the likelihood that a particular call was an order, rather than for some other purpose, such as inquiring about the restaurant’s hours. It then used that algorithm to determine whether to charge the restaurant a commission for the call.

81. Grubhub altered its practices relating to Routing Telephone Numbers on or about August 23, 2021, by using customer service agents to take orders from consumers who call restaurants’ Routing Telephone Numbers. Unlike the recordings played prior to this date, the customer service agents now inform consumers that they are placing their orders through Grubhub. Grubhub also recently added a small circle with an “i” next to its Routing Telephone Numbers that, when clicked, reveals some information about “Order Assistance,” and that Grubhub’s terms of use and privacy policy apply.

82. However, prior to August 23, 2021, Grubhub engaged in deceptive practices by listing Telephone Routing Numbers in a manner that suggested to consumers that they were the restaurants’ direct phone numbers, such that no third party would be charging the

restaurant a commission for orders placed through those numbers. Yet again, Grubhub created a false impression and failed to correct it, thus diminishing consumers' information and options in deciding how to order meals.

H. Grubhub Deceives Consumers with Misleading Restaurant Websites.

83. From 2011 through 2018, Grubhub created, and registered domains for, hundreds of microsites for certain of its Washington, D.C.-based Partner Restaurants. These microsites were made to look like the restaurants' official websites, containing the restaurant's name, street address, and often its official logo and pictures of actual menu items. However, Grubhub used these websites to funnel consumers to Grubhub, with Grubhub taking commissions from those orders.

84. Although Grubhub stopped creating new microsites or registering domain names on behalf of restaurants sometime in 2018, a number of those websites for restaurants available to District of Columbia remained active and were in use as of February 2022.

85. An example of an active Grubhub microsite for a District restaurant is shown in the screenshot below:

PJ Clarke's Express

1600 K St NW, Washington, DC 20006

ORDER NOW



Top dishes



Classic Caesar Salad

Romaine Hearts, Parmesan and kitchen Croutons.

NY Style Cheesecake w/ Blackberry Compote

Classic NY Style Cheesecake made in house and topped with a Tart Blackberry Compote

86. Although Grubhub’s microsites contain “Reviews from Grubhub,” the fact that such reviews are listed under the heading “Our reviews,” and are reviews about the restaurant, suggests that the website is the restaurant’s, not Grubhub’s, as is shown by the screenshot below:



Our reviews

Reviews from Grubhub



<p>Patrick 2 reviews</p> <p>★★★★★</p> <p>Ive ordered from PJs a few times for delivery about .5 miles away, and it is significantly better service and quality than the other options on GrubHub that Ive tried. It comes pretty quick - usually... ▾</p>	<p>Scott 4 reviews</p> <p>★★★★★</p> <p>We were in DC for a few nights. PJ Clarkes was amazing. The food was on time, and the food was prepared perfectly. I will order again, next time Im in town.</p>
<p>Carrie 1 review</p> <p>★★★★★</p> <p>The food was great...very tasty and special instructions were followed. They should have included plastic ware and napkins though.</p>	<p>Donnie Top Reviewer</p> <p>★★★★★</p> <p>The food was delivered in a timely manner; the driver was very courteous, and the food was hot and the best part delicious.</p>

87. In fact, just below the reviews is a section labeled “About us,” which again lists the restaurant’s street address, as well as a phone number, operating hours, the type of cuisine, and a lengthy description of the restaurant that is written in the first person. Combined, all these features foster the impression that it is the restaurant’s official website, as is shown by the screenshot below:

great, I order all the time from PJ Clarke's

About us

1600 K St NW, Washington, DC 20006

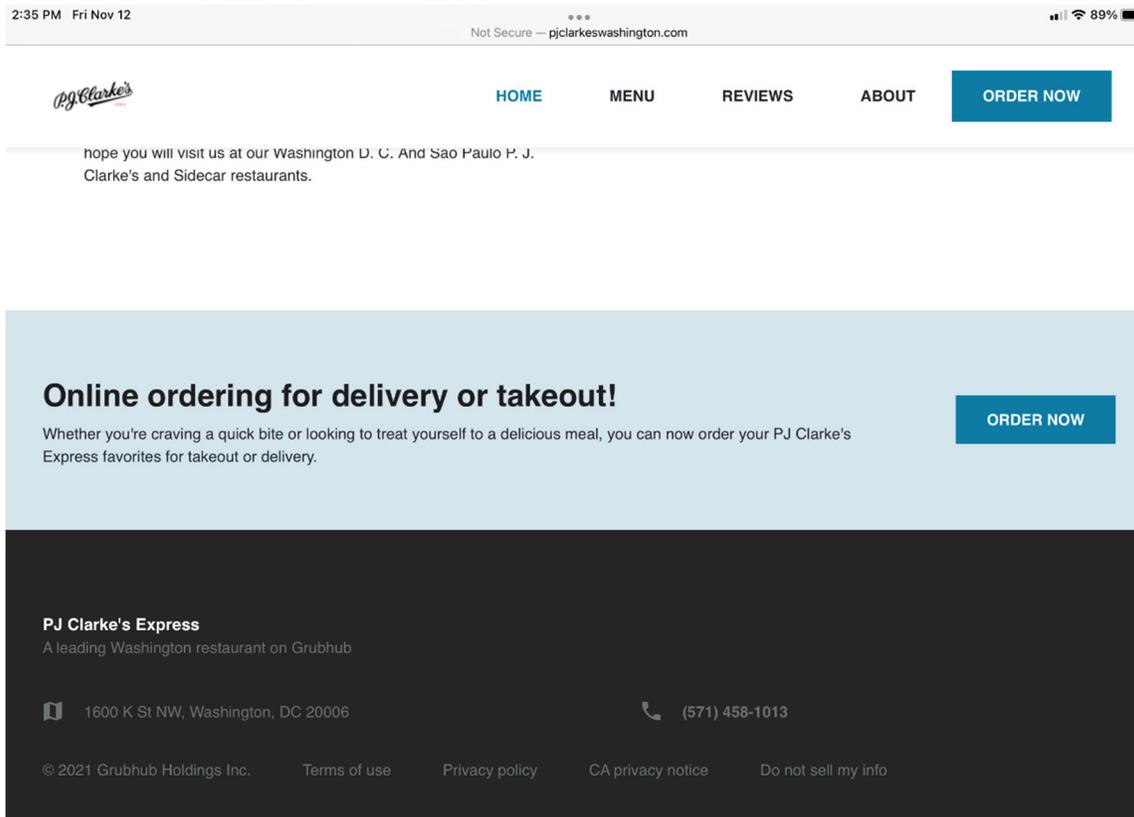
(571) 458-1013

American, Classic, Dinner, Hamburgers, Lunch Specials, Sandwiches

Today Delivery: 11:30 AM - 8:30 PM

Since 1884, this venerable New York institution with its colorful history has entertained the famous, the infamous and everyone else who appreciate the ambiance and food of a real saloon. The pay phone is still "Out of Order", the broken cigarette machine remains broken, and the ashes of one of our favorite patrons, still reside behind the bar. Our little terrier faithfully watches "the joint" while p. J. 'S famous jukebox plays Frank, Buddy and Sting. The wives' beer window stands open and anyone can say "So, set 'em, Joe" where Johnny Mercer penned "One for My Baby". Democracy reigns in the dining room as the newsmaker rubs shoulders with the CEO sitting next to the ironworker. We welcome you for another 12 years (at least) of good food, good drink and great conversation. You can still experience the original P. J. Clarke's on third avenue in New York City but if you are enjoying a show at Lincoln Center or visiting downtown Manhattan the same great food and hospitality can be found at our Lincoln Square and Hudson River locations. We also hope you will visit us at our Washington D. C. And Sao Paulo P. J. Clarke's and Sidecar restaurants.

88. Indeed, a consumer must scroll down to the bottom of the microsite webpage to find further references to Grubhub, which are in the form of a nondescript copyright notice and an obscure statement that the restaurant is “A leading Washington restaurant on Grubhub.” However, most consumers are unlikely to see these references because they are at the bottom of the webpage and are not conspicuous, as is shown by the screenshot below:



89. When a consumer clicks on the “ORDER NOW” button on the microsite, the consumer is redirected to the restaurant’s Grubhub menu page to complete the order. Because it is not uncommon for a restaurant to have links on its official website to various preferred third-party delivery websites, the fact that Grubhub’s microsities redirect consumers who click on the “ORDER NOW” button to Grubhub would not necessarily arouse suspicion that the microsite is controlled by Grubhub.

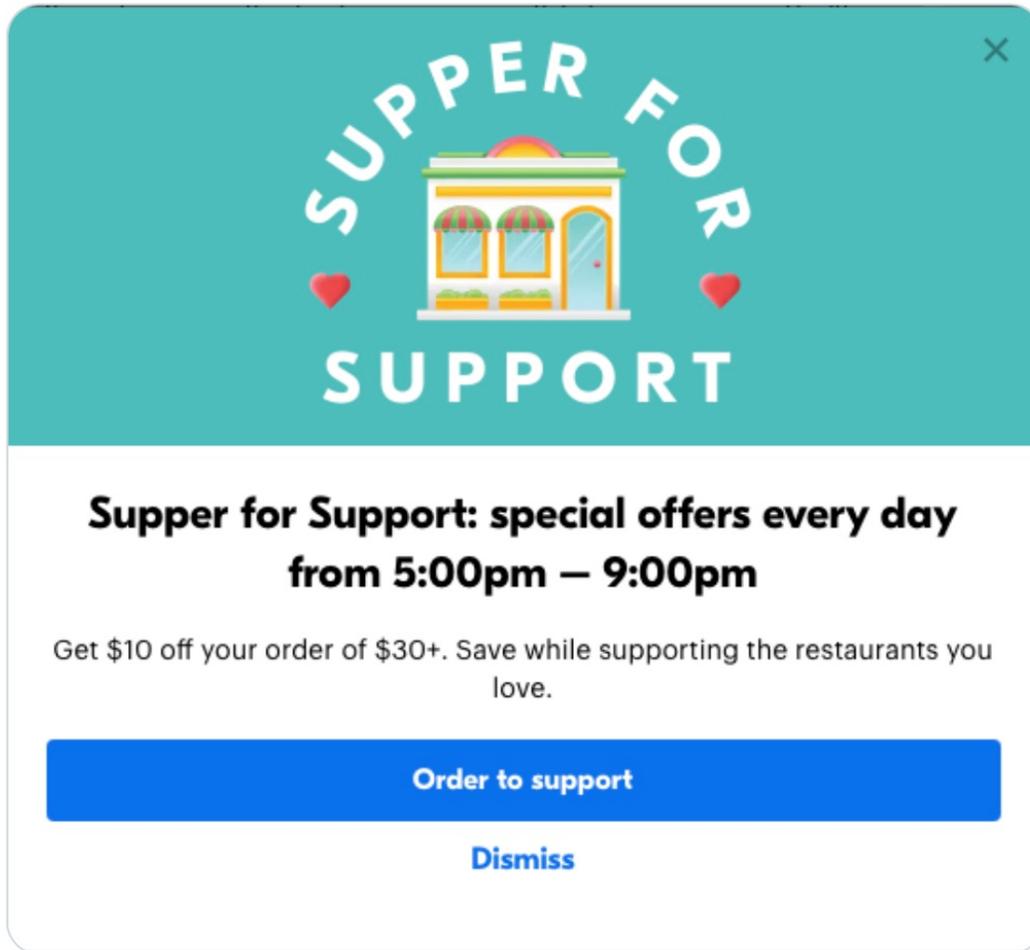
90. After an order that is initiated through a microsite is placed on Grubhub, the company can charge the Partner Restaurant a marketing commission, which is in addition to the commission it receives for listing the restaurant on its platform. Although the amount of commission charged for orders placed through microsities has varied over time, Grubhub continues to charge commissions to Partner Restaurants located in the District of Columbia for all orders placed through its microsities.

91. This practice by Grubhub of using microsites is simply a way to deceive consumers into ordering from a Grubhub-controlled website, where Grubhub can collect an added commission, instead of from the restaurant's own official website, which is not subject to a commission. This impacts consumers' ability to make informed decisions about where and how to order from, and support, their local restaurants.

I. Grubhub Touted its Supper for Support Promotion as a Way to Help Struggling Restaurants During the Covid-19 Pandemic But Restaurants Shouldered the Costs of the Promotion.

92. On March 27, 2020, Grubhub launched a new promotion throughout the United States, including in the District of Columbia, called "Supper for Support." Grubhub told consumers that they could save money while at the same time supporting local independent restaurants hit hard by the Covid-19 pandemic.

93. Pursuant to this promotion, Grubhub told consumers the following: "Every day, from 5:00pm – 9:00pm, get \$10 off your order of \$30+ with Grubhub. So you can save while supporting the restaurants you love." An example of one of Grubhub's advertisements for Supper for Support is shown in the screenshot below:



94. Grubhub extensively promoted its Supper for Support promotion in March and April 2020 via social media, including Instagram, Facebook, Twitter, and YouTube, as well as on the Grubhub website. Some of these advertisements featured video commercials. These advertisements highlighted how consumers would be supporting local restaurants by partaking in the Supper for Support promotion, as is shown in the screenshots below:

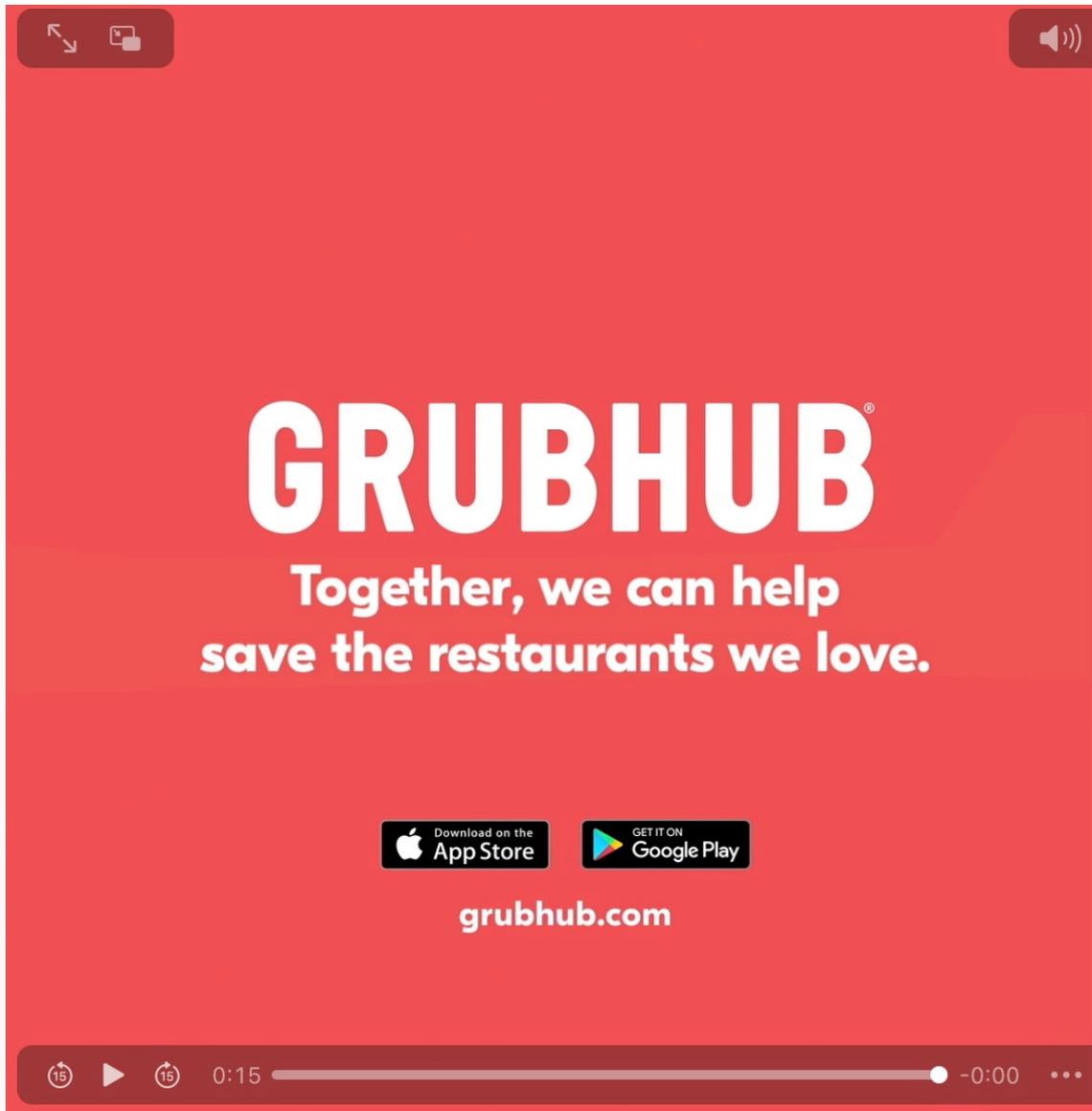
Still Frames from Grubhub's Supper for Support Commercial



**Restaurants need us now
more than ever.**



**So we created Supper for Support
to help out.**



95. Partner Restaurants that agreed to participate in Supper for Support were faced with two costly contractual requirements with respect to the promotion. *First*, restaurants were required to fund the full cost of the \$10 off promotion for each order. *Second*, restaurants were required to pay Grubhub its marketing and delivery commissions based on the higher non-discounted product total rather than the lower amount the customer paid.

96. Grubhub did not disclose to consumers in its advertisements for Supper for Support that participating Partner Restaurants were required to shoulder the entire cost of the \$10 off promotion or that restaurants had to pay Grubhub its commissions on the full price of the food order before the discount.

97. Such costs significantly cut into the gross revenue on each Supper for Support order. The following chart of a hypothetical \$30 order shows the difference in gross revenue between a restaurant participating in Supper for Support and a non-participating restaurant.

Costs and Revenue	Not Participating in Supper for Support	Participating in Supper for Support
Amount that consumer pays the restaurant for food and beverages (before tax)	\$30.00	\$20.00
Amount of Grubhub's Marketing and Delivery Commissions	\$9.00 (30% of \$30.00)	\$9.00 (30% of \$30.00)
Gross Revenue for the restaurant (based on a \$30 order)	\$21.00 (\$30.00 minus \$9.00)	\$11.00 (\$20.00 minus \$9.00)

98. Grubhub usually charged Partner Restaurants in the District of Columbia a combined 30% marketing and delivery commission during the time the Supper for Support promotion was in effect. Therefore, based on the Terms and Conditions of Supper for Support that Grubhub imposed on participating Partner Restaurants, with respect to funding the full cost of the promotion and paying commissions on the non-discounted product total, a restaurant not participating in the promotion would keep \$21 in gross revenue on a \$30 order, while a restaurant participating in the promotion would only keep \$11 in gross revenue.

99. In late March 2020, Grubhub touted how Supper for Support was helping boost sales for restaurants, when it claimed that “local restaurants that chose to participate in the optional initiative have, on average, seen a more than 20 percent increase in the number of orders they have received as well as overall sales.” However, even assuming a 20% increase in the number of orders, many restaurants that participated in Supper for Support would still end up doing worse than if they did not participate. For example, without Supper for Support, a restaurant would see gross revenue of \$315 on fifteen \$30 orders. With Supper for Support, assuming a 20% increase in orders, that same restaurant would see gross revenue of \$198 on eighteen \$30 orders. Thus, this restaurant would make \$117 more in gross revenue by not participating in Supper for Support than if they did participate, even with a 20% increase in orders.

100. Several days after Supper for Support first launched, a number of publications such as Eater, The Verge, and PYMNTS.com began criticizing Grubhub in news articles over its Supper for Support promotion, with headlines such as “Grubhub Asks Restaurants to Foot the Bill on ‘Supper for Support’ Promotions,” “Grubhub’s \$10 Off Promo Forces Restaurants to Front the Discount Costs While Being Charged Full Commission,” and “Restaurants Cry Foul as Grubhub Makes Them Eat a \$10 Off Deal,” respectively.

101. As a result of such criticism, Grubhub began offering participating restaurants a credit of up to \$250 to cover the \$10 discount on the first 25 orders made under this promotion, in what Grubhub dubbed internally as “Supper for Support 2.0.” However, if Partner Restaurants wished to continue participating in Supper for Support after the \$250 credit was exhausted, they would have to again cover the full cost of the \$10

discount. Moreover, according to the Terms and Conditions of the Supper for Support contract, participating restaurants were required to honor up to 100 redemptions of the \$10 off discounts per day.

102. Consumers exposed to Grubhub's "Supper for Support" advertisements, including its statements that Grubhub "created Supper for Support to help out" restaurants, and that the promotion would "help save the restaurants we love," were likely to believe that restaurants were in fact benefitting from this program, and that the costs were being borne exclusively by Grubhub, when that was not the case.

103. In the District of Columbia alone, consumers redeemed over 10,000 Supper for Support discounts. As a result, Grubhub earned tens of thousands of dollars in additional revenue through Supper for Support, while deceptively advertising to consumers that the program was primarily benefitting restaurants.

Count I
(Violations of the Consumer Protection Procedures Act)

104. Plaintiff realleges and incorporates by reference paragraphs 1 through 103, as if fully set forth herein.

105. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful, non-deceptive information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

106. The services that Defendants provide consumers are for personal, household, or family purposes and, therefore, are consumer goods and services.

107. Defendants, in the ordinary course of business, supply consumer goods and services and, therefore, are merchants under the CPPA.

108. Users of Defendants' services receive consumer goods and services in the form of food delivery services from Defendants or their agents and are therefore consumers under the CPPA.

109. The CPPA prohibits unfair or deceptive trade practices in connection with the offer, sale, and supply of consumer goods and services.

110. Defendants, in the course of marketing, promoting, selling, and supplying their services, have engaged in a course of trade or commerce which constitutes false, deceptive, or misleading acts or practices, and is therefore unfair or deceptive under the CPPA, including:

- a. Representing that they have a sponsorship, approval, status, affiliation, certification, or connection to list certain restaurants on their website and app that they do not have, in violation of D.C. Code § 28-3904(b);
- b. Misrepresenting to consumers the following, in violation of D.C. Code § 28-3904(e):
 1. That Grubhub has a business relationship with Non-Partner Restaurants that have been listed on Grubhub, and that they are authorized to list Non-Partner Restaurants on Grubhub;
 2. That menu prices listed on Grubhub's website and app will accurately reflect the prices listed on restaurants' own dine-in and website menus;
 3. That the "Delivery fee" is the only fee that they will have to pay for using the Grubhub website and app;

4. That the Grubhub+ service provides subscribers “free delivery,” when subscribers must pay a “Service fee” on each delivery order fulfilled by Grubhub’s third-party delivery drivers;
 5. That the Routing Telephone Numbers listed on Grubhub’s menu pages are the restaurants’ own official telephone numbers;
 6. That the microsites that Grubhub has created and registered domains on behalf of its Partner Restaurants are the restaurants’ own official websites; and
 7. That the Supper for Support promotion was helping independent local restaurants by offsetting lost revenue.
- c. Failing to adequately disclose material information to consumers concerning the following, in violation of D.C. Code § 28-3904(f):
1. The fact that Non-Partner Restaurants listed on Grubhub do not have a business relationship with Defendants and that these Non-Partner Restaurants have not authorized Defendants to list them on Grubhub;
 2. That the prices of certain menu items on Grubhub are higher than the prices for the same exact items elsewhere, including at the restaurant and on the restaurant’s official website;
 3. Certain fees, such as “Service fees” and “Small order fees,” that Defendants charge on Grubhub;
 4. That consumers can order online for free only with respect to pickup orders;

5. That Grubhub+ subscribers must pay Grubhub a “Service fee” to obtain delivery from Grubhub’s third-party delivery drivers;
 6. Their use of Routing Telephone Numbers on Grubhub, Defendants’ connection to such numbers, and that orders placed through these phone numbers will cause restaurants to pay commissions to Grubhub;
 7. Their use of microsites, Defendants’ connection to such websites, and that orders placed through these websites will cause restaurants to pay commissions to Grubhub; and
 8. That Partner Restaurants participating in Supper for Support had to pay for the full cost of the \$10 discount for each redeemed coupon, and that they had to pay Grubhub commissions on the full (non-discounted) price of the order total.
- d. Failing to adequately explain to consumers the following, which constitute ambiguities as to material facts that have the tendency to mislead and are unfair and deceptive trade practices, in violation of D.C. Code § 28-3904(f-1):
1. That not all restaurants listed on Grubhub have a business relationship with Defendants, and thus many were not authorized to be listed on Grubhub;
 2. That the prices of certain menu items on Grubhub are higher than the prices for the same exact items elsewhere, including at the restaurant and on the restaurant’s official website;

3. That certain fees that Grubhub charges consumers, such as “Service fees” and “Small order fees,” are separate from taxes;
 4. That its “order online for free” representations only apply to pickup orders;
 5. That Grubhub+ subscribers must pay Grubhub a “Service fee” to obtain delivery from Grubhub’s third-party delivery drivers;
 6. That Routing Telephone Numbers listed on Grubhub are controlled by Defendants, and that orders placed through these phone numbers will cause restaurants to pay commissions to Defendants;
 7. That microsites are controlled by Defendants, and that orders placed through these websites will cause restaurants to pay commissions to Defendants; and
 8. That the Supper for Support promotion was benefiting Grubhub more than some of its Partner Restaurants, and that some Partner Restaurants were worse off by participating in Supper for Support.
- e. Advertising or offering goods or services without the intent to sell them as advertised or offered, in violation of D.C. Code § 28-3904(h), by advertising a “Delivery fee” for Grubhub’s delivery services that does not accurately reflect the full cost of delivery to the consumer.

PRAYER FOR RELIEF

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendants, as follows:

- (a) Permanently enjoin Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, pursuant to D.C. Code § 28-3909(a), from engaging in false, misleading, or deceptive practices in the marketing, promotion, selling, and distribution of their services on Grubhub’s platform;
- (b) Award such relief as the Court finds necessary to redress injury resulting from Defendants’ violations of the CPPA, including disgorging monies from Defendants based on their unlawful conduct and/or requiring Defendants to pay damages and restitution;
- (c) Order the payment of statutory civil penalties pursuant to D.C. Code § 28-3909(b) for each and every violation of the CPPA;
- (d) Award the District the costs of this action and reasonable attorney’s fees pursuant to D.C. Code § 28-3909(b); and
- (e) Grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Respectfully submitted,

Dated: March 21, 2022

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