

**Business**

## Competition Bureau sues Cineplex for drip pricing in possible 'precedent-setting' case

By **Anosha Khan**

(May 23, 2023, 1:23 PM EDT) -- The Competition Bureau has filed an application against Cineplex Inc. for adding a \$1.50 allegedly fixed obligatory fee per movie ticket, constituting as drip pricing contrary to new deceptive marketing provisions of the *Competition Act*.

"A Bureau investigation found that many consumers cannot buy tickets on Cineplex's website or mobile app at advertised prices because it adds a mandatory \$1.50 online booking fee to the price of a ticket," it said in a May 18 release.

The bureau is seeking administrative monetary penalties, declaratory relief and restitution of the amount, among other relief. In its application, the bureau alleged that Cineplex is promoting its movie tickets at unattainable prices because of the fixed obligatory fee on top of the initial ticket price represented.

A fixed obligatory charge constitutes a false or misleading representation under the Act. The bureau claimed Cineplex should have been aware of amendments to the Act, where drip pricing was identified as a harmful business practice, since they came into force in April 2022, while Cineplex began to charge the extra amount in June 2022.

In its own May 18 statement, Cineplex said that it is seeking an early determination and expects the application "to be dismissed quickly as it has no merit."



Kenneth Jull, Gardiner Roberts LLP

Kenneth Jull of Gardiner Roberts LLP, who was counsel for the bureau in the misleading pricing case against Ticketmaster where it was inflating the cost of tickets before purchase completion, said that while it may be proven that Cineplex engaged in deceptive marketing, that "doesn't get the bureau home" as it has to show that the practice was false or misleading in a material respect.

He expects that Cineplex will argue that a \$1.50 online booking fee is not material since it's a relatively small amount, while the bureau may argue that \$1.50 on a \$12 ticket is 10 per cent, which is material. According to the application, Cineplex has generated \$17 million in nine months since the fee implementation and "continues to generate significant revenues." Jull said that the bureau may argue that since Cineplex was aware of the amendments, customers should be reimbursed for the

\$1.50.

What is significant about this case, Jull said, is that the new amendments in the Act have not yet been tested in this manner.

"There are no cases yet under this new legislation. So that's why this is interesting," he said. "This case is going to be precedent-setting, where the tribunal will, for the first time, rule on the meaning of these new drip pricing provisions."

He expects the bureau will argue that it is possible for the price to be upfront, as Ticketmaster had changed its interface to reflect the same, where all extra fees are visible on the first screen and there are "no surprises." Cineplex may argue that if one doesn't want to pay the fee, they do not have to get an advanced ticket online and can opt to buy it at the theatre. This could be a triable issue, he said.

Jull added that people may argue that the fee is visible before credit card information is entered, but customers are more likely to pay the fee since they have taken time and exerted effort to get to that page.

"All of this excitement of going through this process and getting that ticket and feeling now it's your ticket, it creates that endowment effect. And then therein lies the drip. By the time you get to the \$1.50 You're not going to go back, because it's your ticket and you've invested the time to go through the process," he said.

"The harm in my view is that there is a point where you might actually decide not to buy that ticket. And maybe a person on a limited budget, shouldn't buy that ticket, or should spend their money on something else. But the psychological process of going through this has taken some of the rationality of the decision and replaced it with more behavioural thought."

He emphasized that it's up to the consumer to decide, upfront, whether they want to pay the \$1.50, which should be on the first screen where the price is advertised.

"Consumers expect to pay the advertised price," said Matthew Boswell, commissioner of competition, in the release. "We're taking action against Cineplex because misleading tactics like drip pricing only serve to deceive and harm consumers. For years, we have urged businesses, including ticket vendors, to display the full price of their products upfront. I remind all businesses to review their pricing claims to make sure they do not mislead consumers."

Cineplex said in its statement that it is "not misleading and fully complies with the spirit and letter of the law. There is no merit to the Bureau's allegation."

"We have been working with the Bureau, since late 2022, in an open and transparent manner. Our online booking fee is entirely optional and provides the convenience of advance seat selection," it said. "All of this information is clearly stated on our website."

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