

# United States Senate

WASHINGTON, DC 20510

February 17, 2023

Adam Dewitt  
Chief Executive Officer  
Grubhub, Inc.  
111 W. Washing St, Suite 2100  
Chicago, IL 60602

Dear Mr. Dewitt,

We write today to express concern and seek information about Grubhub’s practices, specifically regarding concerning reports that Grubhub engaged in junk fees, a misleading and harmful practice directed at consumers and small businesses. With 16% of Americans reporting income from an online gig platform<sup>1</sup>, many small businesses struggling to stay open, and many vulnerable Americans relying on food delivery apps during the COVID-19 pandemic, Congress has a responsibility to ensure consumers, workers, and restaurants that rely on those applications have access to a fair and transparent marketplace. To that end, we are writing to request clarification on the current practices by Grubhub that relate to fees, payments to businesses, consumer disclosures, and compensation for delivery workers.

Food delivery apps play an important role in many Americans’ lives, and they experienced massive growth during the pandemic. Unfortunately, however, the industry has been regularly accused of unfair and deceptive practices. These include listing restaurants on its platform without a contract or consent,<sup>2</sup> misleading consumers by charging hidden fees,<sup>3</sup> using bait and switch tactics,<sup>4</sup> and misrepresenting whether tips would ultimately increase driver pay.<sup>5</sup> Consumers should not have to work through a confusing fee structure, deceptive offers and discounts, and potentially inflated prices while attempting to order a meal and support local businesses.

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<sup>1</sup> Monica Anderson, Colleen McClain, Michelle Faverio, and Risa Gelles-Watnick, “The State of Gig Work in 2021”, Pew Research, December 8, 2021, <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>

<sup>2</sup> Ayana Archie, “D.C. sues Grubhub for allegedly using deceptive trade practices”, NPR, March 22, 2022, <https://www.npr.org/2022/03/22/1087988691/washington-dc-attorney-general-DoorDash-food-delivery-lawsuit>

<sup>3</sup> “AG Racine Sues Grubhub for Charging Hidden Fees & Using Misleading Marketing Tactics During the COVID-19 Pandemic to Increase Profits at the Expense of Consumers & Restaurants”, D.C. Office of the Attorney General Newsroom, March 21, 2022, <https://oag.dc.gov/release/ag-racine-sues-grubhub-charging-hidden-fees-using>

<sup>4</sup> *Id.*

<sup>5</sup> “AG Racine Reaches \$2.5 million Agreement with DoorDash for Misrepresenting the Consumer Tips Would Go to Food Delivery Drivers”, D.C. Office of the Attorney General Newsroom, November 24, 2020, <https://oag.dc.gov/release/ag-racine-reaches-25-million-agreement-doordash>

As the COVID-19 lockdown immersed communities around the country in March and April 2020, many restaurants turned to food delivery apps to stay afloat.<sup>6</sup> As a result, companies like Grubhub enjoyed increased profits and unprecedented growth. In the third quarter of 2020, Grubhub reported a 41 percent increase in active diners compared to the year prior.<sup>7</sup> The company also reported 53 percent more revenue than the year prior.<sup>8</sup> Such growth, however, came at the cost of consumers, who are consistently faced with a confusing fee structure, deceptive offers and discounts, and inflated prices.

Of particular concern is Grubhub's deceptive marketing practice and fee structure, a notable example of which was the company's "Supper for Support" program.<sup>9</sup> As restaurants struggled to stay open during the first months of the COVID-19 pandemic, Grubhub launched "Supper for Support," a promotion that offered a \$10 discount on orders of \$30 or more placed between 9 am – 5 pm.<sup>10</sup> Grubhub billed the "Supper for Support" program as a way to "save while supporting the restaurants you love."<sup>11</sup> However, Grubhub did not shoulder the cost of the \$10 discount, instead passing it along to struggling restaurants.<sup>12</sup> In addition, Grubhub reserved the right to charge commissions on the non-discounted total, rather than the amount paid by the customer.<sup>13</sup> To make up for the discount, some restaurants needed to increase their orders by over 20 percent, and even then, the promotion could end up netting them less revenue.<sup>14</sup> Moreover, customers taking advantage of the discount hoping to support a local restaurant may have unwittingly caused the business additional harm.

Grubhub's troubling behavior pre-dates the COVID-19 pandemic. In 2019, the company admitted to adding "non-partnered" restaurants to the platform.<sup>15</sup> As a result, those restaurants had to proactively check the app or else be surprised when they received orders from Grubhub.<sup>16</sup> Grubhub defended the practice saying that competitor companies who used the tactic witnessed growth.<sup>17</sup> In addition, reporting showed that Grubhub created websites and microsites for restaurants without the consent of the restaurant.<sup>18</sup> These websites sometimes posted incorrect information about the restaurant's location or offerings, a tactic employed to maximize

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<sup>6</sup> Levi Sumagaysay, "The pandemic has more than double food-delivery apps' business. Now what?", MarketWatch, November 27, 2020, <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Jeff Clabaugh, "DC sues Grubhub, alleging misleading marketing and hidden fees", WTOP News, March 21, 2022, <https://wtop.com/business-finance/2022/03/dc-sues-grubhub-alleging-misleading-marketing-and-hidden-fees/>

<sup>10</sup> Grubhub Staff, "Supper for Support", Grubhub Blog, April 3, 2020, <https://blog.grubhub.com/support-local-restaurants>

<sup>11</sup> *Id.*

<sup>12</sup> Caleb Pershan, "Grubhub Asks Restaurants to Foot the Bill on 'Supper for Support' Promotions", Eater, March 31, 2020, <https://www.eater.com/2020/3/31/21201207/restaurants-pay-grubhub-discount-support-for-supper>

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Jaya Saxena, "Grubhub's New Strategy is to be an Even Worse Partner to Restaurants", Eater, October 30, 2019, <https://www.eater.com/2019/10/30/20940107/grubhub-to-add-restaurants-without-permission-like-postmates>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Jenny G. Zhang, "Grubhub Says it Didn't Create Fake Websites Without Restaurants' Permission" Eater, July 2, 2019, <https://www.eater.com/2019/6/28/19171476/grubhub-seamless-cybersquatting-restaurant-web-domains>

Grubhub's orders.<sup>19</sup> In short, it appears as though Grubhub will employ misleading strategies so long as it brings in increased revenue-- at the expense of the consumer and the restaurant alike.

Based on these concerning behaviors displayed by Grubhub as well as other deceptive and predatory practices we observed from companies with similar business models, we request answers to the following questions:

1. Please provide information on Grubhub's fee structure, including:
  - a. Information relating to any fee charged for optional marketing programs offered to restaurants.
  - b. Which fees, discounts, and offers are paid by or offered to customers and which fees, discounts, and offers apply to restaurants.
  - c. A state-by-state, per month average and distribution range of the cost to restaurants to partner with Grubhub, including both one-time and recurring fees.
  - d. An average percentage of the total bill and distribution of charges to consumers for each individual fee including, delivery, service, COVID-19 related fees, and any other fees regularly charged.
  - e. Information regarding at what point in the ordering process the customer is made aware of all service charges or fees.
  - f. Information about how the delivery and service charges are determined for each individual order, and how Grubhub and/or the restaurant profits from these charges.
  
2. Please provide information as to how Grubhub's tip structure works, including:
  - a. What percentage of customer tips go to the delivery worker.
  - b. Whether Grubhub uses customer tips to offset the guaranteed flat fee paid to delivery workers.
  - c. Whether Grubhub discloses the amount tipped to a delivery worker before the worker accepts the order?
  
3. How does Grubhub calculate the "base pay" or flat fee paid to delivery workers for any given order?
  
4. Is Grubhub currently adding "non-partnered" restaurants to its platform, or otherwise adding restaurants without their knowledge or consent?
  - a. If no, when did Grubhub end the practice?
  - b. If yes, does Grubhub provide notice that it is adding the restaurant?
  - c. What percentage of restaurants currently listed on Grubhub are "non-partnered"?
  - d. Please describe the process by which a non-partnered restaurant may remove itself from listing on the platform.
  
5. Does Grubhub allow listings with higher prices for items than the prices offered by the restaurant directly?

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<sup>19</sup> Nathaniel Popper, "As Diners Flock to Delivery Apps, Restaurants Fear for Their Future", The New York Times, June 9, 2020, <https://www.nytimes.com/2020/06/09/technology/delivery-apps-restaurants-fees-virus.html>

- a. If yes, does Grubhub disclose the price discrepancy to the consumer in every jurisdiction? How does Grubhub communicate to customers that restaurants may offer lower prices when ordering directly from the restaurant?
  - b. If yes, what percentage of listings contain a discrepancy?
  - c. If yes, on average, how much more are Grubhub listings compared to the price available directly from the restaurant?
6. If yes, is this higher price on Grubhub established by Grubhub or by the restaurant itself? Does Grubhub disclose to customers the commission they receive from any given restaurant on the platform?
- a. Does Grubhub permit restaurants to disclose such information to customers?
  - b. If no, please provide a breakdown of the average commission Grubhub receives from restaurants on the platform.
7. How does Grubhub calculate delivery time?
- a. Does Grubhub offer dynamic pricing based on delivery time and/or times of high demand?
8. Please provide the following information on the “Supper for Support” program:
- a. Were restaurants that participated in the “Supper for Support” program required to fund the full cost of redeemed promotions
  - b. Has Grubhub conducted any internal research to indicate whether program participants benefitted from the program?
  - c. What communication was done to consumers to ensure they had adequate knowledge that restaurants, not Grubhub, would be responsible for the discounted price?
  - d. Did Grubhub supplement restaurant discounts by reducing the fees it collected during the “Supper for Support” program?

Thank you in advance for your cooperation. We look forward to receiving your response by March 3, 2023.

Sincerely,



BEN RAY LUJÁN  
United States Senator

RICHARD BLUMENTHAL  
United States Senator

RON WYDEN  
United States Senator