



Newsroom

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

March 21, 2022

OAG Alleges Delivery Service Used Deceptive Tactics that Harmed DC Residents & Local Restaurants Struggling During the Heart of the Pandemic

WASHINGTON, D.C. – Attorney General Karl A. Racine today filed a lawsuit against Grubhub Holdings, Inc. and Grubhub, Inc. (Grubhub), a food delivery company, for charging hidden fees and using deceptive marketing tactics during the heart of the COVID-19 pandemic to increase profits at the expense of consumers and local small businesses.

The Office of the Attorney General (OAG) alleges that Grubhub's misleading practices harmed District residents who used its service, exploited local restaurants that were suffering during the pandemic, and violated consumer protection laws. OAG's lawsuit seeks to force Grubhub to end its deceptive marketing practices, be truthful about prices and fees, provide restitution to affected consumers, and pay penalties for violating District law.

"Grubhub misled District residents and took advantage of local restaurants to boost its own profits, even as District consumers and small businesses struggled during the COVID-19 pandemic," said AG Racine. **"Grubhub charged hidden fees and used bait-and-switch advertising tactics—which are illegal. On top of that, the company deceived users with a promotion that claimed to support local restaurants during the heart of the pandemic. But in reality, this program cut into struggling restaurants' profit margins while padding Grubhub's bottom line. Consumers don't mind paying for delivery fees, but Grubhub needs to be honest about those fees in the first place. With this lawsuit, we are seeking to force Grubhub to end its unlawful practices and be transparent so DC residents can make informed decisions about where to order food and how to support local businesses."**

"We support and applaud Attorney General Racine for bringing this action to stand up for consumers and local restaurants," said Andrew Kline of the Veritas Law Firm and General Counsel to the Restaurant Association of Metropolitan Washington. **"Although third party delivery services can be important partners of restaurants, they should not exploit either the public nor the businesses they serve with misleading statements and unfair trade practices. The activities of some of these third party delivery companies are particularly troubling as restaurants have struggled to simply survive throughout the pandemic and now through recovery."**

Grubhub is a food delivery company that operates in more than 4,000 cities across the U.S. Consumers place orders through the company's website or app, which then connects the order with a "gig economy" worker who picks it up and delivers it to the consumer. The company makes money by charging consumers fees when they order delivery, and by charging fees and commissions to many of the restaurants that appear on its platform. In 2020 alone—as the COVID-19 pandemic limited indoor dining in many places, including in the District—Grubhub generated approximately \$1.8 billion in revenue.

In its lawsuit, OAG alleges that Grubhub violated the District's Consumer Protection Procedures Act and harmed District consumers by:

- **Running a promotion that falsely claimed to help struggling restaurants during the pandemic:** In March and April 2020, Grubhub offered a promotion called "Supper for Support" that made it seem like the company was helping restaurants that were struggling because of the pandemic. Grubhub offered discounts to encourage users to order and ran ads saying: "Restaurants need us now more than ever," "So we created Supper for Support to help out," and "Together, we can help save the restaurants we love." But Grubhub didn't fully cover the costs of these discounts. Instead, it passed most of the costs of the discounts along to the already-struggling restaurants. Grubhub also forced the restaurants to pay its full commission—based on non-discounted prices—on the discounted orders. This promotion severely cut into restaurants' already-small profit margins, and misled DC residents who believed their orders through Grubhub would help their favorite restaurants.
- **Charging hidden and deceptive fees:** Grubhub hides the true cost of delivery orders from consumers and fails to properly disclose the fees it charges. The company displays a "delivery fee" prominently on restaurant listings, which leads users to

believe that is the only fee it charges. Then, after users select a restaurant and items to order, the company adds an additional “service fee” and “small order fee” (if applicable) at the final step of the checkout process. Until recently, Grubhub further obscured these additional fees by grouping them with taxes at checkout. This practice constitutes a “dark pattern”—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.

- **Failing to disclose that prices are higher in the app or website than at restaurants:** Grubhub’s website and app often list menu items for higher prices than the prices at which those same items are offered elsewhere, including at the restaurant and on the restaurant’s own website. Grubhub does not adequately disclose that consumers may pay higher prices when ordering through their platform, and consumers may not understand they are paying higher prices because they are also paying service and delivery fees.
- **Listing restaurants that did not sign up for the platform:** Since 2019, Grubhub has listed thousands of DC restaurants on its platform without the restaurants’ consent—and misrepresented its relationship with these restaurants to consumers. Listings for restaurants that do not have a relationship with Grubhub are more likely to include incorrect and out-of-date information, including incorrect prices, menu items, and hours. And orders placed with these non-partner restaurants are more likely to be filled incorrectly or cancelled. But Grubhub did not adequately disclose to users which listed restaurants have relationships with Grubhub and which do not.
- **Creating fake websites that funneled users to Grubhub:** From 2011 through 2018, Grubhub created duplicate websites impersonating DC-based partner restaurants in addition to listing the restaurants on its platform. These standalone websites showed up in web searches and appeared to be the official sites of these restaurants—they contained the restaurant’s name, street address, and often its official logo and pictures of menu items. However, when users clicked on the “order now” button, the site redirected to Grubhub. By creating these misleading websites, Grubhub deprived consumers of choices about where and how to order from local restaurants and further enriched itself with commissions.
- **Listing deceptive “routing” phone numbers:** The company listed Grubhub-generated phone numbers for certain partner restaurants and falsely led consumers to believe that these were the restaurants’ official phone numbers. Grubhub charged restaurants commissions when they received orders through these numbers—without adequately informing consumers that orders placed by phone would require restaurants to pay a commission, and, until 2021, without confirming that the numbers were created and run by Grubhub.
- **Misleadingly advertising “free” online ordering:** Grubhub advertises that users can “order online for free,” and places this statement next to a box where they can search for “who delivers to you?” However, if users place orders for delivery, they are still required to pay a fee. Only orders for pickup are actually free.
- **Falsely advertising “free delivery” on subscription services:** To entice users to join its subscription service, Grubhub+, the company uses bait-and-switch advertising tactics. They advertise that subscribers—who pay \$9.99 per month—get “unlimited free delivery” on eligible orders. However, subscribers do not get unlimited free delivery and they are still charged a “service fee” for delivery orders.

The legal complaint against Grubhub is available [here](https://oag.dc.gov/sites/default/files/2022-03/2022-03-21-Grubhub-Complaint.pdf) (<https://oag.dc.gov/sites/default/files/2022-03/2022-03-21-Grubhub-Complaint.pdf>).

Ensuring Gig Economy Companies Follow the Law

AG Racine has also worked to hold gig economy companies accountable for following the same laws as brick-and-mortar businesses—including consumer protection laws and wage and hour laws—and to stop companies from charging illegal hidden fees. OAG sued food delivery service, DoorDash, for its practice of misleading and encouraging consumers to tip for food deliveries, and then pocketing those tips instead of passing them along to workers. OAG recovered \$1.5 million in restitution that was returned to [DoorDash drivers](https://oag.dc.gov/release/ag-racine-reaches-25-million-agreement-doordash) (<https://oag.dc.gov/release/ag-racine-reaches-25-million-agreement-doordash>) to replace tips the company kept for itself. OAG also [sued Instacart](https://oag.dc.gov/release/ag-racine-sues-instacart-charging-district) (<https://oag.dc.gov/release/ag-racine-sues-instacart-charging-district>) for including “service fees” on its platform that looked much like a tip for workers, but instead went to profit Instacart. OAG recovered \$950,000 in restitution to [car owners](https://oag.dc.gov/release/ag-racine-announces-car-sharing-company-getaround) (<https://oag.dc.gov/release/ag-racine-announces-car-sharing-company-getaround>) that experienced theft or damage to their vehicles while listed on the platform from Getaround, a car-sharing company, for failing to pay its taxes and misrepresenting its safety and security features. In January, OAG sued [Arise Virtual Solutions](https://oag.dc.gov/release/ag-racine-announces-lawsuit-against-arise-virtual) (<https://oag.dc.gov/release/ag-racine-announces-lawsuit-against-arise-virtual>), a customer service support company, and Comcast Cable Communications Management for failing to pay legally due wages to customer service agents. OAG has also [sued Marriott](https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort) (<https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort>) for charging deceptive and misleading

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OFFICE HOURS

Monday to Friday,
8:30 a.m. to 5:00 p.m.

400 6th Street, NW
Washington, DC 20001

PHONE: [\(202\) 727-3400](tel:(202)727-3400) ([\(202\) 7273400](tel:(202)7273400))

FAX: [\(202\) 347-8922](tel:(202)347-8922) ([\(202\) 3478922](tel:(202)3478922))

TTY: [\(202\) 727-3400](tel:(202)727-3400) ([\(202\) 7273400](tel:(202)7273400))

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ADDITIONAL CONTACTS

For adult felony and federal cases in the District of Columbia, call the U.S. Attorney's Office at [\(202\) 252-7566](tel:(202)252-7566) ([\(202\) 2527566](tel:(202)2527566)).

For federal cases generally, call the U.S. Department of Justice at [\(202\) 514-2000](tel:(202)514-2000) (<tel:202-514-2000>).



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