

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

RUSSIANHOTLINE.COM, INC. a Florida corporation,
and ANTON KRILLOFF, an individual,

Plaintiffs,

vs.

PAYPAL, INC., a Delaware corporation,

Defendant.

Case No. CI 20-_____

COMPLAINT

COME NOW Plaintiffs, Russianhotline.com, Inc., a Florida corporation (“RH”), and Anton Krilloff, an individual, (“Krilloff”) (collectively “Plaintiffs”), and for their Complaint against Defendant PayPal, Inc. (“PayPal”), state and allege as follows.

PARTIES, JURISDICTION, AND VENUE

1. RH is a corporation, formed under the laws of Florida, with its principal place of business in New York, New York.
2. Krilloff is a resident of N. Miami Beach, Miami-Dade County, Florida.
3. PayPal is a corporation formed under the laws of Delaware with its principal office in San Jose, California and its worldwide operations based in La Vista, Sarpy County, Nebraska.
4. The parties’ relationship is governed, in part, by an agreement specifically stating any dispute must be resolved by a court in either Santa Clara, California or Omaha, Nebraska.
5. The Court has jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302.
6. Venue in Douglas County, Nebraska, is appropriate pursuant to Neb. Rev. Stat. § 25-403.01.

STATEMENT OF FACTS

7. RH is an online retailer of event tickets, specializing in selling and marketing concert and theater tickets to Russian Americans.
8. Krilloff is RH's President and owner.
9. RH's principal market is in the New York tri-state area, with additional sales made in major metropolitan areas on the east and west coast of the United States.
10. PayPal has been Plaintiffs' online payment processor for roughly twelve (12) years.
11. Krilloff is named as the account holder on a PayPal "merchant account."
12. PayPal classifies RH as a "merchant."
13. The relationship between Plaintiffs and PayPal is governed by the PayPal Website Payments Pro and Virtual Terminal Agreement (the "Pro Agreement").

Reserve Funds

14. Pursuant to the Pro Agreement, PayPal maintains the right to retain a portion of RH's sales in what PayPal describes as Reserves.
15. The money held in Reserves (the "Reserve Fund") is shown as "pending" in Plaintiffs' account and Plaintiffs cannot access those Reserve Funds until they are released.
16. The Reserve Fund is set aside in Plaintiffs' PayPal account to cover possible losses due to disputes/chargebacks, claims, or payment reversals, in the unlikely event RH is not otherwise able to cover those same losses.
17. A dispute/chargeback exists when a customer requests a refund of a purchase through their credit card company.

18. In that instance, the credit card company refunds the customer's purchase and then turns to PayPal to refund the credit card company. PayPal, in turn, asks the merchant to make PayPal whole.

19. Normally, PayPal takes dispute resolution funds from the merchant's PayPal account.

20. PayPal will draw upon available Reserve Funds in the event a merchant does not otherwise have enough funds in its PayPal account to cover a dispute reimbursement.

21. Prior to January 16, 2020, PayPal placed no reserve hold on Plaintiffs' funds.

22. On January 16, 2020, PayPal began withholding a large amount of Plaintiffs' daily sales in a Reserve Fund.

23. Specifically, on January 16, 2020, PayPal set aside \$50,000 of Plaintiffs' money into a Reserve Fund and thereafter began withholding 25% of Plaintiffs' daily sales for a one hundred and eighty (180) day rolling period.

24. Throughout the duration of Plaintiffs' relationship with PayPal, both before and after the Reserve Fund was established, disputes/chargebacks were very rare and when they existed Plaintiffs always had funds to cover them.

25. Given their perfect record regarding chargebacks, Plaintiffs strongly opposed PayPal's decision to place the above described reserve on Plaintiffs' sales, arguing the terms of the reserve are groundless, arbitrary, and unnecessary.

Refunds in Response to the COVID-19 Pandemic

26. Plaintiffs capably operated under this new Reserve Fund scheme until the recent COVID-19 outbreak.

27. Most of Plaintiffs' sales are for live performances in the New York tri-state area, with the remainder being live performance in other locations along the east and west coast of the United States.

28. With the current response to the COVID-19 pandemic, all the pending events for which RH sold tickets have been canceled or postponed.

29. Plaintiffs have seen a large increase in refund requests, with Plaintiffs anticipating that eventually every sale will see a request for refund.

30. Plaintiffs must access the Reserve Funds to complete these refunds.

31. PayPal is refusing to release the Reserve Funds so they may be refunded to RH's customers.

32. Ostensibly, PayPal is holding the Reserve Funds to protect itself against loss through credit card chargebacks. However, by refusing to release the Reserve Funds to refund Plaintiffs' customers, PayPal is virtually guaranteeing that credit card chargebacks will happen.

33. If Plaintiffs are unable to access the Reserve Funds, they are incapable of providing their customers with the refunds owed and therefore those customers will have no other alternative than to conduct credit card chargebacks to obtain their money.

34. Under the Pro Agreement, PayPal charges Plaintiffs a penalty of \$20 per chargeback.

35. As of March 21, 2020, PayPal is holding \$157,769.63 of RHL's sales proceeds in the Reserve Fund.

36. Krilloff estimates the amounts in the Reserve Fund represent roughly 1,000 transactions that need to be refunded.

37. If each of those 1,000 transactions resulted in a credit card chargeback, Plaintiffs would be assessed \$20,000 in penalties.

38. Beyond the transactional costs associated with shouldering those chargeback penalties, RH will suffer a significant blow to its reputation as a vendor in the Russian American community.

39. Because of the hold on the Reserve Funds, Plaintiffs no longer have any available money in their PayPal account to cover refunds and must instead, while possible, issue refunds from RH's operating account.

40. Plaintiffs do not have enough money in their operating account to refund the vast majority of the existing and expected refunds.

41. Additionally, issuance of refunds through Plaintiffs' operating account greatly delays the refund process as it requires Plaintiffs' customers wait an extended period to process the refund rather than having the refund issue directly from PayPal back to the customer's credit card account.

CAUSE OF ACTION
(Declaratory Judgment)

42. Plaintiffs incorporate the allegations contained in paragraphs 1 through 41 as if fully set forth herein.

43. Plaintiffs are ready to provide PayPal any assurances and guarantees necessary to ensure that any released Reserve Funds will be used exclusively to refund RH's customers.

44. By refusing to release the Reserve Funds in order that they may be refunded to Plaintiffs' customers, PayPal is engaging in conduct which frustrates Plaintiffs' rights to the

benefits of the parties' agreement, in breach of the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiffs request the Court declare PayPal's refusal to release the Reserve Funds so that they may be refunded to RH's customers is a breach of the implied covenant of good faith and fair dealing. Plaintiffs further request the Court compel PayPal to release the Reserve Funds on the contingency that those released funds be used exclusively to refund Plaintiffs' customers for purchases related to canceled or postponed pending events.

Dated this 31st day of March, 2020.

RUSSIANHOTLINE.COM, INC., and ANTON
KRILLOFF, Plaintiffs,

By: s/ Colin J. Bernard

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