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Cavoto v. Chicago Nat'l League Ball Club, Inc.: Chicago Cubs Ticket Scalping Scandal and the Relationship Between Separate Corporate Entities Owned by a Common Parent

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Cavoto v. Chicago Nat'l League Ball Club, Inc.: Chicago Cubs Ticket Scalping Scandal and the Relationship Between Separate Corporate Entities Owned by a Common Parent

I. INTRODUCTION

An important decision was recently handed down that could have transformed the loveable image of the Chicago Cubs (“the Cubs”) into woefully dishonest ticket scammers.¹ In the class-action lawsuit *Cavoto v. Chicago Nat'l League Ball Club, Inc.*,² the Chicago Tribune-owned Cubs allegedly scalped its own tickets in violation of Illinois law.³

The popular debate, which stemmed from the admiration the Cubs engender from its loyal fans, became entangled with the substantive law. The lawsuit contended that Wrigley Field Premium Tickets, Inc. (“Premium”), a sister company to the Cubs, was established so that the Cubs could withhold tickets from games. Consumers are compelled to buy tickets from its affiliated brokerage at prices above those printed on the ticket.⁴ Not surprising, many considered the Cubs to be scalping its own tickets in violation of the Illinois Ticket Scalping Act. Following the Cubs successful defense, echoes of former Chicago Cubs announcer Harry Caray could be heard emanating from the courtroom: Cubs Win!!! Cubs Win!!!

This Note will discuss whether Premium was merely an extension of the Cubs, or an entirely separate subsidiary corporation. This distinction is crucial when considering whether the Cubs and Premium violated Illinois law and deceived consumers. Part II will discuss the background and legal history of ticket scalping leading up to *Cavoto v. Chicago National League Ball Club, Inc.* Additionally, this section will address the relevant statutes and case law courts consider when asked to disregard the corporate separateness of affiliated corporations. The factors courts take into account when considering claims of consumer fraud, unfair competition and the likely confusion as to the

1. Lester Munson, *Scalp Treatment?: The Cubs are Ticking Off Fans by “Brokering” Tickets for Far Above Face Value*, Sports Illustrated, June 23, 2003, at 22.

2. *Cavoto v. Chicago Nat'l League Ball Club, Inc.*, No. 02 CH 18372 (Ill. Cir. Ct. Nov. 24, 2003).

3. Sara D. White, *For the Record*, Crain's Chicago Business, August 18, 2003, at 42.

4. David Eggert, *Cubs Exec Defends Club's Ticket Brokerage Operation*, Medill News Service, at <http://xavier.cs.northwestern.edu:8000/article.asp?articleID=8137&item=2> (Aug. 13, 2003).

source of sponsorship will also be discussed. Part III will explain the underlying facts in *Cavoto* and the Circuit Court's decision. Part IV will critique the Circuit Court's decision in *Cavoto*. Part V will speculate how *Cavoto* will affect consumers and how other event promoters will alter ticket sales strategies at their venues.

II. BACKGROUND

In order to understand the current state of ticket scalping in Illinois, a brief history of ticket scalping will be discussed. This section will also attempt to clarify the concept of disregarding the corporate form and explain the factors courts examine when determining if corporations are truly separate, co-existing legal entities. How a private individual can establish a cause of action under the Illinois Consumer Fraud and Deceptive Business Practices Act will also be discussed. Furthermore, an explanation of how courts determine whether a practice is unfair will be discussed as well. Finally, this section will examine what a consumer must prove in order to maintain an action under the Uniform Deceptive Trade Practices Act.

a. *Ticket Scalping and Its Legal Evolution*

Ticket scalping is defined as "the reselling of tickets to popular entertainment or sporting events at whatever price the market will bear."⁵ By direct or indirect methods, professional scalpers acquire tickets from the box office and retain the tickets until other buyers have exhausted the box office supply.⁶ Scalpers then offer to resell their tickets at prices substantially higher than their original value.⁷ The event's popularity is the only ceiling for what scalpers charge.⁸ Scalpers damage the goodwill of event promoters. The sudden exhaustion of box office supply and the emergence of scalpers with numerous tickets inevitably induce accusations of fraud and collusion against the promoter.⁹ Thus, promoters detest ticket scalpers.

Nevertheless, while the public and promoters have consistently regarded ticket scalping with antipathy, the opinion of the courts has changed over time. In Illinois, the judicial response to legislative attempts at regulating ticket scalping has varied. In 1907, Illinois adopted a law that "prohibited the sale of tickets for more than the

5. Thomas A. Diamond, *Ticket Scalping: A New Look at An Old Problem*, 37 U. Miami L. Rev. 71 (1982).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

price printed thereon, for theaters, circuses and places of amusement,"¹⁰ and prohibited the establishment of an agency for such a sale.¹¹ However, in *People v. Steele*, the Illinois Supreme Court declared the act to be an unconstitutional violation of the due process clause of the Illinois Constitution.¹² The court reasoned that "[t]here is nothing immoral in the sale of theater tickets at an advance over the price of the box-office. Such sale is not injurious to the public welfare and does not affect the public health, morals, safety, comfort or good order."¹³ The court further contended that the buyer was not compelled, but purchased tickets voluntarily.¹⁴ Hence, the Illinois Supreme Court originally regarded ticket sale restrictions to be arbitrary and unreasonable interferences with the rights of the individuals concerned.¹⁵ Thus, as the Illinois legislature's aversion to ticket scalping became apparent, the Illinois Supreme Court did not originally believe that ticket scalping injured the buyer or the proprietor of a theater.¹⁶

Thereafter, Chicago enacted an ordinance restricting theatre ticket sales and the formation of collusive alliances.¹⁷ The object of the ordinance was to compel impartial treatment of all buyers of tickets by the licensee.¹⁸ However, the Illinois Supreme Court in *People ex rel. The Cort Theater Co. v. Thompson* changed its opinion of ticket scalping. The court conceded that individuals were not technically forced to buy tickets from scalpers, but had a choice between paying the higher price and not attending the ticketed event.¹⁹ The Illinois Supreme Court in *Cort Theater* reasoned that "[w]itnessing a theatrical performance is not one of the necessities of life, but that affords no reason why the legislative power should not be exerted to prevent misrepresentation and fraud in the sale of theater tickets by the thea-

10. *People v. Steele*, 83 N.E. 236 (Ill. 1907).

11. *Id.* at 238.

12. *Id.* at 240.

13. *Id.* at 238.

14. *Id.*

15. *People v. Patton*, 309 N.E.2d 572, 573 (Ill. 1974).

16. *Steele*, 231 N.E. at 238.

17. *People ex rel. The Cort Theater Company v. Thompson*, 119 N.E. 41, 42 (Ill. 1918). The Chicago ordinance stated:

[E]very ticket of admission to a theater shall have printed upon its face the price thereof, and that no licensee, and no officer, manager or employee of the licensee, shall directly or indirectly receive any consideration. . . upon the sale of any such ticket beyond or in excess of the price designated thereon, or directly or indirectly enter into any arrangement or agreement for the receipt of such consideration.

18. *Id.* at 43.

19. *Id.* at 45.

ter owners and to require fair and impartial treatment of the public.”²⁰ Thus, the court upheld the Chicago ordinance.

In *Cort Theater*, a theater owner entered into a collusive alliance where perspective ticket buyers were told the show was sold out and subsequently purchased tickets above face value from a scalper that directed the theater to provide the ticket.²¹ The court believed that the type of collusive alliances the Chicago ordinance was directed at were those where the “theater owner entered into a secret agreement with a ticket reseller in which they both shared in the profits generated by the reseller’s sale of tickets above face value.”²² Thus, the court realized what it refused to recognize in *Steele*; ticket scalping injured consumers.

In 1927, the United States Supreme Court examined a New York ticket scalping law in *Tyson and Brother—United Theatre Ticket Offices v. Banton*.²³ The New York statute forbade the resale of any ticket to any theater “at a price in excess of fifty cents in advance of the price printed on the face of such ticket. . .”²⁴ In addition, the law specifically declared the price of admission to theatres to be a matter affected with a public interest and subject to state supervision in order to safeguard the public against fraud, extortion, exorbitant rates and similar abuses.²⁵ However, the Court was not willing to defer to the New York Legislature’s conclusory assertion that ticket sales were a matter affected with public interest. In rejecting New York’s argument, the Court concluded that the power to fix prices existed only where *the business* was “affected with a public interest.”²⁶ In order for a business to be affected with a public interest, it must be devoted to “a public use.”²⁷ Accordingly, the sales of theatre tickets bore no relation to the commerce of the country; a place of entertainment is in no legal sense a public utility and the regulation of a theatre’s activities can not be justified as an emergency measure.²⁸ As a result, the Court concluded that a theatre was a private enterprise. The Court regarded theatres as historically falling outside the classes of activities that should be controlled.²⁹ The Court further reasoned “[i]t [was]

20. *Id.*

21. *Id.* at 42.

22. *Id.*

23. *Tyson and Brother—United Theatre Ticket Offices v. Banton*, 273 U.S. 418, 427 (1927).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 434.

28. *Tyson and Brother*, 273 U.S. at 439-40.

29. *Id.* at 441.

not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody upon the chance that, while the innocent will surely be entangled in its meshes, some wrong-doers also may be caught.”³⁰ Accordingly, the Court concluded that the New York statute was unconstitutionally over-inclusive.

By 1934, the United States Supreme Court developed a new test for analyzing economic regulations. In *Nebbia v. New York*, the Court held a New York price fixing statute to be constitutional.³¹ The New York legislature desired to remedy the evils in the milk industry by attempting to prevent destructive price-cutting.³² The Court specifically rejected the test enumerated in *Tyson and Brother* by stating “the expressions ‘affected with a public interest,’ and ‘clothed with a public use,’ . . . as the criteria of the validity of price control. . . are not susceptible of definition and form an unsatisfactory test of constitutionality. . .”³³ The Court recognized that “[a]s far as due process is concerned . . . a State is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose.”³⁴ Thus, price control laws are constitutional as long as “laws have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory. . .”³⁵ Using this new test, the Court upheld the New York milk price fixing statute.³⁶ The Court concluded that the law was not unreasonable, arbitrary, or without relation to the purpose of the legislation.³⁷

The Illinois legislature subsequently passed a price fixing statute regulating the sale of tickets to various amusement events.³⁸ The statute was amended in 1935 by adding section 1.5, which prohibited the sale of amusement tickets at a price higher than the price printed upon the face of the ticket.³⁹ However, this amendment was virtually identical to the provision in *Steele* that the court held to be invalid.

30. *Id.* at 443.

31. 291 U.S. 502 (1934).

32. *Id.* at 530.

33. *Id.* at 536.

34. *Id.* at 537.

35. *Id.*

36. *Nebbia*, 291 U.S. at 530.

37. *Id.* at 530.

38. *Patton*, 57 Ill. 2d at 45.

39. *Id.* at 46. The Act provided:

[i]t is unlawful for any person, persons, firm or corporation to sell tickets. . .for a price more than the price printed upon the face of said ticket, and the price of said ticket shall correspond with the same price shown at the box office or the office of original distribution.

Accordingly, the constitutionality of this statute was called in to question in *People v. Patton*.⁴⁰ In sustaining the statute, the Illinois Supreme Court applied the "reasonable relation test" enumerated in *Nebbia* and rejected the application of the "affected with public interest test."⁴¹ The court reasoned that "contrary to the holding of this court in *Steele* . . . it appears that the law is now settled that a State has a legitimate interest in seeking to control the resale price of tickets to places of entertainment and amusement."⁴² In overruling *Steele*, the Illinois Supreme Court concluded that the statute was reasonably related to its objective and did not violate the due process clause.⁴³

Consistent with the Illinois Supreme Court's opinion in *Patton*, courts currently hold anti-scalping legislation not to be a violation of a person's constitutional guarantee of free enterprise.⁴⁴ The court affirmatively recognized that regulating the resale price of sports and entertainment admission tickets are a legitimate state interest.⁴⁵

Subsequent to *Patton*, the Illinois legislature amended the Ticket Scalping Act permitting a reasonable service charge in 1978.⁴⁶ In *People v. Waisvisz*, the court upheld the amended statute.⁴⁷ The purpose of the amendment was to prevent ticket scalpers from purchasing large blocks of tickets for the best seats at sporting and entertainment events and then reselling the tickets at exorbitant prices.⁴⁸ The Illinois Court of Appeals deferred to the legislature's opinion that the public welfare would be furthered by having the tickets freely available for sale at face value or at somewhat higher than face value from a ticket distributor acting with the event sponsor's permission.⁴⁹ The court concluded that the statute was constitutional.⁵⁰ The court reasoned that "[t]he legislature could reasonably have concluded entities acting with permission of event sponsors would not charge the exorbitant

40. *Id.* at 45.

41. *Id.* at 49.

42. *Patton*, 57 Ill. 2d at 47.

43. *Id.*

44. Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects and Criticisms of Current Anti-Scalping Legislation*, 5 Seton Hall J. Sports L. 189 (1995).

45. *Id.*

46. 1978 Ill. Laws 1245. The amendments provided:

Nothing contained in this Act was ever intended to prohibit nor shall ever be deemed to prohibit a ticket seller, with the consent of the sponsor of such baseball game, football game, hockey game, theatre entertainment or other amusement, from collecting a reasonable service charge, in addition to the printed box office ticket price, from a ticket purchaser in return for service actually rendered.

47. 582 N.E.2d 1383 (Ill. App. Ct. 1991).

48. *Waisvisz*, 582 N.E.2d at 1387.

49. *Id.*

50. *Id.*

prices charged by the stereotypical 'ticket scalper,' and specifically provided only a 'reasonable service charge' in addition to the printed ticket price could be imposed."⁵¹

After *Waisvisz*, the Illinois General Assembly affirmatively legalized ticket brokering. Under section 1.5 of the Ticket Scalping Act, ticket brokers are now permitted to sell tickets in excess of the printed box office price by complying with the enumerated requirements.⁵²

51. *Id.*

52. 720 Ill. Comp. Stat. 375/1.5(b). This Act does not apply to the sale of tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind for a price in excess of the printed box office ticket price by a ticket broker who meets all the following requirements:

- (1) The ticket broker is duly registered with the Office of the Secretary of State on a registration form provided by that Office. The registration must contain a certification that the ticket broker:
 - (A) engages in the resale of tickets on a regular and ongoing basis from one or more permanent or fixed locations located within this State;
 - (B) maintains as the principal business activity at those locations the resale of tickets;
 - (C) displays at those locations the ticket broker's registration;
 - (D) maintains at those locations a listing of the names and addresses of all persons employed by the ticket broker;
 - (E) is in compliance with all applicable federal, State, and local laws relating to its ticket selling activities, and that neither the ticket broker nor any of its employees within the preceding 12 months have been convicted of a violation of this Act; and
 - (F) that the ticket broker meets the following requirements:
 - (i) maintains a statewide toll free number for consumer complaints and inquiries;
 - (ii) has adopted a code that advocates consumer protection that includes, at a minimum:
 - (a-1) consumer protection guidelines;
 - (b-1) a standard refund policy; and
 - (c-1) standards of professional conduct;
 - (iii) has adopted a procedure for the binding resolution of consumer complaints by an independent, disinterested third party; and
 - (iv) has established and maintains a consumer protection rebate fund in an amount in excess of \$100,000, at least 50% of which must be cash available for immediate disbursement for satisfaction of valid consumer complaints. Alternatively, the ticket broker may fulfill the requirements of subparagraph (F) of this subsection (b) if the ticket broker certifies that he or she belongs to a professional association organized under the laws of this State. . .
- (2) (Blank)
- (3) The ticket broker and his employees must not engage in the practice of selling, or attempting to sell, tickets for any event while sitting or standing near the facility at which the event is to be held or is being held.
- (4) The ticket broker must comply with all requirements of the Retailers' Occupation Tax Act [35 ILCS 120/1 et seq.] and all other applicable federal, State and local laws in connection with his ticket selling activities.
- (5) Beginning January 1, 1996, no ticket broker shall advertise for resale any tickets within this State unless the advertisement contains the name of the ticket broker

Additional requirements of ticket brokers were enacted in 1995.⁵³ As a result, ticket scalping has become and will continue to be an inherent part of the sports and entertainment industries in Illinois.

b. *Piercing the Corporate Veil*

When operating a business, use of the corporate form presumptively shields the personal assets of the owners from the claims of business creditors.⁵⁴ Accordingly, use of the corporate form provides owners the advantage of securing limited liability. Limited liability is the general rule, not the exception.⁵⁵ Therefore, the purpose of the corporate structure will be protected when the corporation functions as an entity in the normal manner permitted by law.⁵⁶ Exceptional circumstances must be present to appropriately disregard the corporate form. However, the conduct that courts perceive to trigger the doctrine is far from concrete.⁵⁷ The party who wishes the court to pierce the corporate veil bears the burden of proving that there are substantial reasons to do so.⁵⁸

Commonly, a court may be asked to ignore the liability shield when the corporation is unable to pay its debts.⁵⁹ The creditor would like the court to disregard or “pierce” the statutory limited liability shield so that the debts can be satisfied out of the owners or shareholders assets.⁶⁰ Absent a judicial decision to pierce the corporate veil, the limited liability created by the applicable statute stays intact and the creditor shoulders the loss.⁶¹

Additionally, the separate corporate identity of one corporation may be disregarded and treated as the alter ego of another corporation under certain circumstances. Thus, a subsidiary corporation may be deemed the alter ego of its corporate parent.⁶² Ordinarily, when

and the Illinois registration number issued by the Office of the Secretary of State under this Seciton.

- (6) Each ticket broker registered under this Act shall pay an annual registration fee of \$100.

53. Ill. Public Act 89-0406.

54. John H. Matheson and Raymond B. Eby, *The Doctrine of Piercing the Veil in an Era of Multiple Limited Liability Entities: An Opportunity to Codify the Test for Waiving Owners' Limited-Liability Protection*, 75 Wash. L. Rev. 147 (2000).

55. *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 270 (D. Del. 1989).

56. *Zaist v. Olsen*, 227 A.2d 552, 558 (Conn. 1967).

57. *Chicago-Crawford Currency Exchange v. Thillens, Inc.*, 199 N.E.2d 295, 298 (Ill. App. Ct. 1964).

58. *Mobile Oil*, 718 F. Supp. at 270.

59. *Supra* note 54 at 149.

60. *Id.*

61. *Id.*

62. *Mobile Oil*, 718 F. Supp. at 270.

multiple corporations are involved, parties seek to pierce the corporate veil to hold a parent liable for its subsidiary's acts, or the subsidiary responsible for the acts of its parent. However, the equitable doctrine is not limited to the parent-subsidiary relationship.⁶³ The separate corporateness of affiliated corporations owned by the same parent may be equally disregarded.⁶⁴

The factors courts consider when resolving whether a corporation should be treated as an alter ego, mere instrumentality, or agent of another corporation are numerous. However, the reasoning of the cases discussing whether a parent corporation will be held liable for the obligations of its subsidiary has not always been uniform or clear.⁶⁵ "The legal test for determining when a corporate form should be ignored in equity cannot be reduced to a single formula that is neither over - nor under - inclusive."⁶⁶ The terminology used by the courts has not been a model of clarity either.⁶⁷ Courts and parties often use the expression interchangeably, such as the "alter ego theory" and "disregarding the corporate entity" and "piercing the corporate veil."⁶⁸ Nevertheless, the factors courts consider are the same and will be analyzed.

The Seventh Circuit declared "[i]n Illinois, a corporation's "veil" of limited liability may be pierced only if two requirements are met: first, there must be [a] unity of interest. . . .; and second, circumstances must be such that adherence to the fiction of a separate corporate existence would sanction a fraud or promote injustice."⁶⁹ As noted earlier, the tests that courts use to determine whether such circumstances exist are imprecise.

A Delaware court considered the central factual issue to be that of control.⁷⁰ In order to determine whether or not a sufficient degree of control exists to regard the parent corporation as dominating the activities of the subsidiary, the court examined a wide variety of factors.⁷¹ The court considered factors such as stock ownership, common officers and directors, financing such as commingling funds, responsibility for day-to-day operations, arrangements for payment of salaries

63. *Cent. Nat'l Bank of Mattoon v. Bowen Tranpts*, 551 F.2d 171, 179 (7th Cir. 1977).

64. *Id.*

65. *Japan Petroleum v. Ashland Oil*, 456 F. Supp. 831, 839 (D. Del. 1978).

66. *David v. Mast*, 1999 Del. Ch. LEXIS 34, *6-7 (Del. Ch. 1999).

67. *Mobil Oil*, 718 F. Supp. at 266.

68. *Id.*

69. *Hystro Products, Inc. v. MNP Corp.*, 18 F.3d 1384, 1388-89 (7th Cir. 1994).

70. 456 F. Supp. at 841.

71. *Id.*

and expenses, and origin of subsidiary's business assets.⁷² While no single factor is necessary, a combination of these factors may indicate to a court that a subsidiary is so dominated that it is a mere instrumentality of the parent.⁷³

Courts have previously articulated the requisite degree of control as "exclusive a domination and control. . . to the point that [the General Partner] no longer has legal or independent significance of [its] own."⁷⁴ Furthermore, "[a]ctual domination, rather than the opportunity to exercise control, must be shown."⁷⁵ This element has been interpreted as "such domination of finances, policies and practices that the controlled corporation has. . .no separate mind, will or existence of its own and is but a business conduit for its principle [.]"⁷⁶

Nevertheless, in *Japan Petroleum*, the Delaware District Court concluded that the overall picture presented by the facts was not one of complete domination or control of the subsidiary corporation by the parent.⁷⁷ In *Japan Petroleum*, the parent corporation was active in getting the subsidiary's operations underway in the first several years of its existence.⁷⁸ The parent provided the initial financing for the subsidiary.⁷⁹ A cash management program was used whereby the parent paid the subsidiary's invoices and debited from the subsidiary's account.⁸⁰ However, the court said that financial arrangements entered into by a parent and subsidiary for expense and convenience did not establish an alter ego relationship.⁸¹ The court recognized that the current trend of companies is the establishment of numerous subsidiaries.⁸² "Common sense suggests that such parent corporations should be able to establish certain common management programs which promote administrative convenience without destroying the immunity of the parent from liability for the obligations of its [] subsidiaries, at least when these subsidiaries function as operating entities."⁸³

The relationship in *Japan Petroleum* had other indicia of control, but the court held that the parent did not completely dominate the subsidiary. The parent recruited general managers for the subsidiary

72. *Id.*

73. *Id.*

74. *Wallace v. Wood*, 752 A.2d 1175, 1183 (Del. Ch. 1999)

75. *Bowen Trasnpt.*, 551 F.2d at 179.

76. *Zaist*, 227 A.2d at 557.

77. *Japan Petroleum*, 456 F. Supp. at 845.

78. *Id.* at 842.

79. *Id.*

80. *Id.* at 844.

81. *Id.* at 846.

82. *Japan Petroleum*, 456 F. Supp. at 846.

83. *Id.*

and two of these managers were relocated from other affiliates of the parent.⁸⁴ Furthermore, most of the officers and directors of the subsidiary were affiliated with the parent.⁸⁵ The subsidiary's officers did not receive any separately identified compensation above what they received in connection with their positions with the parent.⁸⁶ The parent guaranteed major bank loans that were extended to the subsidiary.⁸⁷ However, the subsidiary was in no way a shell corporation; it operated with extensive obligations and rights of its own.⁸⁸ The subsidiary maintained its own bank accounts, prepared its own balance sheets and employed its own independent auditors.⁸⁹ Furthermore, all of the employees' salaries of the subsidiary were debited from the subsidiary's account.⁹⁰ Additionally, the subsidiary's dependence on the parent had diminished since its operations were underway.⁹¹ The court stated that the exercise of temporary control by incorporators over an incipient corporation does not prevent the corporation from existing as an independent entity thereafter.⁹² Therefore, while the parent and subsidiary did conduct joint operations in many respects, the Court noted that the subsidiary possessed sufficient indicia of a separate corporate existence; it could not be viewed as a mere instrumentality of the parent.⁹³ As a result, the Court held that the facts did not warrant disregarding the corporate separateness of the parent and subsidiary.

An Illinois district court believed the alter ego theory was premised on an alternative philosophy not contemplated in *Japan Petroleum*. In *Trans Union v. Credit Research Inc.*, the court believed that the alter ego theory is premised on the idea that the corporation in question is essentially a sham; the corporation must be controlled exclusively for the benefit of another, such as its parent company.⁹⁴ The determinative factors the court considered included whether the corporation was adequately capitalized for the corporate undertaking, the solvency of the corporation, whether corporate formalities were observed, and whether the corporation simply functioned as a façade for

84. *Id.* at 843.

85. *Id.*

86. *Id.* at 843.

87. *Japan Petroleum*, 456 F. Supp. at 844.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 846.

92. *Japan Petroleum*, 456 F. Supp. at 845-46.

93. *Id.* at 845.

94. 2001 U.S. Dist LEXIS 7559 (N.D. Ill. June 4, 2001).

the parent.⁹⁵ As in *Japan Petroleum*, the court noted that while no single factor is essential, a combination is required. Furthermore, the court required an overall element of injustice or unfairness to be present as well.⁹⁶

Therefore, courts will disregard the fiction of the corporate entity in the interest of justice.⁹⁷ However, any court that disregards the corporate form to prevent fraud, illegality, or injustice must avoid making "the entire theory of the corporate entity useless."⁹⁸ The "promote injustice" test requires something less than an affirmative showing of fraud, but something more than the mere prospect of an unsatisfied judgment.⁹⁹ Thus, an element of unfairness, akin to fraud or deception or the existence of a compelling public interest, must be present.¹⁰⁰ Courts inevitably tend to keep in mind a general standard of reproach when examining the facts of these cases.¹⁰¹ "[I]f an intercorporate affiliation is devised for or being used to accomplish an improper or unlawful purpose, equity has the authority to tear down technical legal barriers and . . . grant appropriate relief."¹⁰² The ensuing cases apply the "promote injustice" analysis of the alter ego theory.

In *Mobile Oil v. Linear Films, Inc.*, a Delaware court affirmatively held that a basis to pierce the corporate veil is only in the interest of justice.¹⁰³ However, such matters as fraud, contravention of law or contract, a public wrong, or other equitable considerations must be involved.¹⁰⁴ A breach of contract or a tort, such as a patent infringement, may be an injustice, but it is not the type of injustice that is required when piercing the corporate veil.¹⁰⁵ Piercing the corporate veil is appropriate only when fraud or injustice is found in the use of the corporate form.¹⁰⁶ Accordingly, a corporation may be regarded as the alter ego of another where the second corporation was created merely to avoid the effects of laws.¹⁰⁷ However, an intent to circum-

95. *Id.*

96. *Id.* at *26.

97. *Bowen Transpts.*, 551 F.2d at 179.

98. *Zubik v. Zubik*, 384 F.2d 267, 273 (3rd Cir. 1967).

99. *Hystro Products*, 18 F.3d at 1390.

100. *Id.*

101. *David*, 1999 Del. Ch. LEXIS 34, at *7.

102. *Fletcher Cyclopedia Corporations*, 1 *Fletcher* 41.10 at 157 (cum.supp. 1988).

103. *Mobile Oil*, 718 F. Supp. at 268.

104. *Mobile Oil*, 718 F. Supp. at 268.

105. *Id.*

106. *Id.* at 268-69.

107. *Id.* at 269.

vent the law is not controlling.¹⁰⁸ Courts ask whether the parties did what they intended to do and whether what they did contravened the policy of the law.¹⁰⁹ As a result, courts examine the totality of the facts to determine whether a reasonable inference can be made that the corporate format was deliberately adopted in order to defeat the legislative purpose of a law.¹¹⁰

In *Chicago-Crawford Currency Exchange, v. Thillens, Inc.*, plaintiffs charged the defendants with “unfair competition” and a conspiracy to evade the licensing provisions of the Community Currency Exchanges Act (“CCEA”).¹¹¹ The sole shareholder, Melvin Thillens (“Thillens”), of the defendant corporation was denied a license to operate and subsequently formed a sole proprietorship to circumvent the CCEA.¹¹² Thillens obtained a peddler’s license and began to sell numerous items of small value and then cash the checks for a much higher amount than the items cost.¹¹³ Consequently, defendants were found to have violated the CCEA.¹¹⁴ The court concluded that the conduct of the sole proprietorship was an evasion by subterfuge of the licensing provisions of the CCEA.¹¹⁵ The court reasoned that it cannot allow defendants to indirectly do what is forbidden by the statute.¹¹⁶ Despite being a separate corporation, the sole proprietorship was found to be liable because it was wholly owned by Thillens and the sole proprietorship conspired with Thillens to evade the law.¹¹⁷

In conclusion, the elements courts deem to warrant piercing affiliated corporations limited liability shield are numerous and far from concrete. However, when examining the case law, a somewhat clearer picture emerges of what courts consider when a corporation is suspected of being an alter ego of another. Furthermore, each basis a court considers has numerous elements in and of itself; it cannot be enunciated with a perfected formula. A court may pierce the corporate veil where the parent completely dominates the activities of its subsidiary. Additionally, a court may pierce where a second corporation was created merely to circumvent the effects of the law and in the interests of justice. Nevertheless, when considering whether a corpo-

108. *Casanova Guns, Inc. v. Connally*, 454 F.2d 1320, 1323 (7th Cir. 1972).

109. *Id.*

110. *Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7th Cir. 1965).

111. *Thillens*, 48 Ill. App. 2d at 367.

112. *Id.* at 368.

113. *Id.*

114. *Id.* at 372

115. *Id.*

116. *Thillens*, 199 N.E.2d at 299.

117. *Id.*

ration is an alter ego of another, an in-depth analysis of the relationship between the businesses is indispensable.

c. *Illinois Consumer Fraud and Deceptive Business Practices Act*

In Illinois, consumer fraud is considered an omission or concealment of a material fact in the course of trade or commerce.¹¹⁸ A material fact is one where a buyer would have acted differently knowing the information, or if the fact concerned the type of information upon which a buyer would be expected to rely when making a decision to purchase.¹¹⁹ Section 10(a) of the Illinois Consumer Fraud and Deceptive Business Practices Act (“CFA”) establishes a private right of action to any consumer “who suffers actual damages as a result of a violation of this Act.”¹²⁰ The elements of a private cause of action for a violation of this Act are: (1) a deceptive act or practice by the defendant; (2) defendant’s intent that plaintiff rely on the deception; (3) deception occur in a course of conduct involving trade or commerce; (4) actual damage to the plaintiff; and (5) the damages are proximately caused by the deception.¹²¹

Illinois courts construe the CFA liberally.¹²² Accordingly, courts perceive a clear mandate from the Illinois legislature to utilize the CFA to the utmost degree in eradicating all forms of deceptive and unfair business practices and to grant appropriate remedies to defrauded consumers.¹²³ Therefore, violator’s good or bad faith is not material.¹²⁴ Innocent misrepresentations are actionable as well.¹²⁵ A violator only needs to intend for a purchaser to rely on his acts or omissions.¹²⁶ Therefore, a party is considered to intend the necessary consequences of his own acts or conduct.¹²⁷

118. *Chandler v. Am. Gen. Fin.*, 768 N.E.2d 60, 66 (Ill. App. Ct. 2002).

119. *Id.*

120. 815 Ill. Comp. Stat. 505/10(a). The Act specifically provides that:

[U]nfair methods of competition and unfair or deceptive acts or practices. . .with the intent that others rely upon the concealment, suppression or omission of such material fact. . .in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 Ill. Comp. Stat. 505/2.

121. *Zekman v. Direct Am. Marketers*, 695 N.E.2d 853, 860 (Ill. 1998). The terms “trade” and “commerce” include the “distribution of any services or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.”

122. *Warren v. LeMay*, 491 N.E.2d 464, 473 (Ill. App. Ct. 1986).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Warren*, 491 N.E.2d at 473.

The liberal construction of the CFA has resulted in the recognition that “bait and switch” sales tactics are actionable.¹²⁸ Bait and switch advertising is a tactic where the seller attempts to attract customers through advertising products at low prices that he only intends to sell in nominal amounts.¹²⁹ When prospective buyers respond to the advertisements, purchasing the bait is discouraged through various ploys.¹³⁰ Thus, “[n]o advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product.”¹³¹

d. *Unfair Competition*

The determination of whether a certain practice is “unfair” under the CFA requires a case-by-case determination.¹³² A three-prong test has emerged.¹³³ The first prong asks “whether the practice, without necessarily having been considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise. . .”¹³⁴ The second prong examines “whether it is immoral, unethical, oppressive, or unscrupulous.”¹³⁵ The third prong considers whether the unfair practice causes substantial injury to consumers, competitors or other businessmen.¹³⁶

Furthermore, in determining whether a practice is unfair, section 2 of the CFA directs courts to consider “the interpretations of the Federal Trade Commission (“FTC”) and the federal courts interpretation of section 5(a) of the Federal Trade Commission Act.”¹³⁷ As to unfair acts or practices, the Federal Trade Commission Act (“FTCA”) does not afford an act or practice to be declared unlawful for unfairness

128. *Chandler*, 768 N.E.2d at 69. “Bait and switch” is defined as

“[A]n alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch the customers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.”

Williams v. Bruno Appliance & Furniture Mart, 379 N.E.2d 52, 54 (Ill. App. Ct. 1978).

129. *Disc Jockey Referral Network v. Ameritech Publ'g*, 596 N.E.2d 4, 9 (Ill. App. Ct. 1992).

130. *Id.*

131. *Id.*

132. *People ex rel. Hartigan v. Knecht Services, Inc.*, 575 N.E.2d 1378, 1385 (Ill. App. Ct. 1991).

133. *Id.* at 1386.

134. *Id.* at 1385.

135. *Id.*

136. *Id.*

137. 815 Ill. Comp. Stat. 505/2.

unless it causes or is likely to cause substantial injury to consumers.¹³⁸ An act or practice can be declared unlawful if the injury cannot be reasonably avoided by consumers and the injury outweighs the countervailing benefits to consumers or to competition.¹³⁹ Established public policies may be considered as well.¹⁴⁰ However, public policy considerations cannot serve as the primary basis for a unfairness determination.¹⁴¹

e. *The Likelihood of Confusion as to the Source of Sponsorship and the Uniform Deceptive Trade Practices Act*

The purpose of the Uniform Deceptive Trade Practice Act ("UDTPA") is to enjoin trade practices which confuse or deceive the consumer, or which unjustly injure the honest businessman and prevent him from receiving his just rewards from effective advertising and consumer satisfaction.¹⁴² While the UDTPA primarily focuses on acts between competitors, an individual consumer can maintain an action as well.¹⁴³ In order for a successful consumer action to be raised under the UDTPA, the consumer must allege facts that indicate he is likely to be damaged in the future.¹⁴⁴ However, consumers are often unable to allege facts which indicate that the plaintiff is "likely to be damaged."¹⁴⁵ Therefore, consumers are often precluded from injunctive relief because the harm has already occurred; the individual failed to show the likelihood of future damages.¹⁴⁶ Accordingly, when an individual plaintiff is unable to bring a cause of action under the UDTPA in an individual capacity, the individual is barred from bringing an action as a representative of a class as well.¹⁴⁷

Furthermore, the plaintiff must allege what one is confused about, or how the defendant's acts caused the confusion.¹⁴⁸ The plaintiff's allegations of confusion cannot be conclusory.¹⁴⁹ Thus, knowledge

138. 15 U.S.C.S. §45(n).

139. *Id.*

140. *Id.*

141. *Id.*

142. *Popp v. Cash Station*, 613 N.E.2d 1150, 1151 (Ill. App. Ct. 1992). The Uniform Deceptive Trade Practices Act ("UDTPA") provides that: "A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he . . . (2) causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification by another." 815 Ill. Comp. Stat. 510/2.

143. *Id.*

144. *Id.* at 1157.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Popp*, 613 N.E.2d at 1157.

149. *Id.*

bars an individual from claiming a likelihood of confusion in the future. A plaintiff that is aware of the defendant's alleged nondisclosure cannot claim future confusion.¹⁵⁰ Individuals that are aware of any confusion regarding the source of a product can avoid the problem.¹⁵¹ As a result, an individual consumer's knowledge regarding the source of the product, prevents one from being confused. Accordingly, knowledge will also result in the failure of an individual's claim under the UDTPA.

III. SUBJECT OPINION

This section will explore how the circuit court arrived at its decision that the Cubs did not defraud customers or break Illinois scalping laws by selling tickets to a brokerage service incorporated by the Tribune Company.¹⁵²

a. *Relevant Facts*

The Cubs are a wholly owned corporate subsidiary of the Tribune Company.¹⁵³ In 2002, the Tribune Company incorporated Premium to compete in the profitable business of brokering Cubs baseball tickets.¹⁵⁴ Accordingly, Premium resells Cubs tickets in the secondary market.¹⁵⁵ Premium was subsequently licensed by the Illinois Secretary of State and the City of Chicago to engage in ticket brokering.¹⁵⁶ Therefore, Premium lawfully resells tickets to consumers for more than "face value" or the price printed on the ticket.¹⁵⁷ As a result, fans, customers and competing ticket brokers alleged that the Cubs are scalping its own tickets; and Premium is just another box office of the Cubs.¹⁵⁸ The Cubs rebut claiming that the ticket brokerage is an entirely separate subsidiary of Tribune.¹⁵⁹ An in-depth analysis of the incorporation of Premium shall be explored in this section.

Historically, the Cubs have opposed all ticket brokering and scalping of tickets to Cubs games.¹⁶⁰ The Cubs policy has been to revoke

150. *Id.*

151. *Id.*

152. James Janega, *Cubs' Ticket Business Upheld*, Chicago Tribune, November 25, 2003, at 1.

153. *Cavoto*, No. 02 CH at 2.

154. Defendants' Proposed Findings of Fact and Conclusions of Law, *Cavoto v. Chicago Nat'l League Ball Club, Inc.*, No. 02 CH 18372, 1 (Ill. Cir. Ct. 2003).

155. *Id.*

156. *Id.*

157. *Id.*

158. Sara D. White, *For the Record*, Crain's Chicago Business, August 18, 2003, at 42.

159. *Id.*

160. Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *Cavoto v. Chicago Nat'l League Ball Club, Inc.*, No. 02 CH 18372, 5 (Ill. Cir. Ct. 2003).

season ticket privileges of persons engaged in the business of scalping tickets.¹⁶¹ The Cubs have also refused to deal with known ticket brokers in the past.¹⁶² Eventually, the Cubs investigated whether they could enter the secondary market for Cubs tickets.¹⁶³ However, the Cubs were aware that they could not directly sell Cubs tickets at prices in excess of the printed rate.¹⁶⁴ Premium was subsequently established as a separate entity, with a separate box office, so it could sell Cubs tickets above face value.¹⁶⁵ Premium and the Cubs are both wholly owned Delaware corporate subsidiaries of the Tribune Company.¹⁶⁶ The Cubs claim their rationale was to provide consumers a service and protect fans from purchasing illegitimate tickets.¹⁶⁷ Others claim the Cubs reasoning is a pretext for the Cubs envy of the ticket brokers profiting off resales of Cubs tickets.¹⁶⁸ Angry fans simply call the plan a dishonest scam.¹⁶⁹

Once Premium was incorporated, the Tribune Company appointed Cubs personnel as president, vice president, treasurer and general manager of ticket sales of Premium.¹⁷⁰ However, from its inception, neither Premium nor the Cubs kept it a secret that they were both owned by the Tribune Company.¹⁷¹ A press release was issued announcing Premium's opening and that the Cubs licensed its trademarks and service marks to Premium.¹⁷² Furthermore, Premium's offices displayed signs that the Cubs and itself had common ownership by the Tribune Company.¹⁷³ Also, Premium's yellow pages advertisement stated that it was endorsed by the Cubs.¹⁷⁴ To dispel possible confusion further, Premium's employees were instructed to tell customers that Premium was not part of the Cubs.¹⁷⁵

A separate subsidiary of the Tribune Company owned several buildings adjacent to Wrigley Field.¹⁷⁶ Premium leased space in one of the

161. *Id.*

162. *Id.*

163. *Id.* at 6.

164. *Id.* at 7.

165. *Id.*

166. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 8.

167. *Id.* at 7.

168. *Id.*

169. Lester Munson, *Scalping Treatment?: The Cubs are Ticking Off Fans by "Brokering" Tickets for Far Above Face Value*, Sports Illustrated, June 23, 2003, at 22.

170. *Id.* at 8.

171. Defendants' Proposed Findings of Fact and Conclusions of Law at 21.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 10-11.

buildings, but it occupied space that was not described in the lease.¹⁷⁷ Premium signed a new lease for the 2003 season that increased the space rented to that actually occupied while only nominally increasing the rent.¹⁷⁸

In 2002 and 2003, the Cubs sold high demand tickets to Premium to resell in the secondary market.¹⁷⁹ These tickets were usually held for VIPs, media sponsors, elected officials and others.¹⁸⁰ Following the purchase, Premium controlled all of the resales and prices for the tickets.¹⁸¹ While Premium and the Cubs use the software to sell their tickets, both maintain separate computer systems which record their own purchases and sales respectively.¹⁸² However, Premium initially experienced a delay in opening its doors for business.¹⁸³ Due to the delay, Premium sought and received permission from the Cubs to return unsold tickets.¹⁸⁴ Despite the fact that no express return policy was in their contract, the Cubs determined that they had an incentive as an organization to allow the returns due to Premium's startup situation.¹⁸⁵ The Cubs claimed they preferred to have fans sitting in the seats and generating concessions revenue rather than have empty seats.¹⁸⁶ Despite the returned tickets, Premium still obtained losses totaling \$15,464 due to unsold tickets in 2002.¹⁸⁷

Premium's cash is managed through a concentration account where all Tribune Company's subsidiaries' cash is managed.¹⁸⁸ Furthermore, each subsidiary has its own bank account, which it uses to receive funds.¹⁸⁹ The subsidiaries' bank accounts are linked to the cash management concentration account.¹⁹⁰ All of the funds in the subsidiary's bank accounts are transferred into the Tribune Company cash management concentration account and swept to zero every night.¹⁹¹ However, Premium's account is not swept to zero because it must maintain \$100,000 balance as required by the Ticket Scalping Act.¹⁹²

177. *Id.* at 11.

178. *Id.*

179. Defendants' Proposed Findings of Fact and Conclusions of Law at 9.

180. *Id.* at 10.

181. *Id.* at 12.

182. *Id.* at 11-12.

183. *Id.* at 14.

184. Defendants' Proposed Findings of Fact and Conclusions of Law at 14.

185. *Id.* at 14-15.

186. *Id.* at 15.

187. *Id.*

188. *Id.* at 15-16.

189. Defendants' Proposed Findings of Fact and Conclusions of Law at 26.

190. *Id.* at 27.

191. *Id.*

192. *Id.*

In addition, the subsidiaries have intercompany accounts that are used to transfer funds between the Tribune Company and its subsidiaries or between individual Tribune Company subsidiaries.¹⁹³ The entries in the intercompany accounts recognized Premium's purchase of Cubs tickets from the Cubs in 2002 and 2003.¹⁹⁴ Furthermore, a credit was made on Premium's intercompany account and debited on the Cubs intercompany account following the return of tickets by Premium in 2002.¹⁹⁵

Consequently, an attempt was made to halt Premium's operations and reimburse fans who bought tickets from Premium. Peter Cavoto ("Cavoto") was a longtime Cubs fan who purchased tickets from brokers in the past.¹⁹⁶ On June 25, 2002, Cavoto claimed he went to the Wrigley Field box office to purchase a Cubs ticket.¹⁹⁷ However, the ticket sales record showed thousands of tickets were available at the box office.¹⁹⁸ Cavoto subsequently sought out a ticket broker to purchase tickets.¹⁹⁹ The broker was a friend of Cavoto's; Cavoto stood in line to purchase tickets for the brokers business previously.²⁰⁰ Nevertheless, the broker referred Cavoto to Premium, where he purchased tickets for \$50.98 and \$80.²⁰¹ Cavoto claimed that he believed he had been deceived in his purchases because he did not realize that Premium was directly linked to the Cubs.²⁰²

Gerald Carr ("Carr") purchased tickets from Premium over the phone after calling an (800) number that subsequently referred him to Premium.²⁰³ Carr did not ask for the price of the tickets over the phone, but he claimed that he expected to pay face value for a ticket.²⁰⁴ When Carr arrived to Premium's box office to pick up his tickets, he claimed he was shocked by the price.²⁰⁵ However, Carr admitted he had purchased tickets from scalpers previously and he was in no way troubled by paying more than face value.²⁰⁶ Carr at-

193. *Id.*

194. Defendants' Proposed Findings of Fact and Conclusions of Law at 15.

195. *Id.*

196. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 24.

197. *Id.*

198. Defendants' Proposed Findings of Fact and Conclusions of Law at 4.

199. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 24.

200. Defendants' Proposed Findings of Fact and Conclusions of Law at 4.

201. *Id.* at 4-5.

202. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 26.

203. Defendants' Proposed Findings of Fact and Conclusions of Law at 6.

204. *Id.*

205. *Id.*

206. *Id.*

tended the game and never complained to the Cubs.²⁰⁷ Nevertheless, Carr saw a news story about Premium on television and felt deceived.²⁰⁸ Cavoto and Carr subsequently filed a class-action suit under the Illinois Scalping Act, the Consumer Fraud and Deceptive Business Practices Act, and the Uniform Deceptive Trade Practices Act.²⁰⁹

b. *The Decision of the Cook County Circuit Court*

The circuit court found that the evidence presented by the plaintiff-ticket buyers failed to prove that the business relationship between the Cubs and Premium violated any law, custom or practice.²¹⁰ In particular, the court found that the Cubs and Premium did not violate the Ticket Scalping Act²¹¹, that their business relationship was neither unfair nor injurious to the public, and that the Cubs did not control or dominate Premium.²¹² Furthermore, the court found that the Cubs and Premium did not engage in any unfair or deceptive practice.²¹³ Plaintiffs were not confused as to the sponsorship of Premium's business either.²¹⁴ As a result, the court concluded that if the public is concerned with the common ownership of an amusement and a licensed ticket broker, then it is the legislature that can enact desired limitations; the court cannot encroach on legislative authority by reading limitations into the law.²¹⁵

1. Ticket Scalping Act

Plaintiffs made two arguments in support of their claim that defendants violated the Ticket Scalping Act. First, Plaintiffs argued that the transaction between the Cubs and Premium did not constitute a sale.²¹⁶ Plaintiffs claimed that the Cubs and Premium went to great lengths to disguise the transactions between themselves as "sales," but the transactions were actually only a transfer of the Cubs ticket inventory to Premium.²¹⁷ Accordingly, the tickets transferred to Premium were not offered for sale to the public first.²¹⁸ Thus, all of Premium's

207. *Id.*

208. Defendants' Proposed Findings of Fact and Conclusions of Law at 6.

209. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 1.

210. James Janega, *Cubs' Ticket Business Upheld*, CHI. TRIB., Nov. 25, 2003, § Metro, at 1.

211. *Cavoto*, No. 02 CH at 23.

212. *Id.* at 32.

213. *Id.* at 36.

214. *Id.* at 38.

215. *Id.* at 40.

216. *Cavoto*, No. 02 CH at 23.

217. Plaintiffs' Proposed Findings of Facts and Conclusions of Law at 36.

218. *Id.*

sales were not resales of tickets that the Cubs previously sold in the marketplace; all of Premium's sales were in substance original distribution sales between the Cubs and consumers.²¹⁹ Accordingly, Premium violated Section 1.5(b) because it did not "resell" tickets as required by the Ticket Scalping Act.²²⁰ Since the Cubs did not sell tickets to Premium, but "placed" tickets with Premium, the Cubs used Premium to sell Cubs tickets above the printed price as prohibited by the statute.²²¹

The court concluded that the transactions between Premium and the Cubs were sales.²²² To prove a sale occurred, there must be evidence of the transfer of ownership for a price.²²³ Specifically, a sale takes place when money is paid at the time of sale and ownership transfers such that the buyer assumes the benefits and risks of ownership.²²⁴ When subsidiary corporations of a common parent are involved, it is customary to use intercompany accounts.²²⁵ Plaintiffs argued that a sale can only occur if payment is by cash or check and the transactions in the instant case only occurred on paper.²²⁶ The court concluded that plaintiffs' argument ignored modern cash management practices and the transfer of ownership was evidenced by the transfer of ownership entries into the Cubs computer system.²²⁷ Furthermore, the court reasoned that a sale took place because Premium undertook the risks and benefits of ownership of the tickets.²²⁸ This undertaking was evidenced by the losses Premium incurred on tickets it did not sell.²²⁹ Plaintiffs argued that Premium's return of tickets in 2002 to the Cubs was evidence that no sale took place.²³⁰ In rejecting this argument, the court reasoned that the Cubs had discretion to allow returns under circumstances it determined were special.²³¹ Accordingly, the court found that the ticket transactions between Premium and the Cubs constituted sales.²³²

219. *Id.*

220. *Cavoto*, No. 02 CH at 23.

221. *Id.*

222. *Id.* at 24.

223. *Cavoto*, No. 02 CH at 24, *citing* *Plast v. Metro. Trust Co.*, 401 N.E. 302, 312 (Ill. 1948).

224. *Chickering v. Bastress*, 130 N.E. 206, 215-16 (Ill. 1889).

225. *Id.*

226. *Id.*

227. *Id.*

228. *Cavoto*, No. 02 CH at 25.

229. *Id.*

230. *Id.* at 26.

231. *Id.*

232. *Id.*

Additionally, the court held that Premium operated on a regular and ongoing basis.²³³ Plaintiffs' argued that the seasonal nature of Premium's business and that Premium only sold Cubs tickets did not constitute doing business on a regular and ongoing basis.²³⁴ However, section 1.5(b) does not require year round activity or sales of tickets to multiple events.²³⁵ Ticket reselling was Premium's only business and work was done during the off season.²³⁶ Thus, the court found that Premium satisfied all the requirements of section 1.5(b) of the Ticket Scalping Act and did not violate the Ticket Scalping Act by selling tickets.²³⁷

Moreover, the court held that the business relationship between Premium and the Cubs was neither unfair nor injurious to the public.²³⁸ Plaintiffs argued that the business relationship was injurious to the public because the Cubs violated section 1 of the Ticket Scalping Act which prohibits "placing" tickets with a broker.²³⁹ Nevertheless, the court concluded that there was no evidence that the Cubs had an arrangement with Premium whereby the Cubs shared in the excess over face value of tickets Premium resells.²⁴⁰ The revenue Premium received was deposited into their own bank account which was swept directly into the Tribune Company's concentration account.²⁴¹ The amount received was subsequently entered on Premium's separate account.²⁴²

Furthermore, the court held that the Cubs did not circumvent the Ticket Scalping Act by using Premium to sell the tickets at a higher price.²⁴³ Plaintiffs argued that the court should disregard the corporate separateness of the Cubs and Premium because the Cubs violated the Ticket Scalping Act by doing indirectly what they could not do directly.²⁴⁴ In rejecting this argument, the court reasoned that Premium complied with all the requirements as a licensed ticket broker and that the Cubs were not working in concert with Premium to vio-

233. *Cavoto*, No. 02 CH. at 27.

234. *Id.* at 26.

235. *Id.* at 26-7.

236. *Id.* at 27.

237. *Id.*

238. *Cavoto*, No. 02 CH. at 29.

239. *Id.* at 27.

240. *Id.* at 28.

241. *Id.* at 28-9.

242. *Id.* at 29.

243. *Cavoto*, No. 02 CH. at 31.

244. *Id.* at 29.

late the law.²⁴⁵ Therefore, the court refused to disregard the corporate separateness of the Cubs and Premium.²⁴⁶

The court held that the Cubs did not control Premium.²⁴⁷ Plaintiffs argued that the corporate separateness of the Cubs and Premium should be ignored because of their relationship to one another and the assistance the Cubs gave to Premium.²⁴⁸ The court disagreed and held that the business relationship between the Cubs and Premium was insufficient to demonstrate control.²⁴⁹

2. Consumer Fraud and Deceptive Business Practices Act

The circuit court concluded that the defendants did not engage in any unfair or deceptive practice.²⁵⁰ Plaintiffs raised two arguments. First, plaintiffs' claimed that the defendants' violations of the Ticket Scalping Act is itself an unfair and deceptive practice because the Cubs failed to reveal that they were using Premium to sell tickets.²⁵¹ Second, plaintiffs argued that the Cubs conduct constituted a bait and switch advertising scheme.²⁵²

The court dismissed plaintiffs' first argument. The court held that the Cubs did not use Premium to sell tickets above the printed price and that Premium was a licensed ticket broker in compliance with the Ticket Scalping Act.²⁵³ Therefore, plaintiffs failed to prove the first element of a cause of action under the Consumer Fraud Act. There was no deception concerning the independence of Premium as a ticket broker and the defendants complied with the Ticket Scalping Act.²⁵⁴

The court also rejected claims that the Cubs used bait and switch advertising techniques.²⁵⁵ The court reasoned that there was insufficient evidence to conclude that the Cubs artificially limited the supply of tickets.²⁵⁶ Furthermore, Cavoto purchased tickets from Premium at the direction of another ticket broker; Cavoto did not first go to the Cubs box office, where there were available tickets.²⁵⁷ Thus, Cavoto

245. *Id.* at 31.

246. *Id.*

247. *Id.*

248. *Cavoto*, No. 02 CH at 31.

249. *Id.* at 32.

250. *Id.* at 36.

251. *Id.* at 32.

252. *Id.* at 33.

253. *Cavoto*, No. 02 CH. at 34.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.* at 34-5.

was not switched.²⁵⁸ Furthermore, the court held that there was no evidence that the Cubs discouraged the purchase of tickets from the box office while Premium was in business.²⁵⁹ Neither Cavoto nor Carr were discouraged. Cavoto deliberately purchased tickets from Premium.²⁶⁰ After contacting the Cubs hotline to purchase tickets and learning they were not available, Carr was informed that Premium may have available tickets.²⁶¹ In light of Cavoto's knowledge and Carr's purchase, the court held that the Cubs did not engage in bait and switch advertising.²⁶²

3. Uniform Deceptive Trade Practices Act

Finally, the court held that plaintiffs failed to prove any alleged remediable violations of the UDTPA.²⁶³ The court concluded that plaintiffs failed to prove a threat of future harm to consumers.²⁶⁴ Plaintiffs argued that future harm will occur because the public's diminished opportunity to purchase Cubs tickets at face value.²⁶⁵ However, the court was not persuaded that such circumstances existed.²⁶⁶ The court found that Premium's entry into the resale market caused ticket prices to decrease.²⁶⁷ Furthermore, the court held that plaintiffs were not necessarily confused as to the source or sponsorship of Premium's business.²⁶⁸ Since plaintiffs failed to prove future confusion, plaintiffs' UDTPA claim failed.²⁶⁹

IV. ANALYSIS

This section will evaluate the circuit courts decision in *Cavoto*. Four main arguments will be articulated. First, the defendants did not violate the Ticket Scalping Act. Second, the courts failure to disregard the corporate separateness of the Cubs and Premium was based on flawed reasoning. Third, the Cubs did not engage in bait and switch advertising. Fourth, plaintiffs were not confused as to Premium's source or sponsorship and plaintiffs lacked proof of future damages.

258. *Cavoto*, No. 02 CH. at 35.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* at 36.

263. *Cavoto*, No. 02 CH. at 39.

264. *Id.*

265. *Id.* at 37.

266. *Id.*

267. *Id.* at 38.

268. *Cavoto*, No. 02 CH at 38.

269. *Id.* at 38-9.

A. *Premium Complied With All of the Ticket Scalping Act's Requirements of Being a Licensed Broker*

The circuit court concluded that Premium satisfied all the requirements enumerated in the Ticket Scalping Act of a duly licensed ticket broker. The Ticket Scalping Act permits licensed ticket brokers to resell tickets above face value if the broker complies with the specified regulations.²⁷⁰ Plaintiffs' argued that Premium did not "resell" tickets because the transaction between the Cubs and Premium could not be considered a "sale".²⁷¹ Additionally, plaintiffs argued that Premium did not engage in the regular and ongoing business of ticket brokering.²⁷²

Plaintiffs' first argument essentially claims that the Cubs placed the tickets with Premium because their transaction took place on intercompany accounts managed by the Tribune Company.²⁷³ Plaintiffs claimed that a sale can only occur if payment is by cash or check.²⁷⁴ However, the facts do not support such a conclusion. Modern cash management practices include the use of intercompany accounts among subsidiaries of a common parent.²⁷⁵ Plaintiffs' allegation that intercompany accounts constitutes "creative accounting" ignores reality.²⁷⁶ This method of accounting limits the wasteful, inefficient and risky practice of cutting paper checks and constantly mailing them between entities.²⁷⁷ The cash management program used by the affiliated corporations upheld in *Japan Petroleum* is similar to the intercompany accounts used by the Cubs and Premium.²⁷⁸ Accordingly, the transactions between the Cubs and Premium constituted sales as required by section 1.5(b).

Plaintiffs' second argument was insufficient because the facts showed that Premium was engaged in regular and ongoing ticket brokering. Ticket reselling is the only business of Premium, and Premium's president works on the business during baseball's off season.²⁷⁹ Section 1.5(b) does not contain any substantive require-

270. *Id.* at 3.

271. *Id.* at 23.

272. *Id.* at 27.

273. *Id.* at 24.

274. *Cavoto*, No. 02 CH. at 25.

275. Defendants' Proposed Findings of Fact and Conclusions of Law at 29.

276. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 17.

277. Defendants' Proposed Findings of Fact and Conclusions of Law at 30.

278. *Japan Petroleum*, 456 F. Supp. at 843-45.

279. *Cavoto*, No. 02 CH at 27.

ment of year round ticket sales.²⁸⁰ Thus, Premium operated on a regular and ongoing basis as required by the Ticket Scalping Act.

B. *Disregarding the Corporate Separateness of the Cubs and Premium*

The circuit court held that it need not disregard the corporate separateness of the Cubs and Premium.²⁸¹ The court would not disregard the corporate separateness of the Cubs and Premium based on two justifications. First, the Cubs do not completely dominate and control Premium.²⁸² Second, the sale of tickets by the Cubs to Premium was not a sham designed to evade the prohibitions of the Scalping Act.²⁸³ However, the court failed to consider whether Premium's limited liability shield should be pierced in the name of justice.

1. Domination and Control

Plaintiffs alleged three factors that demonstrate control and dominance. First, due to the Cubs control of Premium's board of directors, the Cubs have the power to control all of Premium's sales of tickets.²⁸⁴ In May 2003, Premium held an annual shareholders and directors meeting where Premium appointed a new president that lacked knowledge of basic financial information regarding business.²⁸⁵ According to plaintiffs, the change of membership of the board and officers was an attempt to disguise the Cubs control over Premium. Therefore, Premium is not acting as an independent reseller, but as an agent for the Cubs.²⁸⁶ According to the Chicago Sun Times, "Premium's new president looked like an idiot testifying."²⁸⁷ He did not know how much money Premium had in the bank.²⁸⁸ He admitted that he did not know who approved the moving of money in and out of Premium's account.²⁸⁹ Second, plaintiffs claimed the Cubs provided Premium with extraordinary support.²⁹⁰ Third, plaintiffs argued that the Cubs and Premium were effectively intermingling funds.²⁹¹

280. *Id.* at 26.

281. *Id.* at 31.

282. *Id.*

283. *Id.* at 29.

284. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 37.

285. *Id.* at 15-16.

286. *Id.*

287. Greg Couch, *Cubs Just Giving Fans the Business*, Chicago Sun-Times, Aug. 17, 2003, at 103.

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

In doing so, plaintiffs' refer to the Cubs' and Premium's accounting procedures as "creative accounting".²⁹² Plaintiffs argued that "[t]he Cubs and Premium do not need cash like everyone else—they have intercompany accounts and substantively its all one company."²⁹³ Premium did not tender any cash, use anyone's credit card, or wire funds to pay for the tickets; Premium merely "paid" for the tickets by making entries on the intercompany account.²⁹⁴ Nevertheless, these are the three factors Plaintiffs claim demonstrate complete control

Plaintiffs argument is merely conclusory and unfounded. It is readily apparent that the Cubs do not maintain exclusive domination and control over Premium. Despite the testimony of Premium's new president being damaging, the Cubs do not control Premium's ticket sales.²⁹⁵ Furthermore, the Cubs did not provide Premium with extraordinary support. The Cubs and Premium did not intermingle funds either. Therefore, the evidence failed to show that the Cubs controlled and dominated their sister subsidiary.

The legal fiction of a corporate entity is such that it persuades people to incorporate its business ventures.²⁹⁶ The law encourages people to have multiple business interests.²⁹⁷ When Premium was newly incorporated and Cubs personnel were appointed to run Premium, business decisions were made by Premium's president acting in Premium's best interest. Decisions regarding accepting Premium's request to return unsold 2002 tickets were made by Cubs personnel in the Cubs best interest. Therefore, these business decisions were not legal issues.²⁹⁸ Accordingly, the court appropriately applied judicial restraint.

The Cubs merely provided Premium support in order for Premium to open its doors. The overall picture presented by the Plaintiffs was not one of complete domination or control by the Cubs over Premium.²⁹⁹ Admittedly, the Cubs were active in getting Premium's operations underway in the first year of its existence. However, the plaintiffs' claims of the Cubs providing extraordinary support are fallacious. The Cubs were less involved in its starting stages and assisted

292. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 17.

293. *Id.*

294. *Id.* at 20-21.

295. Greg Couch, *Cubs Just Giving Fans the Business*, CHI. SUN-TIMES, Aug. 17, 2003, at 103.

296. Professor Barry Kellman, Business Organizations Class Lecture at DePaul College of Law (Sept. 15, 2003).

297. *Id.*

298. *Id.*

299. *Japan Petroleum*, 456 F. Supp at 845.

Premium for a shorter time than the parent did in *Japan Petroleum*.³⁰⁰ Additionally, Premium was not a shell corporation because it operated with extensive obligations and rights of its own.³⁰¹ Premium had a separate bank account and maintained its own balance sheets.³⁰² Furthermore, Premium's dependence on the Cubs diminished since its operations were underway.³⁰³ The exercise of temporary control by the Cubs over an incipient Premium should not prevent Premium from existing as an independent entity thereafter.³⁰⁴ Therefore, Premium could not be viewed as an alter ego of the Cubs because Premium possessed sufficient indicia of a separate corporate existence.³⁰⁵

Plaintiffs' reference to intermingling of funds is misguided given modern cash management practices.³⁰⁶ The use of intercompany accounts by the Cubs and Premium for administrative convenience should not destroy Premium's limited liability shield.³⁰⁷

2. Circumventing the Ticket Scalping Act

Plaintiffs' argument that the Cubs violated the Ticket Scalping Act by doing indirectly what it could not do directly is inaccurate and misleading.³⁰⁸ Essentially, plaintiffs' claimed that the Cubs' conception, organization and operation of Premium demonstrated that the Cubs understood it was prohibited from selling its own tickets above face value and Premium was the instrumentality by which the Cubs sought to evade this prohibition.³⁰⁹

The terminology plaintiffs used in arguing for Premium being regarded as the alter ego of the Cubs was inaccurate. Plaintiffs' unfortunately characterized the sale of tickets by the Cubs to Premium as a "sham" designed to evade the prohibitions of the Scalping Act.³¹⁰ Characterizing Premium as a sham is erroneous. A sham corporation has a narrow legal definition. Sham corporations have a pejorative meaning, but its meaning is very specific.³¹¹ A sham corporation exists where two businesses are incorporated with one existing to gener-

300. *Cavoto*, No. 02 CH at 32.

301. *Japan Petroleum*, 456 F. Supp at 844.

302. *Cavoto*, No. 02 CH at 14.

303. *Japan Petroleum*, 456 F. Supp at 846.

304. *Id.*

305. *Id.* at 845.

306. Defendants' Proposed Findings of Fact and Conclusions of Law at 29.

307. *Japan Petroleum*, 456 F. Supp at 846.

308. *Cavoto*, No. 02 CH at 29.

309. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 7.

310. *Id.* at 51.

311. Professor Barry Kellman, Class Lecture at DePaul College of Law (Sept. 8, 2003).

ate revenues and the other to incur liabilities.³¹² A division exists between the expenditure side from the collection side of doing business.³¹³ The Cubs and Premium, when looked at separately, were legitimate for profit businesses with expenditures and revenues.³¹⁴ In short, Premium was not a sham corporation.

In addition to the imprecise terminology used, the court's analysis of whether the Cubs circumvented the Ticket Scalping Act by incorporating Premium was fleeting. Essentially, the court concluded that since Premium complied with all the requirements as a licensed ticket broker under the Ticket Scalping Act, that the court need not disregard the Cubs corporate separateness from Premium.³¹⁵ Using *Mobil Oil Corp.* as instructive, the court concluded that the alter ego theory cannot be used to pierce the corporate veil because Premium was not found to have violated the Ticket Scalping Act.³¹⁶ However, the court's fleeting circumvention analysis would have been improper if the court pierced the Cubs corporate veil in the interest of justice.

3. Preventing Injustice

The court entirely failed to consider the plaintiffs' argument under the "promote injustice" test. Essentially, plaintiffs argued that the court, in the interest of justice, should prevent the Cubs from utilizing the corporate form to perpetrate a fraud or an injustice upon the ticket scalpers and consumers.³¹⁷ Plaintiffs' pointed to Illinois case law that articulates the desire to prevent the formation of collusive alliances and the desire to compel the impartial treatment of all ticket buyers by the licensee.³¹⁸

However, the relationship between Premium and the Cubs does not represent the type of collusive alliance the law fears. The relationship between the Cubs and Premium is readily distinguishable from the collusive alliance formed in *Cort Theater*. The court noted that there is no arrangement between the Cubs and Premium that involved a sharing of Premium's profits by reselling the tickets above face value.³¹⁹ Premium was a separate business that undertook the risks and benefits of ownership of the tickets.³²⁰ This was exemplified by

312. *Id.*

313. *Id.*

314. *Id.*

315. *Cavoto*, No. 02 CH at 30.

316. *Id.*

317. *Id.* at 29.

318. *Id.* at 28.

319. *Id.* at 28.

320. *Cavoto*, No. 02 CH at 25.

the losses Premium obtained for the costs of unsold tickets in 2002.³²¹ Furthermore, Premium's revenues go into its own bank account, which is swept directly into the Tribune Company's concentration account.³²² The use of intercompany and concentration accounts are clearly not the sort of collusive alliances the law fears because there is no secret sharing of the profits.³²³ Unlike the transaction in *Cort Theater*, the Cubs transact with Premium at arms length.

Additionally, plaintiffs seemed to suggest that the relationship between the Cubs and Premium was collusive from its inception because the tickets the Cubs "sold" to Premium were not previously made available to the average fan.³²⁴ While the Cubs only sold Premium a small percentage of tickets in the past, larger percentages presumably would follow, resulting in an even greater injustice.

While arguments based on fairness will inevitably enflame the popular debate, these views are legally insufficient. The record is devoid of facts demonstrating that the Cubs utilized the corporate form to perpetrate a fraud or to work an injustice upon ticket scalpers and consumers.³²⁵ Rather, the record discloses the opposite. Premium is pro-competitive and provides consumers a service while protecting them from illegitimate tickets.³²⁶ Additionally, the tickets Premium purchased only represented a small percentage of tickets available and Premium's tickets were typically not sold to the public.³²⁷ Therefore, plaintiffs did not carry their burden of demonstrating the existence of exceptional facts, so as to require piercing Premium's corporate veil.³²⁸ Here, the specific facts do not fall into a general term of reproach.³²⁹ Actually, the facts reveal otherwise. Reliance upon arguments based on potential injustices to loyal fans are not the type of exceptional facts that warrant piercing the corporate veil.³³⁰

This conclusion avoids making the entire theory of the corporate entity useless.³³¹ The popular debate has focused on how the Cubs are a symbol of baseball's connection to the hearts and souls of fans

321. *Id.*

322. *Id.* at 28.

323. *Id.* at 29.

324. *Id.* at 17.

325. *Mobil Oil*, 718 F. Supp. at 270.

326. Defendants' Proposed Facts and Conclusions of Law at 22-3.

327. *Id.* at 2.

328. *Mobil Oil*, 718 F. Supp. at 270.

329. *David*, 1999 Del. Ch. LEXIS 34, at *7.

330. *Mobil Oil*, 718 F. Supp. at 270.

331. *Zubik*, 384 F.2d at 273.

and how the Cubs are “sell-outs”³³² and are heartless.³³³ However, the Cubs are not legally scalping their own tickets. The legislative intent behind enacting the Ticket Scalping Act was to prevent ticket scalpers from purchasing large blocks of tickets for the best seats at sporting events and resell those tickets at exorbitant prices.³³⁴ The conduct complained of was not a conspiracy between the Cubs and Premium to evade the Ticket Scalping Act.³³⁵ Furthermore, Premium did not violate any statutory requirements of being a licensed ticket broker.³³⁶ The legislature no longer perceives the selling of tickets above the price printed thereof to be contemptuous; a seller merely needs a license. Thus, disregarding the corporate separateness between the Cubs and Premium would not enforce legislative intent.³³⁷ Holding that the popular debate warranted piercing would render the fraud or injustice element meaningless because any conclusory claim of injustice would satisfy the test.³³⁸ Furthermore, the mere potential to sell large blocks of tickets is not the type of injustice contemplated by the doctrine.³³⁹

Accordingly, this was not an appropriate case to pierce the corporate veil.³⁴⁰ Should the legislature feel that it is injurious to the public for a subsidiary corporation to sell tickets to a licensed broker that is owned by a common parent, the legislature can regulate it rather than the judiciary.³⁴¹

B. *The Cubs Did Not Engage in Bait and Switch Advertising*

The circuit court concluded that the Cubs did not violate the CFA.³⁴² Plaintiffs needed to show that the Cubs failed to reveal that they were using Premium to sell tickets and that the Cubs used bait and switch advertising techniques.³⁴³ However, plaintiffs failed to prove either.

332. Mike Dodd, *Sold Out? Cubs Hawk Premium Tickets*, USA Today, http://usatoday.com/sports/baseball/nl/cubs/2003-06-19-cubs-premium-tickets-prices_x.htm, June, 19, 2003.

333. Greg Couch, *Cubs Just Giving Fans the Business*, CHI. SUN-TIMES, Aug. 17, 2003, at 103.

334. *Waisvisz*, 221 Ill. App. 3d at

335. *Thillens*, 48 Ill. App. 2d at 370.

336. *Cavoto*, No. 02 CH at 30.

337. *Thillens*, 48 Ill. App. 2d at 370.

338. *Mobil Oil*, 718 F. Supp. at 268.

339. *Id.*

340. *Id.*

341. *Cavoto*, No. 02 CH at 29.

342. *Id.* at 36.

343. *Id.* at 32-3.

The Cubs' actions were not deceptive.³⁴⁴ The Cubs did not deceive consumers with respect to Premium's independence.³⁴⁵ Neither Premium nor the Cubs concealed the fact they were both wholly owned subsidiaries of the Tribune Company.³⁴⁶ Immediately upon Premium's inception, a press release was issued and Premium posted a conspicuous sign at its box office informing consumers of its relationship with the Cubs and the Tribune Company.³⁴⁷ While the CFA is construed liberally, only deceptive and unfair business practices are actionable.³⁴⁸ Premium did not intend for consumers to rely on its acts or omissions.³⁴⁹ It is readily apparent that Premium was extremely forthcoming regarding its relationship with the Cubs. Premium intended for consumers to rely on its admissions. Therefore, Premium did not deceive consumers.

Additionally, the Cubs did not engage in bait and switch sales techniques.³⁵⁰ Plaintiffs needed to show that the Cubs attracted consumers by advertising tickets, which it did not intend to sell in more than nominal amounts.³⁵¹ Plaintiffs contention that the Cubs artificially limited the supply of tickets by selling high demand tickets to Premium that were not previously made available to consumers is unpersuasive.³⁵² Premium's purchases of tickets represented a small percentage of the tickets that are available to consumers for purchase.³⁵³ The tickets Premium purchased came from the Cubs reserves; if they were available, the tickets were sold to the public just before games, if at all.³⁵⁴ More than nominal amounts of tickets were available at the Cubs box office at Wrigley Field for the games.³⁵⁵ Furthermore, there were numerous tickets available at the Cubs box office at Wrigley Field for the game that Cavoto attended.³⁵⁶ Cavoto deliberately sought to purchase the tickets from ticket brokers, who subsequently referred Cavoto to Premium.³⁵⁷ Cavoto was not discouraged from buying tickets from the Wrigley Field box office be-

344. *Id.*

345. *Id.*

346. *Cavoto*, No. 02 CH. at 34.

347. *Id.* at 13.

348. *Warren*, 142 Ill. App. 3d at 566.

349. *Id.*

350. *Cavoto*, No. 02 CH at 36.

351. *Disc Jockey*, 230 Ill. App. 3d at 915.

352. *Cavoto*, No. 02 CH at 34.

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. *Cavoto*, No. 02 CH. at 35.

cause he did not request tickets from the Cubs ticket offices in the first place.³⁵⁸ Thus, Cavoto was not switched. Carr could not prove he was switched either. Carr was referred to Premium by the Cubs ticket hotline after being informed that no tickets were available.³⁵⁹ Furthermore, Carr bought tickets in the secondary market previously and was aware other brokers were an option.³⁶⁰ The Cubs did not discourage Carr from purchasing tickets at the Wrigley Field box office in order to switch him to Premium.³⁶¹ The sale of tickets to Premium did not artificially reduce consumers' opportunities to purchase tickets from the Cubs box office.³⁶² As a result, plaintiffs failed to prove that the Cubs engaged in bait and switch advertising.

C. Confusion as to the Sponsorship of Premium and Likely Future Damages Were Not Demonstrated

The court found that Cavoto and Carr were not confused as to the source of Premium's business.³⁶³ Plaintiffs' argued their confusion stemmed from the Cubs endorsement of Premium, the Cubs allowing Premium to use the Cubs trademarks, and Premium using a full name similar to the Cubs Wrigley Field box office.³⁶⁴ However, plaintiffs' argument is inherently flawed. Cavoto knew that Premium was a ticket broker because he previously helped friends in their ticket brokering businesses.³⁶⁵ Thus, Cavoto's knowledge barred him from claiming a likelihood of confusion in the future; knowledge of the Cubs relationship with Premium allows Cavoto to avoid purchasing from Premium for future games.³⁶⁶ Additionally, Carr's claim of being shocked at the price of the tickets Premium sold him did not prove any confusion as the source of Premium's tickets.³⁶⁷ Plaintiffs could not prove the likelihood of future damage.³⁶⁸ Due to Cavoto's and Carr's inability to prove the likelihood of future damages in their individual capacity, they were properly barred from bringing an action as

358. *Id.*

359. *Id.* at 35-6.

360. *Id.* at 36.

361. *Id.*

362. *Cavoto*, No. 02 CH. at 34.

363. *Id.* at 39.

364. *Id.* at 38.

365. *Id.* at 35.

366. *Popp*, 613 N.E.2d at 1157.

367. *Cavoto*, No. 02 CH at 35.

368. *Id.*

representative of a class.³⁶⁹ Thus, there is no situation in which confusion could arise in the future.³⁷⁰

V. IMPACT

This case will undoubtedly have an impact upon the resale of tickets to entertainment and sporting events in Illinois. In fact, a Cubs vice president, who was formerly Premium's president, testified that the plan was to get involved with other Chicago sports franchises to resell their tickets as well.³⁷¹ Sports economists suggest that team owners may follow the Cubs lead and merely be angry they did not contemplate forming an affiliated corporate ticket brokerage first.³⁷²

However, *Cavoto* does not advocate the eradication of the ticket scalping industry. Subsequent event promoters that attempt to follow the Cubs lead must walk an equally fine line when forming subsidiary brokerage firms. Minor factual changes may result in a contrary outcome. If the Cubs sold larger percentage of tickets to Premium and it could be proved that portions were typically available to consumers, the Cubs would be engaging in bait and switch advertising and Premium's corporate veil may have been pierced. Thus, event promoters must be wary when entering the secondary ticket sales market in the future.

Furthermore, Premium and its imitators are pro-competitive.³⁷³ Tickets for high-demand sporting events have reached outrageous prices. Cubs' tickets for the most sought after games of 2003 against the New York Yankees were sold by Premium for as much as \$1,500 a ticket, when the face value was only forty-five dollars.³⁷⁴ Licensed ticket brokers sold tickets for the same games, but reduced quality seating, for prices far in excess of \$1,500. In order to compete with Premium, licensed ticket brokers must reduce the price of their resale tickets.

However, the most significant impact may be upon the Cubs reputation. Win or lose, the Cubs have always maintained an extremely loyal fan base. Much of the loyalty the Cubs engender stems from Wrigley Field. Wrigley Field, also known as "The Friendly Confines,"

369. *Popp*, 613 N.E.2d at 1157.

370. *Cavoto*, No. 02 CH at 39.

371. Greg Couch, *Cubs Just Giving Fans the Business*, Chicago Sun-Times, <http://www.suntimes.com/output/couch/cst-spt-greg171.html>, August 17, 2003.

372. Greg Couch, *A Textbook Case of Might vs. Right*, Chicago Sun-Times, <http://www.suntimes.com/output/couch/cst-spt-greg01.html>, March 15, 2004.

373. Defendants' Proposed Findings of Fact and Conclusions of Law at 22-3.

374. Greg Couch, *A Textbook Case of Might vs. Right*, Chicago Sun-Times, <http://www.suntimes.com/output/couch/cst-spt-greg01.html>, March 15, 2004.

is the second-oldest baseball stadium behind Boston's Fenway Park.³⁷⁵ In an era where larger than life baseball stadiums are being constructed, Wrigley Field has maintained its traditional appearance. From the original scoreboard constructed in 1937, to the ivy on the outfield wall, the Friendly Confines has become a place of homage for baseball fans.³⁷⁶ While Wrigley Field has also been the site of many historic moments in baseball,³⁷⁷ the Cubs have a history of fighting ticket scalpers as well.³⁷⁸ The Cubs director of ticket operations once compared ticket scalping to the black market in World War II. He said that scalping “. . . depletes the market. [Scalpers] drain the supply. They force the poor guy from Keokuk, Iowa, to come here and he can't get tickets and [he] foolishly goes over there [to the ticket brokers] and pays an exorbitant amount.”³⁷⁹ Consequently, fans hold the Cubs to an extremely high, sometimes unrealistic, standard. Trusting fans allegedly felt deceived once Premium's relationship with the Cubs became publicized. Ticket scalpers characterized the Cubs scheme as might versus right.³⁸⁰ However, these arguments intrinsically recognize that the Cubs are doing something wrong but not technically illegal.³⁸¹ Reliance upon an argument asserting that the Cubs actions are contrary to the “spirit of baseball” are legally insufficient. Prior cases against the Cubs whose claims were based on parochial notions of baseball were held to be legally insufficient as well.³⁸² Thus, the gestalt of the ticket scalpers' argument against Premium was inherently flawed.

While loyal Cubs fans will undoubtedly remain devoted to the Cubs, Premium's future success depends upon its ability to obtain the good will of its customers. However, Premium has started off on the

375. *Wrigley Field History*, March 14, 2004, available at http://chicago.cubs.mlb.com/NASApp/mlb/chc/ballpark,cbc_ballpark_history.jsp.

376. *Id.*

377. *Id.*

378. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 5.

379. Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 5.

380. Greg Couch, *A Textbook Case of Might vs. Right*, Chicago Sun-Times, <http://www.suntimes.com/output/couch/cst-spt-greg01.html>, March 15, 2004.

381. *Id.*

382. *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. Ct. 1968). The stockholder filed a derivative suit against directors for negligence and mismanagement. The stockholder claimed that Wrigley's failure to install lights at Wrigley Field and to schedule night baseball games was injurious to the corporation. The stockholder offered evidence that every other team in the league installed lights and generated additional revenue from scheduling night games. Accordingly, Wrigley's decision was made not on monetary grounds, but on Wrigley's parochial notions of baseball being a daytime sport. In rejecting the stockholders arguments, the court held that the issue was one properly before the corporation's directions. Furthermore, the court held that the stockholders claims were conclusory and legally insufficient.

wrong foot. Consumers presently perceive Premium as a dishonest scam.³⁸³ Premium must reformulate the public's current opinion of its operation. Premium's continued sale of tickets at prices lower than other licensed brokers and its insurances of its tickets legitimacy, may eventually result in such a change. Therefore, should the legislature fail to act, the market shall decide Premium's fate, not the courts.

VI. CONCLUSION

Based on the above analysis, the circuit court was correct in ruling in favor of Defendants. The Cubs and Premium did not violate the Illinois Ticket Scalping Act or deceive consumers. Additionally, Premium was not an extension of the Cubs; it possessed sufficient indicia of having a separate corporate existence.³⁸⁴ Even though the Cubs are a cursed franchise on the baseball diamond, the Cubs were victorious in its day in court against ticket scalpers. Should the legislature feel that it is injurious to the public for a subsidiary corporation to sell tickets to a licensed broker that is owned by a common parent, the legislature can take appropriate regulatory measures.³⁸⁵ Absent legislative action, the market will decide Premium's future. The judiciary must not be swayed by the popular debate.

Mathew Siporin

383. Lester Munson, *Scalp Treatment?: The Cubs are Ticking Off Fans by "Brokering" Tickets Far Above Face Value*, Sports Illustrated, June 23, 2003, at 22.

384. *Japan Petroleum*, 456 F. Supp. at 845.

385. *Cavoto* No. 02 CH at 29.

