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NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/08/2017 7:58:41 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Concise Statement
File Number:	NSD1489/2017
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v VIAGOGO AG
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, appearing to read "Wanda Soden", is written over a faint, larger signature.

Dated: 29/08/2017 9:38:28 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Federal Court of Australia

District Registry: New South Wales

Division: General

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

VIAGOGO AG

Respondent

IMPORTANT FACTS GIVING RISE TO THE CLAIM

- 1 The Respondent, viagogo AG (**Viagogo**) is a company incorporated in Switzerland and a foreign corporation within the meaning of that term in section 4 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**). Viagogo facilitates the re-sale of, and arranges delivery of, live sport, music and entertainment tickets (**tickets**) by third party owners of tickets to consumers located in Australia (**Consumers**) via an online secondary ticketing platform on its website at <http://www.viagogo.com/au/> (the **Viagogo Australian website**), which are advertised in Australian dollars under the headings "Top Events in Australia" and "Top International Events".
- 2 This proceeding relates to Viagogo's conduct between 1 May 2017 to 26 June 2017 (**Relevant Period**) in representing to Consumers that it was the official seller of particular tickets, representing that tickets for particular events were scarce or close to running out, representing the price of tickets without including significant fees also payable on purchase, and not disclosing those fees to Consumers who were seeking to purchase tickets until considerably later in the sales process.

Official Site

- 3 During the Relevant Period, Consumers who searched for tickets to a particular event on the Google search engine saw advertisements for Viagogo at the top of the search results which included the words "Buy Now, viagogo Official site". The overall impression created by the advertisements, and in particular the use of the word "Official", was that Viagogo was the official seller of the particular tickets that the Consumers had searched for. It was not clear from the advertisements that Viagogo was operating an online secondary ticketing platform on which third party owners of tickets resold their tickets. Consumers who clicked on the link in the advertisements were taken to the Viagogo Australian website which did not disclose, or adequately disclose, to Consumers that Viagogo was not a primary ticket seller.

Filed on behalf of	Australian Competition and Consumer Commission, Applicant		
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2

Purchasing tickets through the Viagogo Australian website

- 4 During the Relevant Period, there were a number of webpages on the Viagogo Australian website that a consumer was required to progress through in order to purchase tickets. Screen shots of those webpages taken during the Relevant Period and their defined names for the purposes of this Concise Statement are set out in Schedule 1. Each of the webpages referred to below is a webpage on the Viagogo Australian website.
- 5 On the "Homepage", tickets for different events were advertised with a price "From A\$x" (with x being a dollar amount in Australian dollars). The ticket prices on the "Homepage" were set by the seller, not Viagogo. In addition to that price, Viagogo charged two additional fees: a "VAT and Booking Fee" and a "Secure Ticket Handling Fee" (**Viagogo Fees**). Viagogo Fees comprised a significant percentage of the total ticket prices charged to Consumers, with the booking component of the "VAT and Booking Fee" being the most significant at 27.6% for most events. The existence and amount of Viagogo Fees was not disclosed on the "Homepage" and was only incrementally disclosed throughout the booking process on the Viagogo Australian website.
- 6 On the "Tickets and Seating Selection Page", which appeared after a Consumer selected an advertised event for which he or she was interested in purchasing tickets, the price for the tickets was displayed as "A\$x" (the **initial price**). This was the first time in the booking process that a Consumer could select a ticket based on location within a venue and price within a displayed range of prices. On this page, for at least part of the Relevant Period, there was no indication that Viagogo Fees were payable in addition to the stated prices.
- 7 Tickets available for Consumers to purchase through the Viagogo Australian website on the "Tickets and Seating Selection Page" on 18 May 2017 included:
 - a) a ticket for a seat in the Grand Circle section at the Princess Theatre in Melbourne to attend "The Book of Mormon" on 20 May 2017 for A\$135 per ticket (**Book of Mormon ticket**);
 - b) three tickets for seats in the Bronze section of the Gabba cricket ground in Brisbane to attend the Ashes cricket test match on 26 November 2017 for A\$110.05 per ticket (**Ashes tickets**); and
 - c) two tickets for seats in the Upper Tier section at Rod Laver Arena in Melbourne to attend a Cat Stevens concert on 27 November 2017 for A\$225 per ticket (**Cat Stevens tickets**), (collectively **18 May Advertised Events**).
- 8 After a Consumer selected the ticket he or she wished to purchase, the Consumer progressed to the "Quantity Selection Page", where a visible ten minute timer began to count down the remaining time the Consumer had to complete the purchase. On this page, for at least part of the Relevant Period, the price for the relevant tickets was displayed as "SUBTOTAL AU\$ x" in bold black font, with the words "+ Booking, Handling and VAT" in smaller, light grey italicised font below. This was the first time in the booking process that a

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3

Consumer was informed that further amounts may be payable in addition to the ticket price the Consumer had already selected. No further details about Viagogo Fees were disclosed on this page. The price for the tickets was displayed in this same manner on the next two pages in the booking process: the "Buyer Details page" and the "Delivery Page".

- 9 On each of the "Quantity Selection Page" and "Delivery Page" of the Viagogo Australian website on 18 May 2017, the price of the Book of Mormon ticket was displayed as "SUBTOTAL AU\$135", the price of the Ashes tickets was displayed as "SUBTOTAL AU\$330.15", and the price of the Cat Stevens tickets was displayed as "SUBTOTAL AU\$450".
- 10 After a Consumer progressed in the booking process to the "Payment Page" and inserted his or her payment details and confirmed his or her billing address, the price for the relevant tickets, which was displayed as "SUBTOTAL AU\$ x" in bold black font, was increased to include the "Secure Ticket Handling Fee". For at least part of the Relevant Period, the words "+ *Booking and VAT*" appeared in smaller, light grey italicised font below the price as displayed.
- 11 On the "Payment Page" of the Viagogo Australian website on 18 May 2017, the prices of the tickets for the 18 May Advertised Events were increased by \$4.95 to reflect the "Secure Ticket Handling Fee" amount Viagogo charged for electronic delivery, which was the only method of delivery available. The subtotal prices were: the Book of Mormon ticket "SUBTOTAL AU\$139.95", the Ashes tickets "SUBTOTAL AU\$335.10", and the Cat Stevens tickets "SUBTOTAL AU\$454.95".
- 12 After a Consumer provided his or her payment details and progressed to the "Review Page", the price was displayed as a "TOTAL PRICE AU\$ x". This price included, for the first time, all of the Viagogo Fees and represented a significant increase in price from the initial price represented to Consumers. For 18 May Advertised Events, at this stage in the process, the price of the Book of Mormon ticket increased by \$37.50 to "TOTAL PRICE: AU\$177.45" (which was a 31% increase on the initial price); the price of the Ashes tickets increased by \$91.71 to "TOTAL PRICE: AU\$426.82" (which was a 29% increase on the initial price); and the price of the Cat Stevens tickets increased by \$125 to "TOTAL PRICE: AU\$579.95" (which was a 29% increase on the initial price).
- 13 The total prices of the tickets for the 18 May Advertised Events were able to be quantified by Viagogo by at least the "Delivery Page" of the Viagogo Australian website (if not sooner for the Book of Mormon ticket and Ashes tickets). By that stage in the booking process, Viagogo had all necessary information to calculate the Viagogo Fees because the number of tickets had been selected, Viagogo had information that the purchaser was Australian (so VAT was not payable), and electronic delivery was the only method of delivery available.

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4

Quantity or percentage of tickets available for an event

- 14 During the Relevant Period, throughout the booking process for purchasing tickets through the Viagogo Australian website, a number of statements were displayed on the Viagogo Australian website to Consumers which represented that the tickets they were looking for were scarce. These statements included statements as to the number of tickets remaining such as: "Less than 1% of tickets left for this event" or "Less than 1% of tickets remaining", "Only 2% of tickets left", "Tickets are likely to sell out soon", "Only a few tickets left", "Only 8 tickets left", "LAST CHANCE!" and "Tickets for this event are selling fast".
- 15 Viagogo did not disclose at any time throughout the booking process for purchasing tickets that the references to the number or percentage of tickets still available for any of the events were references to the number or percentage of tickets available for purchase through the Viagogo Australian website only, and not references to the total number or percentage of tickets available to the event, including those available from other ticket sources.

SUMMARY OF RELIEF SOUGHT FROM THE COURT

- 16 The Applicant seeks the relief set out in the accompanying Originating Application, comprising declarations under s21 of the *Federal Court Act 1976* (Cth), orders for pecuniary penalties under s224 of the Australian Consumer Law (ACL), injunctions pursuant to s232 of the ACL, corrective publication orders and orders requiring Viagogo to implement a compliance program under s246 of the ACL, and costs.

PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

- 17 By using the word "Official" in its advertisements on Google during the Relevant Period, and failing to disclose, or adequately disclose, that it was not a primary ticket seller, Viagogo represented that Consumers could purchase official original (i.e. not resold) tickets through the Viagogo Australian website, and/or Viagogo was affiliated with, or had approval from, the relevant team, musician, entertainer or event promoter, organiser or venue (Host) as an "official" agent of the Host to sell original (i.e. not resold) tickets to the Host's event(s) directly to the public. By making these representations in circumstances where the tickets available on the Viagogo Australian website were being resold on an online secondary ticket platform, and Viagogo did not have any such approval or affiliation, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and conduct liable to mislead the public with respect to the nature of the services Viagogo provided in contravention of s34 of the ACL; and made false or misleading representations that Viagogo had an approval or affiliation that it did not have in contravention of s29(1)(h) of the ACL.
- 18 By making representations during the Relevant Period on the "Tickets and Seating Selection Page" of the Viagogo Australian website:
- a) that a Consumer could purchase tickets for the amount stated on that webpage;

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5

b) on 18 May 2017, that a Consumer could purchase the Book of Mormon tickets for A\$135 each; the Ashes tickets for A\$110.05 per ticket; and the Cat Stevens tickets for A\$225 per ticket,

when in fact a Consumer could not purchase any of those tickets on the Viagogo Australian website for those amounts because he or she also had to pay the Viagogo Fees, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and made false or misleading representations with respect to the price at which Consumers could acquire tickets through the Viagogo Australian website in contravention of s29(1)(i) of the ACL.

- 19 By Viagogo's conduct in making part price representations to Consumers in relation to the tickets for the 18 May Advertised Events by stating, on the "Delivery Page" of the Viagogo Australian website on 18 May 2017, a price for each of the tickets for the 18 May Advertised Events that excluded the Viagogo Fees, which were quantifiable at the time the representations were made, without also specifying, in a prominent way and as a single figure, the price for each of the events that included the Viagogo Fees, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and made a part price representation in contravention of s48(1) of the ACL.
- 20 By making representations during the Relevant Period that tickets were scarce, as referred to in paragraph 14, in the circumstances outlined in paragraph 15, Viagogo engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and conduct liable to mislead the public with respect to the quantity of tickets available to events advertised on the Viagogo Australian website in contravention of s34 of the ACL.

ALLEGED HARM

- 21 As a result of Viagogo's conduct, Consumers were misled into thinking that they were purchasing original (not resold) tickets from an "official" agent of the Host, at prices which were significantly lower than the actual prices they would be charged in order to purchase the tickets from the Viagogo Australian website, and that there were very few tickets left available for the event, which led them to continue with the process of purchasing tickets on the Viagogo Australian website rather than seeking to buy tickets from alternative sources, potentially at lower prices.

Date: 28 August 2017



Signed by Frances Millicent Williams

Lawyer for the Applicant

This concise statement was prepared by Frances Williams of Corrs Chambers Westgarth and settled by Kristina Stern SC and Victoria Brigden of Counsel

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Certificate of lawyer

I, Frances Williams, certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 28 August 2017

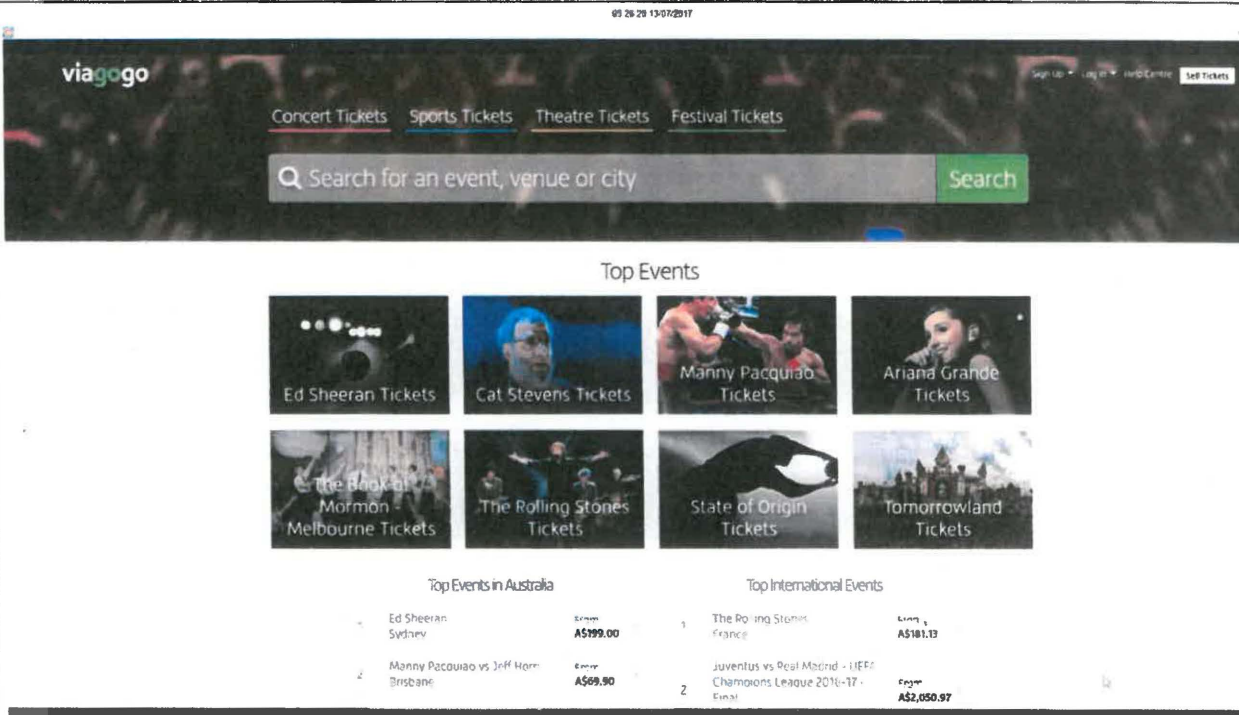


Signed by Frances Millicent Williams

Lawyer for the Applicant

Schedule 1 – Webpages in the Viagogo Booking Process

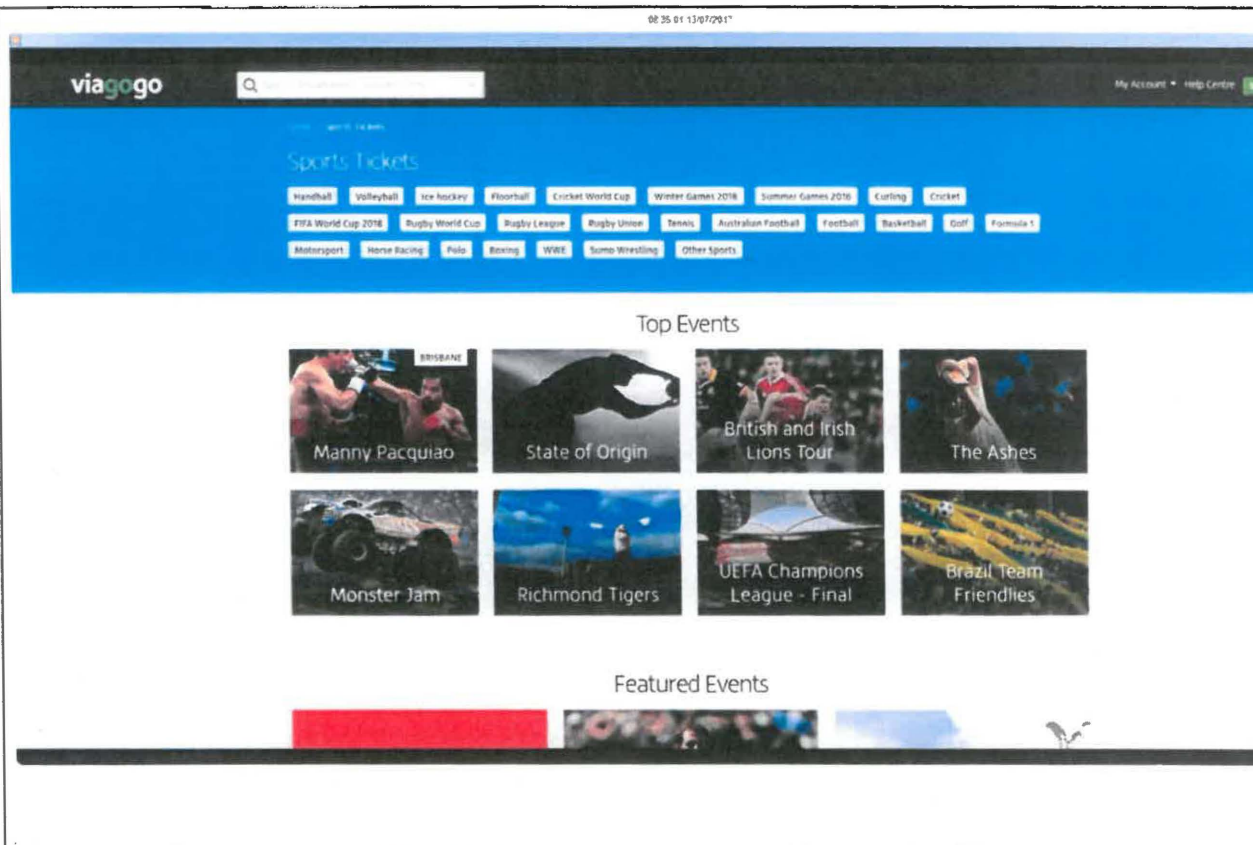
During the Relevant Period, as a Consumer navigated through the process of purchasing tickets on the Viagogo Australian website, the Consumer was taken to a number of webpages in the following order:

# Order	Defined Page Name	Image
(1)	Homepage: https://www.viagogo.com/au	

(2)

Category Specific Page

If the event was not on the Homepage, a Consumer could have clicked on, for example, the "concert tickets", "sports tickets", "theatre tickets" or "festival tickets" button at the top of the Homepage and gone to those specific pages.



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(3)

Event Specific Page

The Consumer was directed to this page upon selecting the event from either the Homepage or the Category Specific Page.

This page provided a brief description of the event.

The screenshot displays the 'Cat Stevens Tickets' website. At the top, there's a navigation bar with 'Cat Stevens Tickets' and links for 'Home', 'Concert Tickets', 'Country and Folk', and 'Cat Stevens'. A date stamp '08:39 11 13-07-2017' is visible in the top right corner. Below the navigation bar, a circular badge on the right says 'TICKETS ON SALE TODAY'. The main content area features a 'Search by location' dropdown menu with 'All cities' selected. Below this, a list of events is shown for November 2017:

- Wednesday, 22 November 2017**
 - Perth, Australia**
 - Perth Arena
 - Madness: 1429 other people are viewing Cat Stevens tickets
 - Madness: 1429 other people are viewing Cat Stevens tickets
 - View Tickets
- Saturday, 25 November 2017**
 - Adelaide, Australia**
 - Botanic Park
 - Small venue - limited number of seats. Act quickly!
 - View Tickets
- Monday, 27 November 2017**
 - Melbourne, Australia**
 - And Laver Arena
 - Small venue - limited number of seats. Act quickly!
 - View Tickets
- Tuesday, 28 November 2017**
 - Melbourne, Australia**
 - And Laver Arena
 - About to sell out - only few tickets left
 - View Tickets

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(4)

Tickets and Seating Selection Page

On this page the Consumer was required to identify the quantity of the tickets he/she wished to purchase and select seats from the available options.

The screenshot displays the 'Cat Stevens Tickets' website interface. At the top, the header includes the site name, a 'Recently Viewed' dropdown, and a user profile icon with the name 'Stevens' and a notification bell. Below the header, two red banners provide alerts: 'Tickets are likely to sell out soon' and 'Prices have been rising over the last 3 days'. The main content area features a large 'LAST CHANCE!' banner for 'TO SEE CAT STEVENS IN MELBOURNE THIS YEAR' in Melbourne for only 2 days. Below this, the event details for 'Cat Stevens' at 'Rod Laver Arena, Melbourne, Australia' on 'Monday, 27 November 2017 20:00' are shown. A 'How Many Tickets?' section allows users to select a quantity from 'Any' to '5+ Tickets'. At the bottom, a seating chart is visible with a note 'Only 67 tickets left' and a checkbox for 'Show best value tickets?'. The browser's address bar shows the URL '08:41:04 13/07/2017'.

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11:47:40 14/07/2017

In Melbourne for only 2 days

Cat Stevens

Rod Laver Arena, Melbourne, Australia
Monday, 27 November 2017 20:00:11 (AEST) (AEST)

[View on Google Maps](#)

About The Venue...

- One of the city's leading venues
- Amazing atmosphere
- Great facilities
- Great travel links

I would like 2 Tickets to see Cat Stevens

Less than 1% of tickets left for this event

Only 24 tickets left

Show best value tickets

Section: Upper Tier
2 tickets
E-Ticket
Unrestricted view
You'll be seated together
Most popular section
Last 2 tickets left
AS\$225.00
Buy

Section: Upper Tier
2 tickets
E-Ticket
Unrestricted view
AS\$230.99
Recently sold

Section: 30 | Row PP
2 tickets
Unrestricted view
AS\$280.80
Recently sold

Section: 22 | Row R

Sorry, we've had to turn off the Interactive Seat Map for this event as many customers are trying to purchase tickets at this time

SELECT AREAS

- Floor - Only 34 tickets left
- Lower Tier - Only 20 tickets left
- Upper Tier - Only 5 tickets left

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On this page the Consumer was required to confirm the number of tickets he/she intended to purchase.

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(6)

Buyer Details Page

On this page the Consumer was asked to provide his/ her contact details, including an Australian telephone number.

This page will not appear if the Consumer had already logged into his/her Viagogo account.

08:46:28 13/07/2017

Cat Stevens Tickets

QUANTITY SELECTION

1

These tickets will no longer be reserved
In: 08:34

Release My Tickets

Please note that these tickets may not be available at this price if you release them

Cat Stevens
Monday, 27 November 2017 20:00
Rod Laver Arena Melbourne, Australia
Less than 1% of tickets remaining
Section: Upper Tier Most popular section
Notes:
- Unrestricted view
- Seats are close to the stage
- You'll be seated together
Only a few tickets left
Price per Ticket AUS 225.00 per ticket
Number of Tickets 2
SUBTOTAL AUS 450.00
+ Booking handling and GST

Barcode

QUANTITY SELECTION

1

Already Have An Account?

Contact Details

First Name Mitchell

Last Name Shepherd

Email Address mitchell.shepherd@accc.gov.au

Confirm Email Address mitchell.shepherd@accc.gov.au

Phone Number Australia (+61) 07 3835 4689

Please update me with the latest news, great deals and special offers

Continue

Secure Checkout

3 DELIVERY

4 PAYMENT

5 REVIEW

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(7)

Delivery Page

On this page the Consumer was required to choose the delivery method of the ticket or tickets (if different delivery methods were available).

In this example, there is only one delivery method available.

08 48 46 13/07/2017

Cat Stevens Tickets

QUANTITY SELECTION

1

These tickets will no longer be reserved
In: 07:58
[Release My Tickets](#)
Please note that these tickets may not be available at this price if you release them

Cat Stevens

Monday, 27 November 2017 20:00
Rod Laver Arena, Melbourne, Australia
Less than 1% of tickets remaining

Section: Upper Tier
Most popular section

Notes
✓ Seats reserved until 14:00 on 13/07/2017
✓ Seats reserved to arrive on time
✓ Seats will be seated together

Only a few tickets left

Price per Ticket
AUS 225.00 per ticket

Number of Tickets (100)
2

SUBTOTAL
AUS 450.00
+ Booking handling
AUS 187

IN FRONT ROWS & SEAT

YOUR DETAILS

2

1 QUANTITY SELECTION ✓

2 YOUR DETAILS

Choose Your Delivery Method

☒ E-Ticket
E-Ticket - Electronic Delivery

[Continue](#)

Secure Checkout

4 PAYMENT

5 REVIEW

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(8)

Payment Page

On this page, the Consumer provided his/her Credit or Debit Card details and confirmed his/her Billing Address.

09 58 54 13/07/2017

These tickets will no longer be reserved in: 07:00
Release My Tickets
Please note that these tickets may not be available at this price if you release them

Hurry up!
110 other people are viewing this event

There is 1 person viewing these tickets!

Cat Stevens
Monday, 27 November 2017 20:00
Rnd Laver Arena, Melbourne, Australia
Less than 1% of tickets remaining
Section: Upper Tier Most popular section
Notes
✓ Unrestricted view
✓ Guaranteed to arrive on time
✓ You'll be seated together
Only a few tickets left
Price per Ticket: AU\$ 225.00 per ticket
Number of Tickets (144): 2
Secure Ticket Handling: AU\$ 48 per ticket
SUBTOTAL: AU\$ 454.95
+ Booking and S&T

DELIVERY
This event is at high demand, so these tickets may not be available at this price later

Choose Your Payment Method

☒ Credit or Debit Card

Card Number
Expiry Date
Name as it appears on your card
Mitchell Shepherd
Card Security Code
Security code must be 3 digits long, it helps for American Express

Billing Address
☐ Mitchell Shepherd
Level 24, 400 George Street
Brisbane, QLD, 4000
Australia
Add a new address

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(9)

Review Page

This was the final webpage in the booking process before purchase.

08:54:30 13/07/2017

These tickets will no longer be reserved in: 05:37

[Release My Tickets](#)

Please note that these tickets may not be available at this price if you release them

get valid tickets in time for the event

Over 10 million fans have gone to their favourite events*

☒ Yes, and I can't wait!

☐ No, I've seen Cat Stevens before

Cat Stevens

Monday, 27 November 2017 20:00

Rod Laver Arena, Melbourne, Australia

Less than 1% of tickets remaining

Section: Upper Tier

☒ Most popular seating

Notes

- ☒ 100% guaranteed value
- ☒ Guaranteed to arrive on time
- ☒ You'll be seated together

Only a few tickets left

Price per Ticket	AUS 225.00 per ticket
Number of Tickets (Edit)	2
VAT and Booking Fee	A\$62.50 per ticket
Secure Ticket Handling	A\$2.48 per ticket
TOTAL PRICE	AUS 579.95

Congratulations! You will be credited with 10,030 points*

About The Venue...

One of the city's leading venues

Amazing atmosphere

Great facilities

☒ Great view from every seat

Comfortable seats

Great travel links

Your ticket location in the venue

Great! Check! On average, customers paid A\$316 per ticket for 12.5 events - more than the A\$225.00 tickets you've selected

Don't forget to send your friends a reminder to pay you back!

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