



School of Law
Water Tower Campus
Philip H. Corboy Law Center
25 E. Pearson Street | Chicago, Illinois 60611
Phone 312.915.7120 | Fax 312.915.7201
www.luc.edu/law

ATTORNEY GENERAL MADIGAN

**Office of the Illinois Attorney General
Consumer Protection Bureau
500 South Second Street
Springfield, IL 62701**

December 22, 2016

Dear Attorney General Madigan,

I am writing to draw the attention of your office to an interrelated set of problems involving consumer fraud in online marketplaces. While of course, I hope that your office will consider taking action against the individual or individuals responsible for the specific fraud outlined in this complaint, my main objective is to persuade you to take action against eBay in relation to its deceptive practices and against the re-mail services that make so much online fraud possible.

Executive Summary

eBay runs a well-known online marketplace and has recently instituted a “Buyer Protection Program” which essentially compels eBay sellers to accept returns regardless of whether they have indicated a willingness to do so or not. This practice is likely to deceive a substantial number of eBay sellers.

Criminals (probably based overseas) use re-mail services to disguise their identities and pretend to be residing in the United States. These criminals buy valuable or easily tradable items such as an Apple iPhone on eBay auctions, falsely claim that the item is damaged or wrongly described, insist on returning the item, but instead return something else entirely worthless. This is called “The Brick Scam”.

Essentially, eBay’s “Buyer Protection Program” resolves disputes between buyers and sellers in favor of the buyer by default unless the buyer admits dishonesty. In effect, there is no way for the seller to prove that buyer sent back a brick rather than an iPhone. The criminal thus obtains a refund from eBay and gets to keep the item as well.

The Brick scam is well-known. Although the immediate cause of this problem is fraudulent buyers, eBay plays a significant role. Sellers on eBay are induced into a vulnerable position by eBay's deceptive practices and the fraud is made possible by eBay's "Buyer Protection Program" enforced on sellers as a contract of adhesion. eBay can and should take a number of steps to mitigate these problems. They are more likely to do so at the urging of a state attorney general such as yourself.

The Parties In This Case

eBay: eBay Inc., is a publicly traded company incorporated in Delaware, with substantial contacts in Illinois through advertising, shipping, etc.

Remail service: Ukraine Express, 78 McCullough Dr., New Castle DE 19726.

Buyer: The buyer trades on eBay under the name "plasmacompany" and claims to be Dmitriy Dubogray, doing business as ITG EXPRESS, 78 McCullough Dr # 11051, New Castle, DE 19726-2079. But according to PayPal, the buyer is Vadim Grebenyk (Vadex1960@gmail.com) doing business as ITG EXPRESS, with a shipping address of 78 McCullough Dr # 11051, New Castle, DE 19726-2079. I have no knowledge of the buyer's true name.

Complainant: Matthew Sag, Illinois resident, occasional eBay seller, Loyola University Law School professor, and Associate Director of the Institute for Consumer Antitrust Studies.

Reasons for action

Your office has the resources to investigate the fraudulent buyer (who is probably an overseas criminal), and more importantly to investigate the role of the re-mail service that is the physical hub of this criminal enterprise.

Moreover, your office may be able to bring enforcement action against eBay or otherwise persuade eBay to adopt systems and processes that discourage this type of scam and that are more transparent with sellers as to the nature of their exposure.

In full disclosure, eBay eventually responded to my initial blog post about this incident by giving me a full refund. While this is good news for me, it does nothing for the thousands of other sellers exposed to similar scams.

Detailed Complaint

In October this year I listed a very slightly used iPhone 6S for sale on eBay and was quite satisfied when it eventually sold for \$465. (See **attachment 1** for a print out of the listing from url <http://www.ebay.com/itm/122170886937>). This satisfaction was short-lived, however, as I came to realize that I had been taken in by an eBay scammer.

I shipped the iPhone on October 17 via UPS almost immediately after receiving full payment in my PayPal account. (See **attachment 2** UPS 'Pack & Ship' receipt and **attachment 3** Summary

of PayPal transaction). I now realize that the buyer's address was just a box at a re-mail service (see **attachment 4** Ukraine Express Website).

The buyer waited a few days after receiving the package and then fabricated a disagreement claiming that the phone was damaged and not as described (See **attachment 5**). The delay and the his outlandish claims made me suspicious, but I offered to refund 5% of the value of the transaction just to make him go away and preserve my good seller reputation.

The buyer immediately rejected my refund offer and made a return request. I did not agree to accept returns when I listed the item, in part to protect myself against unscrupulous buyers. (See **attachment 1** eBay listing).

By appearing to give me the option to not accept returns and then forcing me accept returns eBay exposed me to the very kind of fraudulent conduct I had tried to avoid. I believe that eBay's conduct in this regard is deceptive and can say for a fact that notwithstanding terms and conditions buried in the fine print of eBay's terms and conditions, I was deceived.

In communications with me, eBay explained that my options were to refund the buyer and let him keep my phone or approve the return request. Grudgingly, I accepted the return. On November 2, 2016 eBay instructed me to refund the buyer when the return was delivered. On November 4, 2016 eBay invoiced to me \$46.53 for the listing and sale which I paid.

Occasionally you might read the description "suspicious looking package" in the media wondered what exactly makes a package look suspicious? It looks like this:



On November 14, 2016, I received this package from the Ukraine with a customs declaration describing the contents as "phone used". Given that I had shipped the iPhone to an address in Delaware and that my address on Lake Shore Drive in Chicago was written as "LK Shr Dr" I was immediately suspicious. I took photos as I unboxed the packaged and I did so in the presence of a witness. (See **attachments 6(a) – (f)** unboxing photos). The phone that I received to replace my mint condition gold iPhone was a beaten up old Samsung pictured below. I didn't

even know Samsung made phones like this – it looks almost exactly like an old Nokia that I had in 2002.



eBay’s website gives the return a tracking number of RF611652494UA via USPS (See **attachment 7**). Using the USPS tracking website it is clear that the item comes from the Ukraine, not Delaware where the iPhone was sent. (See **attachment 8** – partial extract below).

USPS Tracking®

Tracking Number: RF611652494UA

Updated Delivery Day: Monday, November 14, 2016

Product & Tracking Information

Postal Product:

Features:
Registered Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
November 14, 2016 , 3:07 pm	Delivered, Front Desk/Reception	CHICAGO, IL 60611
Your item was delivered to the front desk or reception area at 3:07 pm on November 14, 2016 in CHICAGO, IL 60611.		
November 14, 2016 , 11:45 am	Out for Delivery	CHICAGO, IL 60611
November 12, 2016 , 5:58 pm	Arrived at USPS Facility	FLUSHING, NY 11351
November 10, 2016 , 11:07 am	Processed Through Facility	ISC NEW YORK NY(USPS)
October 30, 2016 , 3:22 pm	Processed Through Facility	KIEV PI-1, UKRAINE
	Origin Post is Preparing Shipment	

Also On November 18, 2016 I received an instruction from eBay commanding me to issue a refund (see **attachment 7**). eBay stated that “Our tracking information shows that Apple iPhone 6s - 128GB - Rose Gold (Unlocked) Smartphone (CA) #122170886937 has been delivered. Please inspect it and issue a refund.” I attempted to alert eBay to this scam (see summary in **attachment 5**, see **attachment 9** on case opening). I explained that the buyer had returned a worthless 10-year-old phone in exchange for the mint condition iPhone 6 I had sold. I offered to provide pictures.

On November 25, eBay “resolved” this case in favor of the buyer with the following explanation (as pictured below). “The item has been delivered to you. eBay Customer Service is refunding the buyer and debiting your PayPal account for reimbursement. We understand how frustrating it is that the items condition changed but, unfortunately, we didn't receive proof that the buyer caused the issue.”

eBay: “We understand how frustrating it is that the items [sic] condition changed ...”



What this note does not explain is that eBay never gave me any opportunity to submit any proof of buyer fraud.

On November 26, 2016, I attempted to appeal this decision. I was not successful (See **attachment 10**). eBay sent me several messages demanding payment and eventually extracted \$424 from my PayPal account despite my protests.

The Role of Re-Mail Services

Sellers on eBay can limit their transactions to the U.S. to ensure that if they are defrauded, they at least have the option to refer the matter to the police and to pursue civil remedies. However, re-mail services allow overseas buyers to pose as U.S. customers. The buyer in this cases was using a remailer called Ukraine Express (78 McCullough Dr., New Castle DE 19726, USA.) Now that I have Googled this address it is clear that this address and others on the same street have a long history of similar fraudulent activity (See **attachment 11** and **attachment 12** for examples). Ukraine Express may be a legitimate business that just happens to be used by criminals—anything is possible.

Resolution with eBay

On December 16, 2016, eBay contracted me by email and telephone to inform that it would reverse the outcome of my case and issue a refund. (**Attachment 14**).

Conclusion

I realize that consumer protection offices across the country confront a vast array of fraudulent practices and do not have the resources to pursue every case. I hope that you feel this case merits attention to address the obvious fraud perpetrated by Vadim Grebenyk (if that is his real name), but more importantly to call companies like eBay and Ukraine Express to account for their role in facilitating and perpetuating this activity.

Specifically with respect to eBay, I believe that consumers would benefit from enforcement action that required/persuaded eBay to end its misleading practices and address the problem of re-mail services more proactively.

- eBay should make it clear to sellers that they will be forced to accept returns, no matter what.
- eBay should make it clear to sellers that either (i) there is no way for a seller to prove they received a brick in the mail as opposed to the valuable item they sold, or (ii) how to establish such proof.
- eBay should proactively identify re-mail services and block accounts using those services.
- eBay should give the seller the benefit of the doubt whenever the shipping address for a return does not match address to which the item was shipped.
- Sellers willing to pay for such a service should be able to insist that items are returned through a domestic pack and ship service to prevent fraud.

I am happy to provide any additional information you may require.

Sincerely,



Professor Matthew Sag

Loyola University Chicago School of Law; Associate Director for Intellectual Property, Institute for Consumer Antitrust Studies.

(email) msag@luc.edu

(phone) 312 915 7223