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February 3, 2021

Service by Regular Mail and Email

Maggie Drucker, General Counsel
Grubhub Holdings Inc.
111 W. Washington Street, Suite 2100
Chicago, IL 60602

Dear Ms. Drucker,

On behalf of the Attorney General's Office, I write to notify you of your obligations under recent changes to Massachusetts law concerning third-party food delivery services.

On December 11, 2020, the Governor signed into law Chapter 227 of the Acts of 2020, which restricts third-party delivery services' use of restaurant intellectual property:

(b)(1) A third-party delivery service company shall not use a likeness, trademark or other intellectual property belonging to a covered establishment without obtaining written consent from said establishment to use the likeness, trademark or other intellectual property. Written consent under this subsection shall be reflected in a valid agreement.

(2) To enter into a valid agreement under this section, the third-party delivery service company shall be registered to do business in this state.

(3) An agreement under this section shall not require the covered establishment to indemnify the third-party delivery service company, an independent contractor acting on behalf of the third-party delivery service company, or a registered agent of the third-party delivery service company for damages or harm that may occur after a product leaves the said establishment's place of business. A provision of an agreement that is contrary to this section is void and unenforceable.

2020 Mass. Acts 227 §100.

Under the new law, you must remove any likeness, trademark or other intellectual property of a restaurant or other eating or drinking establishment with a retail location within the Commonwealth from your website(s) and materials, unless authorized by the establishment's written consent.

Further, please ensure that you do not include void indemnity provisions in contracts with restaurants. If you have existing agreements which contain the now-prohibited indemnity provisions, we expect you to notify the subject restaurants that the provisions will not be enforced.

In addition to Chapter 227, there are also other new legal provisions relating to food delivery service. On January 14, 2021, the Governor signed into law Chapter 358 of the Acts of 2020, which limits the



fees that third-party delivery service companies may charge restaurants and other food and drink establishments with fewer than 25 retail locations in Massachusetts. The law provides:

(b) Notwithstanding any general or special law to the contrary, no third-party delivery service company, from the effective date of this act until the termination of the COVID-19 emergency, shall charge a covered establishment a delivery fee per online order for the use of its services and fees other than a delivery fee that totals more than 15 per cent of the purchase price of the online order. No third-party delivery service company shall reduce the compensation rates paid to the delivery service driver, or garnish gratuities, as a result of this section.

2020 Mass. Acts 358 §98.

The Legislature deemed that a violation of this provision is a violation of the Consumer Protection Act, Chapter 93A. We expect that you will comply with section 98 for the duration of the COVID-19 emergency.¹

Please let us know if you would like to discuss these matters further. Thank you for your time and attention.

Sincerely,



Glenn Kaplan, Chief
Insurance & Financial Services Division

¹ Section 100 of Chapter 227 is not limited to the duration of the pandemic. Your practices should conform to that provision even after the conclusion of the pandemic, unless section 100 is obviated by further changes in the law.