FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

In the Matter of)
DoorDash Inc. & Uber Technologies, Inc.)
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___________________________________)

Complaint and Request for Investigation, Injunction, and Other Relief

Submitted by Robert White

<u>BACKGROUND</u>

1. This complaint is about deceptive and unfair "junk fees" that major app-based delivery companies DoorDash Inc. ("DoorDash") and Uber Technologies, Inc. ("Uber") are currently imposing on thousands of Seattle food-delivery consumers, not because the fees are legally required or because they bear any direct or reasonable relationship to increased costs on the companies, but rather in a bald attempt to increase revenues and turn consumers against drivers in service of the companies' profits.

2. For several months, Uber—through its delivery apps Uber Eats and Postmates—and DoorDash have charged all Seattle customers a fee of $5.00 (or in the case of DoorDash $4.99) per delivery job.

3. The companies assert these fees are the necessary result of a new Seattle ordinance passed to provide DoorDash's and Uber's delivery drivers with minimum pay protections (the "PayUp Ordinance") that effectively require the companies to pay drivers the same minimum wage as other businesses pay their workers in Seattle.[1] But the companies' communications about the fee with consumers are riddled with misrepresentations that distort the true costs of the companies' delivery services and deceive consumers about the nature and purposes of the fee.

4. The companies misrepresent the total cost of deliveries by hiding the fee until the end of a transaction. Seattle customers do not see the fee until after they have already selected their food items for delivery and gone to check out.

5. The companies also disguise the total price of deliveries by disclosing the $5.00 fee separately on top of already-inflated costs of the food or other goods being delivered and other fees that consumers must pay to the companies.[2] By including the $5.00

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[1] Seattle Ordinance 126595, codified at Seattle Municipal Code 8.37.

[2] *See* Letter from Senators Warren, Lujan, & Casey to DoorDash CEO ("Food delivery platforms like DoorDash appear to have adopted a multi-layered pricing strategy to

fee separately, the companies distract consumers from the overall price and the amounts already being paid to the companies beyond the cost of food and amounts paid to delivery drivers, and instead encourage consumers to direct their attention and frustrations about increased costs towards the PayUp Ordinance.

6. In further communications about the fees, the companies give consumers the impression that the fee is mandated by the City of Seattle including by using vague labels and disclosing the fee as one of the additional fees and taxes attached to any delivery purchase. In fact, online comments reveal that since DoorDash began warning customers of $5.00 "fee increases" before the passage of the PayUp Ordinance to encourage them to "[t]ake action now to oppose this bad policy," Seattle consumers have assumed that the fee is imposed by Seattle. [3]

7. When consumers actually click through the companies' interfaces to learn more about the fee, the companies' public disclosures only add to the confusion. The disclosures suggest that the purpose of the fee is to pay drivers for the costs of increased minimum pay requirements, but in doing so the companies both overstate drivers' wage rights and suggest that the new fee will go to drivers, and not to the companies. In fact, many consumers have commented that they are tipping less because of their confused understanding that the company-set $5.00 delivery fee is paid to drivers or that drivers are earning substantially more than minimum wage. [4]

8. Moreover, the fee bears no reasonable or logical relationship to the companies' costs, and certainly no relationship to any purported increase in costs that the companies face due to labor standards protections passed in Seattle. The companies charge the $5.00 fee to Seattle consumers no matter what the overall costs of the delivery may be and no matter how much the companies pay their drivers for that ride.

9. In actuality, the fee is neither paid to drivers nor mandated by Seattle. Like many other fees and costs bundled into the transaction, it goes to the companies' bottom line. The fee is a tool to increase profits above and beyond the amounts the companies already collect through the increased cost of food purchased through the delivery apps and additional service fees they impose on every transaction separate from the new $5.00 fee.

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maximize profits. Consumers pay a premium on each item ordered through delivery platforms because restaurants often increase their listed prices on DoorDash to offset the huge fees that platforms charge restaurants for using their service – which can sometimes go up to 30 percent. DoorDash then adds extra fees for delivery and other services to this existing markup.").

[3] *See, e.g.*, Appendix at Figs. A ("Seattle trying to impose $5 extra charge on delivery orders…"), B ("Seattle's new 4.99 service fee. . .").

[4] *See, e.g.*, Appendix at Figs. C-D, F.

10. Because of their near complete control over the market for app-based delivery and their parallel decision to impose a $5.00 fee on every delivery, the companies do not fear competition for consumers or drivers from delivery companies that comply with Seattle's labor protections without charging the $5.00 fee. Uber and DoorDash consumers have no choice but to order through the companies and no other option than to pay Uber's and DoorDash's unfair and deceptive fees.

11. Knowing this, the companies use their complete control over prices and wages to manipulate the marketplace, rapidly increasing costs for every delivery by precisely the same amount in a manner that misleads consumers about the total cost of deliveries and the basis and justification for the fee.

12. The companies have aimed to ensure that consumers upset about the fee—including many who believe the fee to be imposed by the City of Seattle—help them put pressure on the City to rescind or amend its wage protections for delivery drivers so as to ensure that the companies can continue playing by a different set of minimum pay rules than everyone else.

13. That is precisely what is happening now. Bolstered by media coverage that appears to amplify the companies' misrepresentations about the $5.00 fee, including by expressly stating that the fee is a requirement imposed by the City of Seattle,[5] the Seattle City Council is now considering amendments to City law to strip delivery drivers of their hard-fought minimum pay rights and drive their pay substantially below the minimum wages paid by other Seattle businesses to their workers.[6]

14. The companies' junk fees are not a true reflection of any actual cost increases for the companies. They are a tool of corporate greed and political gamesmanship, and they violate our core consumer protections, including federal laws prohibiting unfair and deceptive acts and practices.

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[5] *See, e.g.*, Jackie Kent, App-Based Food Delivery Drivers and Customers React to Seattle's New Fees, KOMO News, February 10, 2024 ("The new regulations added a fee to support drivers who make food deliveries as supplemental income or for full-time work."); *see also* Maddie White, 'Outrageous' Food Delivery Fee Angering Seattle App Users, KING 5, February 4, 2024 ("Why the fee? Seattle City Council passed legislation to help provide a livable wage for full-time app-based delivery drivers…").

[6] *See, e.g.*, Working Washington, Media Release: Nelson Proposal Would Cut Gig Worker Pay to $13.17/Hour, More Than $6 Below Seattle Minimum Wage.

PARTIES

15. Towards Justice submits this complaint to petition the FTC on behalf of Robert White, a Seattle consumer of app-based delivery services through DoorDash and Uber.

16. Towards Justice is a nonprofit legal organization that defends workers and consumers against abuses of corporate power through impact litigation and advocacy across the country.

17. Robert White is a Seattle resident who has been a consumer of the delivery apps DoorDash and Postmates in the Seattle area for over five years, using their services for celebrations, special occasions, and casually to get takeout from his favorite restaurants.

18. DoorDash and Uber are gig delivery companies offering food delivery from a variety of sources.

19. DoorDash controls 67% of the U.S. market for app-based food delivery services,[7] resulting in $8.635B in revenue in 2023,[8] up from $6.58B in 2022.[9]

20. Uber Eats controls 23% of the market for app-based food delivery services,[10] earning $10.9B in revenue in 2022.[11]

21. Postmates is owned by Uber Technologies, Inc.[12] In 2021, it made $730M in revenue, serving 9.3 million customers.[13]

22. Together, Uber and DoorDash control substantially all the market for app-based food delivery drivers and app-based food delivery customers in the Seattle area.[14]

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[7] Michal Kaczmarski, Which company is winning the restaurant food delivery war?, Bloomberg Second Measure, April 15, 2024.

[8] DoorDash, News Details, February 15, 2024.

[9] Tyler Philbrook, DoorDash Statistics: Revenue, Usage Statistics & More, June 9, 2023.

[10] Kaszmarski *supra* note 7.

[11] Ch Daniel, Uber Eats Revenue and Growth Statistics (2024), SignHouse, December 29, 2023.

[12] Uber, Uber Completes Acquisition of Postmates, December 1, 2020.

[13] David Curry, Postmates Revenue and Usage Statistics (2024), Business of Apps, January 8, 2024.

STATEMENT OF FACTS

A. DoorDash and Uber Impose Nearly Identical Fees on Seattle Consumers and Misrepresent the Nature the Purpose of Those Fees in Several Respects.

23. Early in 2024, delivery apps owned and operated by DoorDash and Uber nearly simultaneously imposed a new fee on Seattle customers.[15] The companies similarly describe the fee as being responsive to local worker protection legislation in Seattle.

24. For example, Uber imposed a $5.00 "Local Operating Fee" through its Postmates and Uber Eats apps.

25. DoorDash imposed a nearly identical fee of $4.99, characterized as a "SEA Regulatory Response Fee."

26. These nearly identical fees (the "$5.00 junk fee"), imposed by the companies on Seattle consumers, are deceptive and unfair in at least five different respects:

a. First, the $5.00 junk fee dramatically increases the costs of delivery services in a manner that is not disclosed until the end of a transaction.

b. Second, by separating the $5.00 junk fee from the overall price and from the other fees that purportedly cover the companies' operating and delivery costs, the companies distract consumers from the amounts the companies are already collecting, and instead encourages consumers to direct their attention and frustrations about increased costs toward the PayUp Ordinance.[16]

c. Third, the $5.00 junk fee is imposed on customers in a manner that initially suggests to them that it is mandated by the City of Seattle like a tax, when in fact, nothing in Seattle law requires the imposition of such a fee.

d. Fourth, the $5.00 junk fee's disclosures suggest to customers that it is either paid directly to drivers or somehow relates to driver pay increases, when in

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[14] *Cf.* Kaszmarski *supra* note 7 (showing that, together, DoorDash, Uber Eats, and Postmates control approximately 92% of the national market).

[15] *See, e.g.*,Whizy Kim, How did the cost of food delivery get so high?, Vox, April 3, 2024; *see also* Maddie White, 'Outrageous' food delivery fee angering Seattle app users, King 5, February 4, 2024.

[16] *See, e.g.*, Bertini, M., & Wathieu, L., *Attention Arousal through Price Partitioning,* 27 Mktg. Sci. 2, 236, 239–41 (2008) (showing that when prices are partitioned, subjects give outsized attention to attributes associated with mandatory surcharges rather than the primary product).

fact the fee is used by the companies to pad their own bottom line. The fee's disclosures also dramatically overstate drivers' wage rights, leading many consumers to believe that drivers are making substantially more money than they actually are. These deceptive practices have even led some consumers to reduce their tips based on their misunderstanding of the fee.

e. Finally, the description of the $5.00 junk fee suggests that it is directly related to increased costs to the companies resulting from the PayUp Ordinance. In reality, the $5.00 flat fee has no reasonable or logical relationship to increased minimum pay standards for Seattle delivery drivers. In some cases, the fee substantially increases the costs of delivery for customers in ways that are not directly related to any costs imposed on the company by the ordinance. The fee appears designed to turn consumers against workers and to drive up revenues for the companies, which are already making money on the transaction in several other ways.

B. DoorDash Has Imposed Deceptive Junk Fees on Mr. White and Thousands of Other Seattle Consumers.

27. Like most "junk fees," DoorDash's "SEA Regulatory Response Fee" is not disclosed until the end of a transaction, when consumers like Mr. White are confronted with jarring and confusing sticker shock.

28. Based on Mr. White's experience ordering from both DoorDash and Postmates, he knows the companies profit off commissions charged to restaurants. He also knows those commissions can be substantial, especially for some of the Seattle restaurants he supports that are already under significant financial pressure.

29. The costs of commissions are often passed on to customers in the increased costs of food ordered through the platforms. While the companies do not disclose to Mr. White what commissions they are charging the restaurants, he sees the increased cost of food items in the initial subtotal when he selects the items he would like to order.

30. But it is not until he clicks through to "check out" to complete his transaction that he sees that his costs for the order may in fact be substantially higher, largely through the addition of, as DoorDash describes it, "Fees and Estimated Tax."

31. These additional fees and taxes can substantially increase the costs of a delivery order. On one recent order, for example, Mr. White saw his overall costs almost double because of the addition of "Fees and Estimated Tax." On this particular order, he was not charged a separate "Delivery Fee," but on some occasions that additional fee has also substantially increased the costs of the delivery and is also not disclosed until checkout.

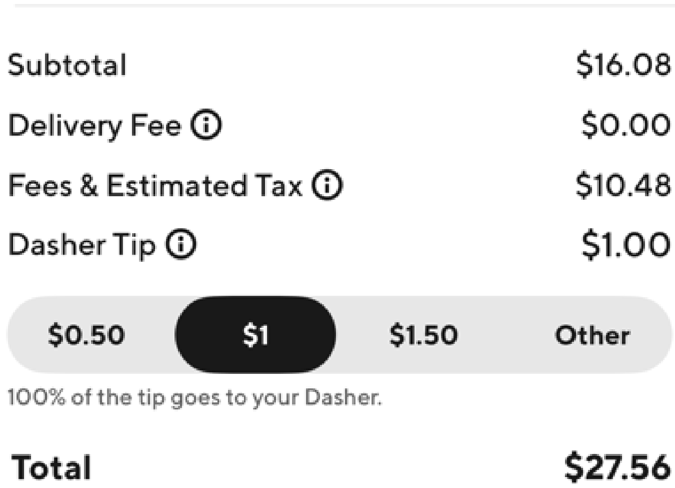

Fig. 1 (DoorDash Checkout Screen)

32. Upon seeing DoorDash checkout screen (Fig. 1), Mr. White's initial reaction was that the items included in the initial "Fees and Estimated Tax" must include fees and costs that DoorDash is required to pay to third parties, like sales tax. After all, he knows that DoorDash makes money off commissions to restaurants and also through delivery fees that it separately imposes on customers. Mr. White assumes that fees and taxes captured under the "Fees and Estimated Tax" are paid to or required by some third party.

33. But especially upon seeing the extraordinary increase in "Fees and Estimated Tax" over the past several months, Mr. White, like consumers across Seattle, has clicked through the DoorDash app to learn more about these additional fees. That has only added to the confusion.

34. When clicking through the DoorDash app to learn more about "Fees and Estimated Tax," Mr. White has seen three separate additional fees. The first is a "Service Fee," which according to DoorDash is 15% of his order (or a minimum of $3.00 if the order is small), which goes to "help[] operate DoorDash." Mr. White understands, after clicking through to learn more about the "Fees and Estimated Tax" line item that this additional fee is not for the purpose of paying a third party but does in fact go to paying DoorDash. Separately, however, there are the additional costs of "Estimated Taxes," which he assumes includes local sales tax. And finally, the fee at issue here, a $4.99 "SEA Regulatory Response Fee."

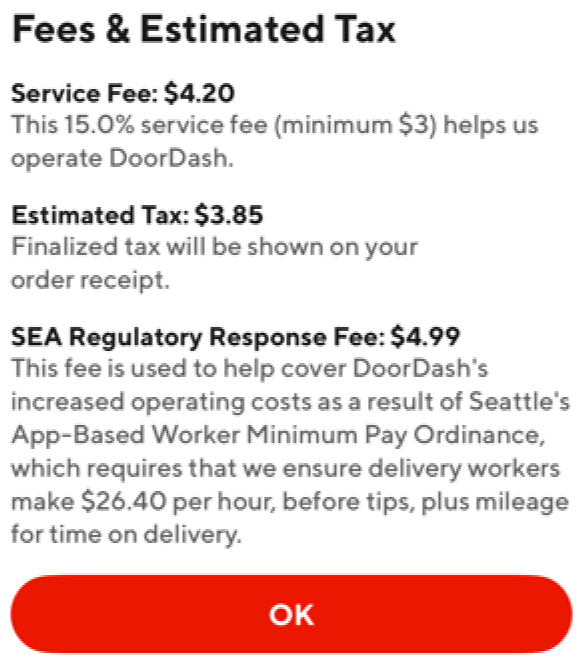

Fig. 2 (DoorDash "Fees and Estimated Tax" Description)

35. Especially because DoorDash is seemingly charging consumers inflated menu items and separately imposing delivery and service fees on consumers, both of which seem to go directly to DoorDash, Mr. White like consumers across Seattle initially assumed that the "SEA Regulatory Response Fee" is a required fee imposed by the City of Seattle. After all, the company is already making money off his order in many other ways.

36. Indeed, several online comments suggest that consumers and even the media may have this impression.[17] But the fee is not required by Seattle. Nothing in the PayUp Ordinance requires the companies to charge customers any additional amounts for their orders.

37. Upon reading the specific description of the "SEA Regulatory Response Fee," Mr. White and consumers across Seattle are additionally confused and misled.

38. After customers click through to learn more about their "Fees and Estimated Tax" and once again click through to learn about the "SEA Regulatory Response Fee," they are told the fee is necessary because Seattle's new PayUp Ordinance "requires that we ensure delivery workers make $26.40 per hour, before tips, plus mileage for time on delivery."

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[17] *See, e.g.*, Kent *supra* note 5 ("The new regulations added a fee to support drivers who make food deliveries as supplemental income or for full-time work."). *See also*, Appendix at Fig. A, B, E.

39. Initially upon reviewing this language, Mr. White, also like consumers across Seattle, was under the impression that the additional fee was paid out directly to workers, just like a tip would generally be. After all, DoorDash appears to cover its own costs through several other fees and upcharges, and the explanation for the $5.00 junk fee from DoorDash directly refers to minimum pay requirements to be paid to DoorDash workers. In fact, online comments reveal that many Seattle consumers share this confusion and are even tipping less to drivers because they assume that this $5.00 flat fee goes directly to drivers.[18]

40. In fact, this $5.00 junk fee is not paid directly to drivers but goes to DoorDash. And while the PayUp Ordinance is designed to provide basic minimum pay protections to app-based delivery drivers, DoorDash's description of the ordinance dramatically overstates drivers' wage rights.

41. Most importantly, DoorDash says that the PayUp Ordinance requires payment to drivers of over $26.00 per hour, but the minimum pay requirement in the PayUp Ordinance does not work like the "minimum wage" that most customers would be familiar with because it applies only to time that the drivers are traveling to locations to pick up orders, waiting to collect the orders, and delivering them to consumers.

42. When drivers are doing other necessary work for the companies, that time is not compensated. For example, drivers must travel to areas where orders will be made, wait for those orders to come in, and communicate with the companies or customers about those orders. The companies need drivers at the ready to make deliveries so that customers can benefit from the purported convenience of app-based delivery, and the companies' proprietary algorithms, which determine what offers drivers receive and how much they are paid for their offers, manipulate drivers in various ways even when drivers are waiting for orders. But this time worked—the hours and hours drivers spend away from their families in their vehicles for the companies' benefit— is not subject to the PayUp Ordinance's per minute pay rate.

43. The companies' assertion that drivers make over $26.00 an hour relies on a misleading hypothetical where all 60-minutes of every hour a driver worked was compensable under the PayUp Ordinance, completely ignoring the reality that drivers must engage in extensive uncompensated duties to conduct their work.

44. Furthermore, unlike other workers, including delivery workers, who receive minimum wages on top of any amounts they must spend out of pocket in service of their boss's profits, Seattle drivers are required to pay out of pocket for the costs of gas and car upkeep out of their own pockets.

45. The companies' assertion that drivers make over $26.00 an hour also misleadingly disregards these additional costs borne by drivers.

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[18] *See* Appendix at Fig. B, D.

46. In reality, the PayUp Ordinance sets a minimum pay standard that seeks to account for drivers' uncompensated time and their additional costs, resulting in an actual hourly wage that closely approximates the Seattle Minimum Wage for hourly employees.

47. When customers reduce the amount they tip drivers due to the "SEA Regulatory Response Fee," they do so both based on the misimpression that these amounts are paid directly to drivers and based on the misunderstanding that drivers are making more than they actually are.

48. DoorDash reinforced the misimpressions and misunderstandings about whether the $5.00 junk fee went to the drivers and the amount drivers were actually making by reducing the pre-set tip options provided to consumers using the app. Before the PayUp Ordinance went into effect, consumers were typically shown pre-set tip options ranging from approximately $4.00 to $6.00. After the PayUp Ordinance went into effect, consumers began seeing pre-set tip options ranging from approximately $0.75 to $1.50.

49. Finally, notwithstanding that it is disclosed to customers as being responsive to the PayUp Ordinance, the $5.00 junk fee has no reasonable or logical relationship to the minimum payment rights of drivers under the ordinance. DoorDash's "SEA Regulatory Response Fee" is a fixed amount, despite the fact that the PayUp Ordinance sets a pay structure that varies with miles traveled and minutes spent working. Effectively, these fees may constitute a substantial percentage of the entire cost of the service and the goods when the trips are short and the value of the goods are low.

50. Furthermore, while the PayUp Ordinance does require a minimum payment to drivers of $5.00 per order, in most cases the minimum payment for the time and distance of the order will take them above that amount, and even when they do not, the companies' imposition of a $5.00 junk fee on customers per order bears no reasonable or logical relationship to the minimum per ride payment unless the companies are not making any additional payment to drivers for that ride out of the other costs and fees they impose on consumers and restaurants.

C. Uber Has Imposed Deceptive Junk Fees on Mr. White and Thousands of Other Seattle Consumers.

51. Like DoorDash's "SEA Regulatory Response Fee," Uber imposes its junk fees on Uber Eats and Postmates consumers at the very end of the transaction.

52. Mr. White has been charged this fee by Uber when he has ordered through Postmates. As with his DoorDash orders, Mr. White knows that Uber makes substantial sums off of commissions to restaurants, which show up for him in the increased cost of food ordered through the Postmates app.

Subtotal	**$16.70**
Service Fee	$3.84
Tax	$2.57
Local Operating Fee	$5.00
Delivery Fee	$2.49
Special Offer	-$3.00
Discount	-$11.33

Fig. 3 (Uber Checkout Screen)

53. But as with DoorDash, several additional fees that also appear to go to Uber are not disclosed until the end of his transaction with Postmates. These fees include a "Service Fee" and a "Delivery Fee," both of which also appear to go to padding Uber's bottom line.

54. The fees disclosed at the end of the transaction also include the $5.00 "Local Operating Fee." Because it is disclosed at the end of a transaction alongside taxes and because it is imposed alongside at least two other fees that appear to go to DoorDash for the core service DoorDash is providing, Mr. White initially assumed that this fee was like a tax, required by Seattle and paid to Seattle or some other third party.

55. Upon clicking through to learn about the $5.00 junk fee, consumers like Mr. White read that it is necessary to "offset" the increased costs of labor associated with the PayUp Ordinance.

- **Delivery Fee:** Delivery Fees help cover delivery costs. They vary for each merchant based on factors like demand, your location and the availability of nearby delivery people. You'll always know the Delivery Fee before selecting a merchant. Uber collects this fee; it is not a gratuity. Couriers also receive payment per local laws.

- **Local Operating Fee:** This fee helps offset the increased costs of regulations imposed on third-party food delivery platforms. Uber collects this fee; it is not a gratuity. Couriers also receive payment per local laws.

- **Service Fee and Other Fees:** These fees vary based on factors like basket size and help cover costs related to your order. You pay $0.10 of these fees directly to Uber for marketplace services (such as facilitating access to couriers and merchants), and the remaining amount is remitted to your Courier. Your Courier may pay a portion of these fees to Uber for various services, including lead generation, payment processing, issue support, and other ancillary

Fig. 4 (Uber Junk Fee Description)

56. Unlike the DoorDash description of the "SEA Regulatory Response Fee," Uber's is clear that the $5.00 junk fee is not a tip for drivers, although of course this is only clarified when customers click through the app to learn more about the fee.

57. However, like DoorDash's disclosures, Uber misrepresents the nature of drivers' wage rights, suggesting drivers earn substantially more than they are entitled to under the PayUp Ordinance.

58. Furthermore, as with the DoorDash disclosure, Uber's disclosures suggest that the flat fee has some logical and reasonable relationship to drivers' pay rates. It does not.

<u>CLAIM ONE</u>: Misrepresenting Total Cost of Delivery

Unfair or Deceptive Act or Practice, 15 U.S.C. § 45(a)(1)

59. A trade practice is unfair under § 5 if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not

outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). In determining whether a trade practice is unfair, the Commission is expected to consider "established public policies."

60. A practice is deceptive under § 5 if it involves a material representation, omission, or practice that is likely to mislead. *See e.g.*, *Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

61. DoorDash and Uber engage in unfair and deceptive business practices by misrepresenting the total costs of their delivery services.

62. The mandatory $5.00 junk fee appears late in the purchase process, along with other mandatory fees and taxes, creating a false impression in consumers about the total cost of the goods and services being purchased.

63. On the front end, consumers are presented with the price of food and other goods to be delivered, which are often already inflated to account for fees charged by the companies.[19] The mandatory fees, including the $5.00 junk fee, are not disclosed to consumers until they have already made their selections and gone to check out.

64. Once disclosed, delivery apps partition the mandatory fees, including the $5.00 junk fee, from the total cost of the delivery.

65. These practices are misleading because they lead consumers to believe that the total costs of deliveries through are lower than they actually are.

66. These practices deceive consumers about the actual price of delivery apps' services.

67. Price is a material term.

68. By not disclosing the mandatory fees, including the $5.00 junk fee, until late in the process, delivery apps are providing consumers "misleading door openers," which are deceptive.

69. Disclosing the mandatory fees separately from the base price ("partitioned pricing") also distorts consumer choice because it is likely to cause consumers to underestimate the total cost.

70. Partitioned pricing leads consumers to pay disproportionate attention to secondary features of a product associated with ancillary fees, which impedes consumers' ability to accurately compare products.

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[19] *See* Warren Letter *supra* note 2.

71. For example, the partitioned pricing deceptively leads consumers to focus on the $5.00 junk fee purportedly resulting from the PayUp Ordinance instead of the overall price of the goods and delivery, including amounts collected by the companies that are not paid out to drivers or restaurants.

72. As a result, the companies can distract consumers from inflated corporate profits and instead encourage consumers to direct their attention and frustrations about increased costs towards the PayUp Ordinance.

73. The delivery apps' misrepresentations of total cost are also unfair.

74. The misrepresentations are likely to cause substantial injury because consumers are likely to transact with the delivery apps under false pretenses.

75. The misrepresentations "harm consumers and actively undermine competition by making it impractical for consumers to compare prices, a linchpin of our economic system."[20]

76. Businesses that accurately represent the total amount consumers will pay up front are at a competitive disadvantage to those that do not.

77. Injuries to consumers include higher prices and search costs.

78. The fees are substantial–in combination with other poorly disclosed and mysterious mandatory fees charged by the delivery apps, these fees can nearly double the cost of the goods and services purchased by consumers.

79. The injuries caused by the $5.00 junk fee are not reasonably avoidable because the fee is imposed unilaterally by the delivery apps for all deliveries in Seattle.

80. The search costs of attempting to avoid these injuries are themselves a harm to consumers.

81. Consumers are also prevented from avoiding injury by cognitive biases, including:

a. *The anchoring theory:* consumers set expectations based on the price initially disclosed to them and do not accurately adjust those expectations once they learn about additional fees later in the process, causing them to underestimate the total cost of the transaction;

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[20] CEA, The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition, President of the United States, Council of Economic Advisors Issue Brief, March 5, 2024.

b. *The endowment theory:* consumers attach value to the items they select during the purchase process, so it would feel like a loss to end the transaction after learning about mandatory fees late in the process; and

c. *The sunk cost fallacy:* once consumers invest in a transaction, such as by taking time to make food selections on an app, they are likely to continue the transaction even if it would benefit them more to begin again elsewhere.

82. The market cannot correct for these injuries because the practice is maintained by two firms, seemingly operating in parallel, that have substantial control over the market.

83. The consumer injury is not outweighed by benefits to consumers or competition because the $5.00 junk fee does not serve any legitimate economic purpose. The $5.00 junk fee is wholly uncoupled from the costs actually caused by the PayUp Ordinance, which is primarily based on the time and mileage expended by workers. Rather they it is a flat fee, the same across at least three major delivery apps. No market is benefited by the collusive and arbitrary setting of junk fees by massive corporations.

<u>CLAIM TWO</u>: Misrepresenting Nature and Purpose of Fees

Unfair or Deceptive Act or Practice, 15 U.S.C. § 45(a)(1)

84. Section 5 of the Federal Trade Commission Act prohibits unfair and deceptive acts and practices in or affecting commerce. 15 U.S.C. § 45(a)(1).

85. A trade practice is unfair under § 5 if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). In determining whether a trade practice is unfair, the Commission is expected to consider "established public policies."

86. A practice is deceptive under § 5 if it involves a material representation, omission, or practice that is likely to mislead. *See e.g.*, *Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

87. DoorDash and Uber engage in unfair and deceptive business practices by misrepresenting the nature and purpose of the $5.00 junk fee described by DoorDash as the "SEA Regulatory Response Fee" and by Uber as the "Local Operating Fee."

88. These vague labels suggest that the $5.00 junk fee may be mandated by Seattle.

89. DoorDash's practice of separating the $5.00 junk fee from its "delivery fee" and instead grouping it with "fees & tax," further suggests that the $5.00 junk fee is mandated by Seattle or another third party.

90. Both DoorDash and Uber create further confusion by separating the $5.00 junk fee from the companies' delivery and service fees, which already purport to compensate the companies for delivery and operating costs, thereby suggesting that the $5.00 junk fee serves some other function.

91. The delivery apps' disclosures explaining the $5.00 junk fee are also misleading.

92. As detailed above, the disclosures suggest to customers that the $5.00 junk fee is either paid directly to drivers or used to cover the costs of paying drivers drastically more than actually required by the PayUp Ordinance, when in fact the fee is used by the companies to pad their own bottom line. The fee's disclosures also dramatically overstate drivers' wage rights, leading many consumers to believe that drivers are making substantially more money than they actually are.

93. The disclosures also mislead consumers by suggesting that it is directly related to increased costs to the companies resulting from the PayUp Ordinance. In reality, the flat, $5.00 junk fee has no reasonable or logical relationship to increased minimum pay standards for Seattle delivery drivers. In some cases, the fee substantially increases the costs of delivery for customers in ways that are not directly related to any costs imposed on the company by the ordinance. The fee appears designed to turn consumers against workers and to drive up revenues for the companies, which are already making money on the transaction in several other ways.

94. The $5.00 junk fee's disclosures are inherently likely to mislead consumers because they include false claims and claims that lack a reasonable basis.

95. The nature and purpose of the $5.00 junk fee are material because they are core characteristics that affect the value to consumers of the goods or services being offered and will necessarily affect a consumer's choice whether to pay a charge.

96. The delivery apps' representations regarding the nature and purpose of the $5.00 junk fee are also unfair.

97. The delivery apps' representations regarding the nature and purpose of the $5.00 junk fee cause substantial injury by charging consumers under false pretenses.

98. The $5.00 junk fee is substantial– in combination with other poorly disclosed and mysterious mandatory fees charged by the delivery apps, these fees can nearly double the cost of the goods and services purchased by consumers.

99. The injuries caused by the $5.00 junk fee are not reasonably avoidable because the delivery apps obscure information about the nature and purpose of the fees and provide other false information to consumers.

100. The $5.00 junk fee is imposed unilaterally by the delivery apps for all deliveries in Seattle.

101. The $5.00 junk fee does not serve any legitimate economic purpose. The fee is wholly uncoupled from the costs actually caused by the PayUp Ordinances, which are primarily based on the time and mileage expended by workers. Rather the $5.00 junk fee is a flat fee, the same across at least three major delivery apps. No market is benefited by the collusive and arbitrary setting of junk fees by massive corporations.

PRAYER FOR INVESTIGATION, INJUNCTION, AND OTHER RELIEF

102. Mr. White requests that the Commission investigate fees charged by Uber and DoorDash to Seattle consumers, and find that:

a. Those fees constitute unfair or deceptive practices in or affecting commerce under Section 5 of the FTC Act; and

103. White further requests that the Commission:

a. Enjoin Uber and DoorDash from imposing junk fees on Seattle consumers; and

b. Provide such other relief that the Commission finds necessary and appropriate.

Respectfully Submitted,

/s/David H. Seligman
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Counsel for Robert White

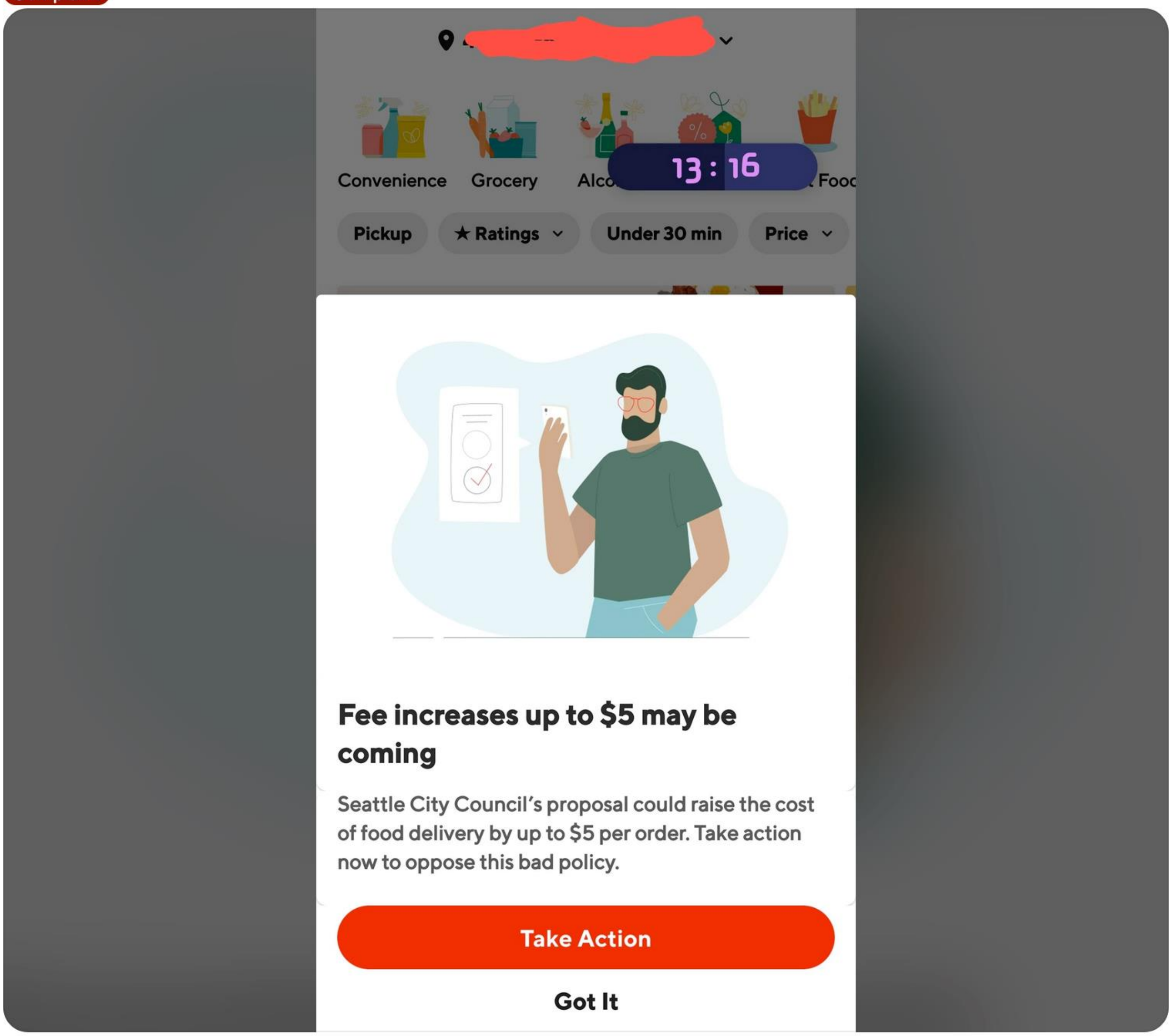
APPENDIX

Fig. A

r/doordash • 2 yr. ago
PNWGirl420

Seattle trying to impose $5 extra charge on delivery orders!?

Complaint



Archived post. New comments cannot be posted and votes cannot be cast.

244 | 314 | Share

Fig. B

r/doordash • 4 mo. ago
Stock-Horror620

Seattle's new 4.99 service fee and 26.50 hourly pay has officially ruined this service for me

Seattle now adds a ~$5 fee to every order so that they can pay dashers 26.50 an hour plus gas. It was predicted this would cause dashers to start dragging out order deliveries, and that is exactly what happened to me. I paid around $40 to get a soup bowl delivered to me, and the dasher decided to drive around the most densely packed part of Seattle instead of driving to me via a more direct route.

The result? It took 50 minutes to deliver my food (racking up the dasher 21.25 in wages, in addition to the $5 tip). By the time I got it, it was cold, soggy, and disgusting. Totally worth $40. To add insult to injury, the service refused to give me anything more than $3 for the slop I was given.

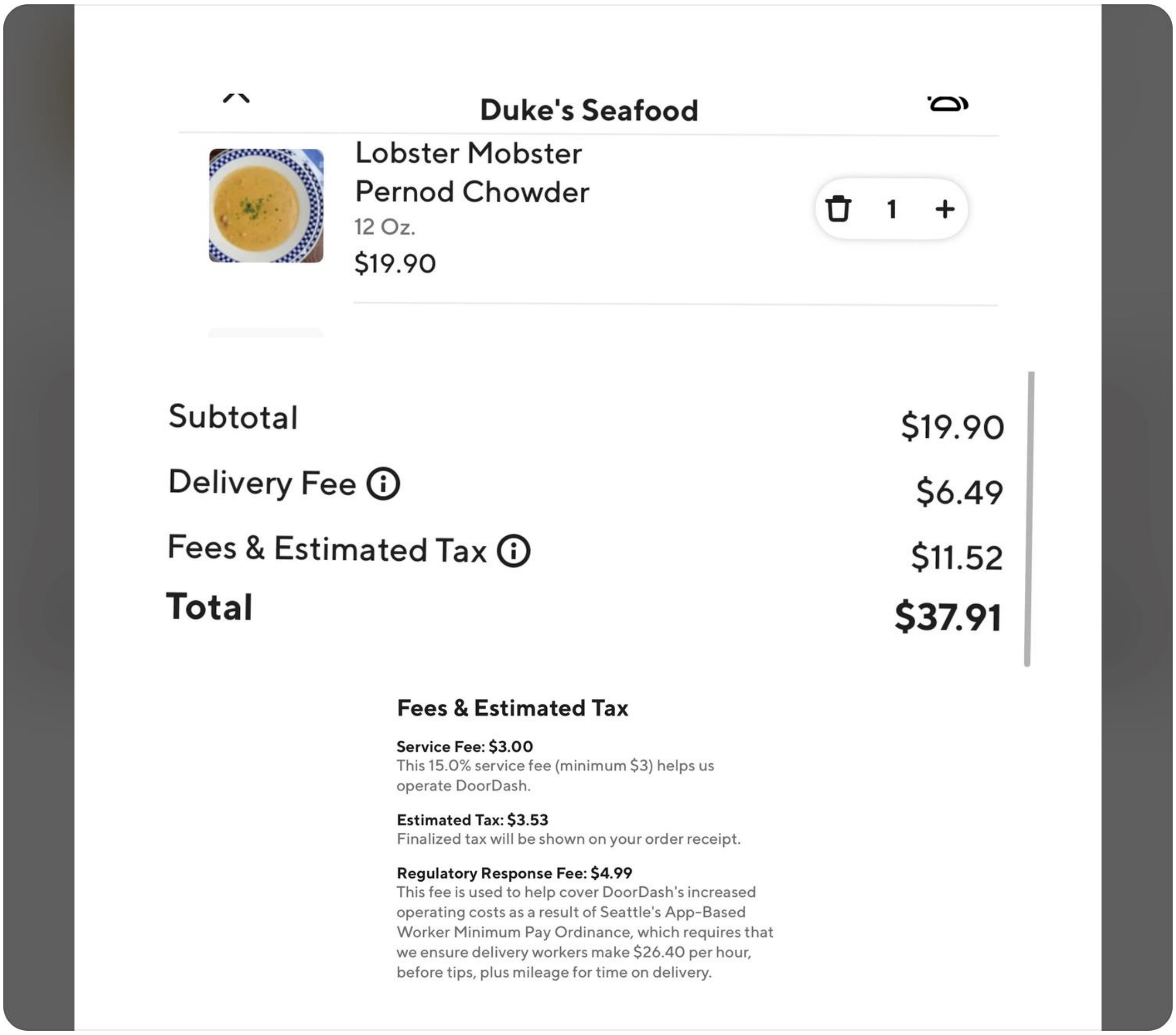
Pro-tip, anyone in the Seattle area will probably save money and time just renting a car to get food at this rate. The new system incentivizes dashers to take as long as possible so they can stay "on the clock"

27 18 Share

Fig C.1

r/SeattleWA • 4 mo. ago
zachty22

New "Regulatory Response Fee"... This is Becoming Insane! I Still Need to Add a Tip on Top of This.



298 | 483 | Share

Single comment thread — See full discussion

jumbocards • 4mo ago

Looks like you don't need to pay tips ... if they are getting paid 26.40 per hours. This is of my opinion.

115 Reply Award Share

Fig. C.2

[deleted] • 4mo ago

Yup don't tip. They are making 26 an hour which is more than I make. With the extra 8.00 in fees, it doesn't even let you add a delivery fee on Uber eats until after they deliver now

9 Reply Award Share ···

Fig. C.3

Jetlaggedz8 • 4mo ago

The drivers make $25+ an hour in Seattle and still want tips.

47 Reply Award Share ···

Fig. C.4

jmowtab • 4mo ago

Just stop tipping. Seattle has decided the pre-tip wage needs to be a living wage.

2 Reply Award Share ···

Fig. C.5

natey37 • 4mo ago

Are you still expected to tip? If it's built into the price then maybe... otherwise the convenience just costs too much

0 Reply Award Share ···

Fig. C.6

Wizzenator • 4mo ago

You do not still need to add a tip on top of that.

1 Reply Award Share ···

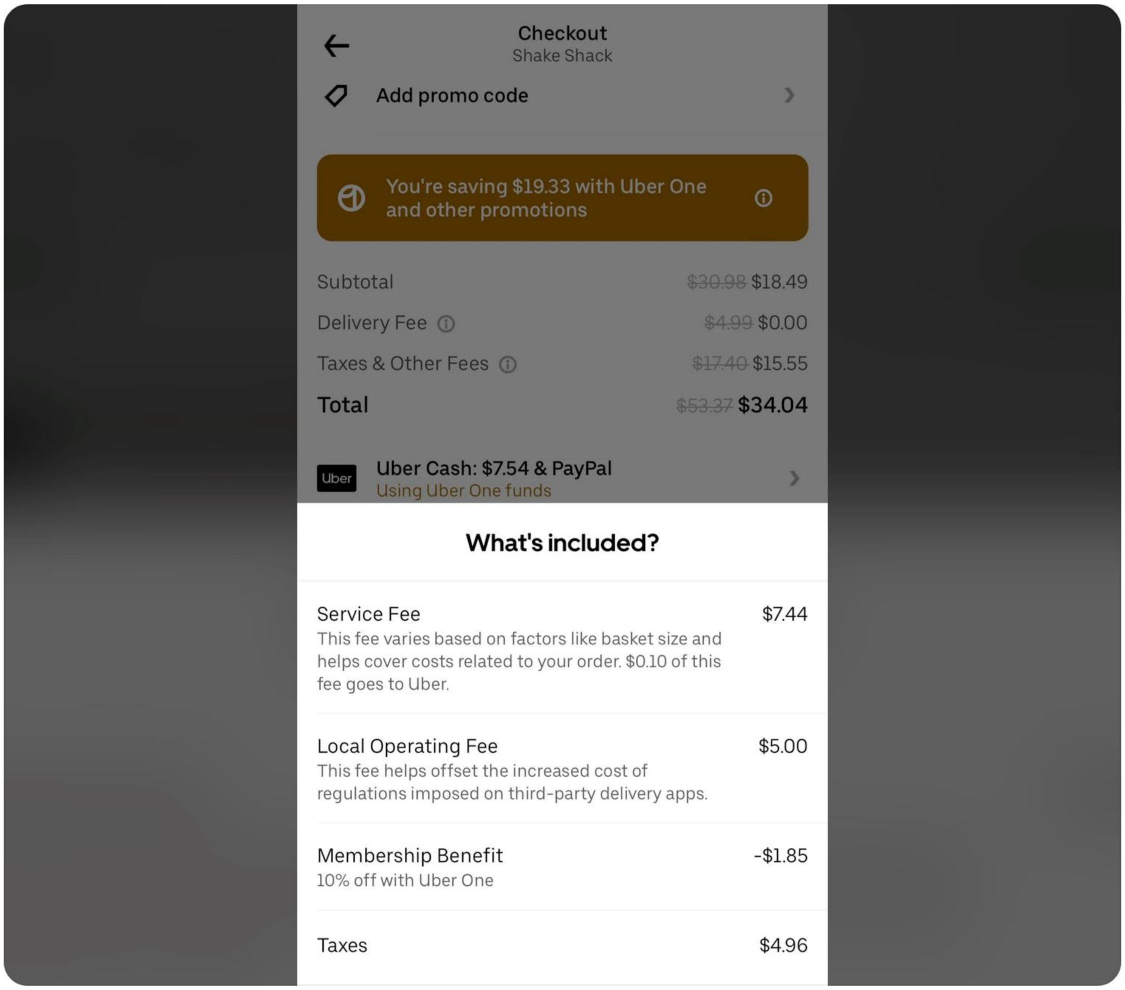
Fig. D

r/UberEATS • 4 mo. ago
Jayfiraja

Ordering in seattle now costs almost double with Local Operating Fee

USA

Ordering 18 worth of food now you get to pay 15! On forced fees and tip is still to be included on top of all that after placing the order I am no longer willing to pay for.



11 | 64 | Share

Single comment thread — See full discussion

PrettyCauliflower423 • 4mo ago

Drivers are being compensated fairly now. No need to tip. Think do the fee as replacement of a tip. Base pay is now $5 plus mileage.

2 Reply Award Share ···

Fig. E

r/SeattleWA • 4 mo. ago
IPAtoday

Seattle's new app-based delivery fee ordinance goes into effect Saturday

Discussion

I never use food delivery anyways but this just validates my decision even more.

king5.com

Open

78 | 83 | Share

Single comment thread — See full discussion

[deleted] • 4mo ago

I'll literally never order delivery again. On principle alone. I love this city but I cannot wait to move to a city that doesn't punish its citizens with so many taxes and fees. It's astonishing.

9 Reply Award Share ...

Fig. F

r/technology • 3 mo. ago
esporx

'It's definitely backfiring': Seattle ordinance intended to help app delivery workers is 'hurting' them

Business

king5.com

Open

1.3K 469 Share

Single comment thread See full discussion

kobachi • 3mo ago

They are now guaranteed $25/hr before tips per city ordinance. I don't feel the need to tip on top of that for my 1-2 person easy orders

15 Reply Award Share ···