

SHOUT OUT

Latham's Hat Trick

By Jenna Greene

May 12, 2016

Latham & Watkins antitrust litigators racked up three wins in the past week, prevailing in federal court on behalf of Live Nation Entertainment Inc. and Ticketmaster; Ocean Spray Cranberries Inc.; and Blue Rhino propane gas seller Ferrellgas.

On Wednesday, Live Nation and Ticketmaster got a clear signal from U.S. District Judge Dale Fischer of the Central District of California that she didn't think much of the suit against them. Fischer ruled that the plaintiff, Complete Entertainment Resources, "failed to show virtually any likelihood of success on the merits," and denied the company's motion for a preliminary injunction.

Represented by Quinn Emanuel Urquhart & Sullivan, Complete Entertainment Resources owns the website Songkick.

At issue: "artist presale tickets." Such tickets are set aside for artists to sell outside the Ticketmaster system to their fan club members, and have lower service fee charges.

As an artist presale ticketing services provider, Songkick says it "helps artists offer artist presales to fans, and designs bespoke direct-to-fan marketing strategies to excite the audience for such presales."



Over the past four years, Songkick alleges, Ticketmaster and Live Nation, which merged in 2010, are "using their postmerger monopoly power to stifle that competition."

The preliminary injunction motion is a bit short on examples, pointing mainly to instances where Weird Al Yankovic and the band Alabama Shakes were told by Ticketmaster that their fan clubs didn't conform to certain policies, so their members would have to pay the standard ticket fees.

But Fischer didn't seem to care. "Plaintiff fails to provide any reason why this is illegitimate on its face or why plaintiff should be allowed to interject

itself into the contracts between defendants and the venues,” she wrote.

The Latham team is led by San Francisco partners Daniel Wall and Timothy O'Mara, with associate Andrew Gass.

On Tuesday, Latham lawyers won a key ruling for Ocean Spray, when U.S. District Judge Rya Zobel for the District of Massachusetts refused to certify a class action against the company.

An agricultural cooperative owned by 700 cranberry growers, Ocean Spray was sued by other cranberry growers who said, among other things, that Ocean Spray was trying to monopsonize the market for raw cranberries (where a large buyer, as opposed to a seller, controls the market and drives prices down).

Latham had been whittling away at the case, winning dismissal of nine of the 12 counts in May 2014, and obtaining summary judgment on one of the three remaining counts in May 2015.

The plaintiffs then moved to certify a class of all independent growers who delivered their fruit to handlers that compete with Ocean Spray in the processing of fruit and sale of cranberry products.

“The claims--and the appropriateness of class certification--hinge on several peculiarities of the cranberry industry,” Zobel wrote. Recognizing this, San Francisco partner Al Pfeiffer provided a tutorial to the court in February. Washington, D.C., partner Margaret “Peggy” Zwisler argued in opposition to the motion for class certification.

In declining to certify the class, Zobel found that the plaintiffs “trip at the threshold, offering a proposed class definition that requires individualized inquiries of each grower to determine, as to each, whether or not that grower belongs to the class. ... Plaintiffs’

maximally inclusive class definition sweeps in scores of growers who may well have suffered no injury under the plaintiffs’ theory of the case.”

Other Latham team members include partners Jennifer Giordano in Washington, D.C., and Larry Buterman in New York, with associates William Rinner and Jessica Bratten in Washington, D.C., and Elyse Greenwald and Amy Feinman in Boston.

The growers are represented by Lawson & Cates; Hernandez and Associates; Jackman & Roth; and Carleton Law Offices.

Finally, Latham lawyers also won dismissal with prejudice last week of a class action against propane seller Ferrellgas and its primary competitor, Amerigas Propane, for allegedly misleading consumers as to the amount of usable propane contained in their tanks.

Amerigas was represented by Morgan, Lewis & Bockius.

U.S. District Judge Dean Pregerson of the Central District of California wrote that the propane tanks “accurately state, as they must, the net weight of the propane contained therein.”

“Further, and as explained by this court by reference to toothpaste, peanut butter, shampoo and many other products,” he continued, “the general consumer is generally aware that she may not be able to extract every bit of a product from its packaging.”

Latham San Francisco partner Niall Lynch argued on Ferrellgas’s behalf at the hearing on the motion to dismiss, and the case team also includes associates Jesse McKeithen, Alicia Jovais and Benjamin Pulliam in San Francisco.

Contact Jenna Greene at jgreene@alm.com or on Twitter @jgreenejenna.