

Live Nation Escapes Price Structure Monopoly Suit

By **Gavin Broady**

Law360, New York (September 20, 2013, 2:13 PM ET) -- An Illinois federal judge on Wednesday tossed a putative nationwide class action against Live Nation Entertainment Inc. after finding that the plaintiff was not harmed by the company's practice of charging additional fees, saying his allegations that the company is a monopolist are irrelevant.

U.S. District Court Judge Charles Kocoras tossed plaintiff Brendon Holub's suit after determining that he could not demonstrate injury sufficient to establish standing based on Live Nation's practice of charging fees for things such as processing and parking at the end of a transaction rather than offering a single, flat-rate option up front.

"The court is perplexed as to how Holub can claim a loss of money or property based on the facts that he has set forth, which show that the overall price that Holub paid would have been the same," Judge Kocoras said. "This claim appears to be a threadbare recital of the elements of a claim under the [Unfair Competition Law], which is insufficient for pleading purposes."

Judge Kocoras also found that Holub's allegation that Live Nation is a monopolist has no bearing on pleaded claims regarding the company's pricing structure. Live Nation merged with Ticketmaster in 2010 in an approximately \$2.5 billion deal, giving it control of around 80 percent of the ticket sales market, according to the order.

Holub mounted his proposed class action in March, claiming the company's pricing model allows it to hit consumers with unfair fees rather than operating under a purportedly more honest system of "all in" pricing in which the total retail price of the ticket is presented to consumers up front, according to the complaint.

Live Nation moved to dismiss the suit in May, saying Holub had failed to plead any cognizable injury and any objection he has to the ticket structure is ultimately not an antitrust issue, according to court documents.

In doing so, it cited a previous putative class action brought in Illinois by the same plaintiff's attorney, in which concertgoer James Batson argued that Live Nation's practice of charging parking fees violated the Illinois Consumer Fraud Act, antitrust laws and policies that encourage people to walk, ride bikes or use mass transit and avoid drunk driving.

The district court tossed that suit in March after determining that the company's tying of the parking fee to the ticket cost did not amount to "oppressive" conduct and that Live Nation's ticket pricing didn't meet the criteria to be considered a "substantial injury" that consumers could not reasonably have avoided.

Holub moved in July to amend his complaint in the instant dispute, saying Live Nation was "simply wrong about plaintiff's antitrust standing" and requesting permission to add a claim under the Clayton Act explicitly challenging the merger between Live Nation and Ticketmaster, according to court records.

The court subsequently denied that motion, and on Wednesday said allegations that Live Nation is a monopolist are unrelated to Holub's original complaint and he could not "implicitly amend" that complaint while attempting to fend off a dismissal motion.

"Holub has not shown how a lack of competition in the ticket selling market bears upon the manner in which prices are presented to consumers, and the court cannot logically discern one," Judge Kocoras said. "As such, finding that Live Nation is a monopolist would not in and of itself redress Holub's grievance regarding the manner of presentation of Live Nation's ticket prices."

Live Nation faced a federal legal challenge from the U.S. Department of Justice over allegations its \$2.5 billion merger with Ticketmaster would have lessened competition for ticketing, resulting in higher prices and less innovation for consumers. Those claims were resolved via a simultaneously filed settlement in January 2010 calling for the divestiture of some ticketing assets and licensing of ticketing software.

Representatives for the parties were not immediately available for comment Friday.

Holub is represented by Mark T. Lavery of the Lavery Law Firm.

Live Nation is represented by Sean Berkowitz, Daniel Wall and Sadik Huseny of Latham & Watkins LLP.

The case is Holub v. Live Nation Entertainment Inc., case number 1:13-cv-02008 in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Dan Prochilo. Editing by Stephen Berg.