

Angela Black
Direct: 608-258-7128
Angela.Black@huschblackwell.com

Jeffrey L. Vercauteren
Direct: 608-234-6052
Jeff.Vercauteren@huschblackwell.com

October 31, 2016

VIA E-MAIL

City of Madison Common Council
210 Martin Luther King Jr. Blvd., Room 417
Madison, WI 53703

**Re: Development Agreement for Capitol East District Parking Structure
Legistar File No. 44762**

Dear Council Members:

The Development Agreement for the Capitol East District Parking Structure is a critical component for the continued growth of the district, to support existing businesses and residents, and to provide the infrastructure necessary to catalyze the types of employment uses identified in the Capitol Gateway Corridor (BUILD) Plan. The Cosmos proposed by Gebhardt Development and The Spark proposed by American Family Mutual Insurance Company will create significant new office, retail and other commercial uses consistent with the Plan, including the creation of a new 50,000 square foot space for StartingBlock Madison. We respectfully ask that the Council carefully consider the proposal and the information presented, keeping in mind that the decision of whether to approve the Development Agreement will determine whether this important Project will move forward.

This letter aims to supplement the work of City staff in outlining and analyzing the terms of the Development Agreement, and to dispel certain incorrect and misleading information and arguments which have recently been circulated by certain special interests. The Project team has worked diligently with City committees and staff over the last two and a half years to bring this Project to reality. Consistent with the Corridor Plan, the proposed Development Agreement seeks to “use TIF funds and other revenue sources to provide parking, transit and related public amenities needed to attract new employers to the Corridor.”

Representatives of the Orpheum Theater have suggested there has been little or no process or input related to the Project. That assertion is simply false, and such assertions by representatives of the Orpheum are disingenuous, at best, considering they have been attending and speaking at neighborhood and city meetings about the Project for the last several years.

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Gebhardt responded to the City's RFP for redevelopment of the 800 South Block in September 2014 with a proposal including office space, commercial and retail space, and a concert venue. The Capitol East District Committee—including four alders and representatives from the Marquette and Tenney-Lapham Neighborhoods—considered the proposal, held public meetings, and ultimately authorized the proposal to proceed in November 2014. In July 2015, the Capitol East District Committee recommended the City proceed with negotiating the sale of land to Gebhardt. As part of that process, initially Gebhardt proposed to construct the parking ramp on site, and then offsite on property owned by MGE. Following extensive discussions with City staff and the consideration of multiple options for addressing parking to serve the office uses within the Project, the City indicated its desire to construct the ramp in furtherance of the objectives of the BUILD Plan and the Parking Utility.

The current proposal includes a new music venue for Frank Productions—a local, third-generation, family-owned business headquartered in Madison for over 50 years. Frank Productions has made significant investments in and contributions to our City including its programming of the annual Freakfest (which by all accounts has been a tremendous success in dealing with issues that existed previously on State Street during Halloween weekend). The proposed venue incorporates City and neighborhood feedback provided over two years ago in relation to an earlier proposed site on the other side of East Washington Avenue. In a November 7, 2014 letter, the City Director of Planning & Community & Economic Development stated: “We found your music venue concept to be very exciting, and it could become a major attraction in the Cap East District. We would like to offer our assistance in helping you locate such a venue in the Cap East District.”

The Development Agreement before you should not be evaluated based on an analysis of theoretical future “competition” one business in the Project *might* present based on unfounded assertions and inaccurate information. However, we believe it is important to correct some of the misleading information and arguments being circulated by the Orpheum's owners, lobbyists and attorneys. To be clear, if competition is a consideration in this process, then the entire competitive picture should be part of the discussion.

The Orpheum's lobbying efforts are intended to benefit a large, publicly-traded, multi-national corporation—Live Nation (formerly Clear Channel Entertainment)—which many in the industry believe enters markets and minimizes or eliminates local competition through gaining control of local music venues, evidenced by multiple suits it has faced for anti-competitive tactics. (See enclosed articles, which are just a sampling of articles available about past and present actions). Pertinent facts here include:

- Since May 2014, the Orpheum has prohibited Frank Productions from promoting shows at the Orpheum. This was confirmed by Eve Paras at the Board of Estimates meeting.

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- On June 22, 2014, Gus Paras indicated in an interview with Channel 3000, “Competition is always good. It’s going to make us work harder, and that’s good ... You have to be open-minded and you have to work harder than the next guy to do a better job. It doesn’t matter how big they make it, whatever they do. There is only one Orpheum.”
- In April 2016, the Orpheum announced it had entered into a management agreement with Live Nation, and it is our understanding Live Nation (not the owners of the Orpheum) now exclusively manage and operate the venue. (See enclosed Capital Times article).

Any conversation about competition related to this Project, and the proposed music venue, must consider all the facts, sources of information and underlying special interests. Frank Productions is no longer able to produce shows at the Orpheum, limiting the ability of Frank Productions to compete in its own market to attract shows of all sizes, ultimately allowing the Orpheum and Live Nation to inhibit competition in the Madison live music market and limit Frank Productions’ ability to program venues of all sizes. Efforts by the Orpheum and Live Nation to stop the Frank Productions music venue will not only have the impact of jeopardizing the entire Project, it will enable a large multi-national corporation to limit competition.

In addition, it is our understanding Orpheum’s owners, lobbyists and attorneys do not represent or speak on behalf of The Barrymore, The Majestic, The High Noon Saloon, The Overture Center or The Wisconsin Union Theater—all of which are often cited in their communications. To our knowledge, those venue operators have not expressed an opinion in opposition to the proposed venue and several have specifically asked the Orpheum to stop using their names or purporting to speak for them. Frank Productions continues to book shows at those venues and will continue to do so with the new proposed music venue. The size, location, layout and characteristics of each of those venues makes each appropriate for certain types of artists and shows, as indicated in the enclosed information prepared by Frank Productions.

The new venue will bring a product to the Madison music market that does not exist (much of the information circulated by the Orpheum lobbyists regarding the size, layout, specifications and cost of the new venue is totally inaccurate). The purported market information circulated by the Orpheum on the number of shows occurring at those venues is also inaccurate; we enclose accurate market information with this correspondence compiled by Frank Productions.

We appreciate the Council’s thoughtful consideration of the Development Agreement, and respectfully request the Council approve the agreement. The Project is an important catalyst for employment and economic growth in the Capitol East District. The Project will only happen if the Development Agreement is approved at the November 1 meeting. The special interests lobbying against it should not be allowed to stand in the way of substantial benefits for the City and the Capitol Gateway Corridor.

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Very truly yours,

A handwritten signature in blue ink that reads "Angela Black". The signature is written in a cursive style with a long horizontal line extending to the right.

Angela Black
Jeffrey L. Vercauteren

AB/JLV/ifh
Enclosures



Background Information on Proposed Concert Venue

Submitted to the Common Council on October 31, 2016

Frank Productions' vision for the new venue is one as a catalyst for the exciting expansion of Madison's live music scene. Venues of varying capacities and layouts are critical for the health of the market for live music, as there is no one-size-fits-all concert venue. The targeted capacity is 2,500 with the ability to scale down to 1,500.

1. The New Venue Would Expand The Type Of Music Venues And Variety Of Live Music Available In The Madison Market.

Madison continues to see growing interest from performers who have not traditionally performed in Madison. As Madison's profile as a growing, thriving hub for young professionals, technology companies and entrepreneurs continues to grow, so does the demand for new performances. As long as there are music fans in Madison and touring bands in different stages of their career, there will be demand for different size venues in the Madison market.

The only large venue that has opposed the new venue is the Orpheum. The Orpheum owners have entered into an exclusive booking agreement with Live Nation, a publicly traded corporation that controls the highest percentage of global market share in the live entertainment industry. Neither the Paras family (as Orpheum landlord) nor Live Nation (as venue manager and operator) will allow Frank Productions to book shows at the Orpheum. Frank Productions has a good working relationship with Live Nation and has booked shows at other Live Nation venues around the country. However, the Orpheum arrangement allows Live Nation to control all revenue from ticket sales, merchandise and bar sales. This results in hundreds of thousands of entertainment dollars per year being distributed outside of Madison rather than being reinvested locally via local promoters. Our new venue will be locally owned, operated, and programmed.

Since Frank Productions has not been allowed to bring events to the Orpheum for several years, we have been forced to move those events to other less suitable venues in town or in many cases cities other than Madison. We aim to bring as many shows as we can to the Madison community and ensure that the money generated at these events remains in Madison.

2. The Continued Success Of Existing Venues Is Important To The Health Of The Market And The Future Success Of The Proposed Venue.

The High Noon Saloon and the Barrymore are much smaller than Frank Productions' new venue and cannot accommodate the number of fans or the size and type of shows contemplated at our new venue. The Overture Hall is a similar size, but is a seated performance arts venue which is not suitable for the type of standing shows that will be booked at Frank Productions' new venue. Additionally, Overture Hall is well programmed by its in-house bookers, so there are very few dates available for Frank Productions to promote events there.

Frank Productions currently books all national touring acts at the nearby High Noon Saloon. Frank Productions views the High Noon Saloon as a critical introductory venue for bands in Madison and it is important to continue to program that venue for several reasons:

- (a) Frank Productions has a longstanding relationship with the venue and has put a lot of effort into establishing the venue's reputation within the industry.
- (b) Frank Productions wants bands to come to Madison early on in their careers to develop fan bases locally that will enable them to eventually sell out larger venues in town, including the new venue. Without career launch pads like the High Noon being viable, it is harder to attract artists to come to Madison once they do become more successful.
- (c) The healthier the High Noon Saloon is, the more vibrant the Capitol East District will be. The success of the new venue will largely depend on the success of this developing district.

3. The Current Number Of Event Days For Existing Venues Is Not Indicative Of Market Limitations Or The Potential For Market Expansion.

Venues may have unused event days for a number of reasons, including operational constraints, promotional limitations, or market forces. A venue could have fewer event days based on the owner's choice to open less frequently or due to a lack of industry contacts, knowledge or ability to book appropriate shows. Frank Productions brings significant financial benefits to the market based on its industry connections and has the ability to support both a new venue and national touring acts at other venues.

Frank Productions is a member of the North American Concert Promoters Association (NACPA), a trade association for concert promoters. Current data from NACPA indicates that the trend for concerts is in venues of the 2,500 to 4,000 range. The majority of touring shows fall in this range, which indicates there are many bands not playing Madison. A larger venue open to other promoters is necessary to continue to cultivate the Madison music market. Based on industry statistics, there is high demand for live shows by artists in the mid-level range who can sell 2,000 to 4,000 tickets. Frank Productions has over 50 years of experience as tastemakers in the Madison music scene and we know how to market and sell tickets.

4. The New Venue Will Be Operated With The Same Commitment To Safety And Security That Frank Productions Has Provided At Other Venues In Madison.

Frank Productions has an excellent reputation in terms of crowd control at events in Madison and around the country. For the new venue, Frank Productions intends to employ private, professionally licensed and bonded crowd control staff at every event. Typical security responsibilities include:

- Maintaining an orderly queue of people prior to the start of the event;
- Setting a professional but welcoming and neighborly tone for patrons as they enter;
- Searching/pat downs for contraband as patrons enter;
- Enforcing venue security policies;
- Addressing security issues as they arise within the venue;
- Assisting patrons in case of emergency.

Examples of Frank Productions' success with crowd control include 10 years managing Freakfest, essentially eliminating vandalism and reducing the arrest count at the event to a negligible amount. Also, Frank Productions has successfully managed four large scale events at Breese Stevens Field with crowds ranging from 4,000 – 7,500 patrons. There have been no arrests at those shows and no security related complaints from the neighborhood regarding crowd ingress or egress around the events. Maintaining a safe venue is critical to Frank Productions as it intends to use the venue for events that attract people of all ages and intends to create a venue where all feel welcome.

With the main entrance for the venue being oriented toward the corner of East Main Street and South Livingston Street, Frank Productions plans to use the area on the southwest corner of the building (in the location of a utility easement that prevents building construction in that location) as a queuing zone for patrons. Initial calculations have that area handling a queue of up to 500 patrons. Additionally, Frank Productions plans to have an interior bar with a dividing wall that would create a temporary lobby space indoors of up to 250 people. That would potentially provide the ability to queue up to 750 people (one-third of total capacity) without encroaching on sidewalk space. Frank Productions estimates this to be adequate space for the vast majority of events. If that space is maximized, additional queuing could be provided along the sidewalk on East Main Street extending into the shared plaza. Security staff will be in place for larger shows to manage and maintain all public queuing areas.



Data on Concert Venues in Madison and Other Markets
Submitted to the Common Council on October 31, 2016

1. There Is Increasing Demand For Large Shows In The Madison Market.

Attempts to use the current show count in Madison to argue against our new venue fail in the face of market trends and improved venue choices. Investing in new capacity stimulates demand in positive ways for our music scene. As the table below shows, availability in venues with a capacity between 1,500-2,500 is very limited, especially given that Live Nation prohibits Frank Productions from producing shows at The Orpheum. The numbers of event days at other venues provided by the Orpheum lobbyist are grossly inaccurate and not based on actual data. Additionally, fixed seating venues are not appropriate for many types of shows such as live music.

<u>Venue</u>	<u>Capacity</u>	<u>Estimated Events Per Year</u>	<u>Event Count from Orpheum Lobbyist</u>
High Noon Saloon	400 (unseated)	355*	--
Majestic Theatre	600 (seated)	250*	--
Barrymore Theatre	850-900 (seated)	80-100*	31
Capitol Theater	1100 (seated)	183*	17
Orpheum Theater	2000 (seated)	39*	39
<i>Proposed Venue</i>	<i>2500 (unseated)</i>	<i>95 (75 concerts & 20 rentals)*</i>	<i>130</i>
Overture Hall	2255 (seated)	215*	38

*All counts received directly from venue operators.

- **Majestic Theater.** Under old ownership, hosted 44 concerts in 2006. After 1 year of new ownership and venue improvements, hosted 118 concerts in 2008. In 2015 The

Majestic hosted 130 concerts (in addition to other types of shows).¹ The Majestic's Live On King Street series is now well established and has contributed greatly to downtown economic vitality.

- **Breese Stevens Field.** Hosted 0 concerts in 2014. In 2015, hosted 1 concert selling 7,500 tickets. In 2016, hosted 3 concerts selling approx. 16,000 tickets total. 2017 is projected to host 5 concerts selling 25,000+ tickets total.
- **Orpheum Theater.** In 2011, hosted 13 shows (last full year of concerts before foreclosure). In 2013 under Frank Productions management for Monona Bank, hosted 39 shows. Our company was only able to start programming for that year in November 2012. Typically, booking starts upwards of 6 – 8 months in advance for these venues. Despite a short timeline and the inability to make capital improvements, we were able to book 39 music concerts and no comedians. In 2014 (the first full year that was Frank Productions was not allowed to bring shows), venue hosted only 25 concerts and 7 comedians, in 2015 hosted 29 concerts and 4 comedians, and in 2016 hosted 40 concerts and 6 comedians.²
- **Overture Center.** Overture Center is a state of the art center featuring 2 venues, Overture Hall and Capitol Theater. Overture Hall hosts an average of 215 events per year and Capitol Theater hosts an average of 183 events per year. The number of event days in these facilities taken up by non-concert programming (Theater, Symphony, etc.) makes it very tough for us to find available dates to host concerts. Frank Productions concerts represent only 2.33% of overall show count at Overture Hall and 4.76% of overall show count at Capitol Theater.

2. Existing Venues Are Not Currently Able To Accommodate All Large Shows.

- **Needtobreathe @ Alliant Energy Center.** This show sold out the Orpheum in 2015. We were not allowed to promote the show in Madison but did so the next day in Grand Rapids. The artist had a lot of complaints about the Orpheum, mainly related to their inability to accommodate the show's production. This year, they asked us if there was another option in Madison and we booked the show at the Coliseum as there was no room larger than Orpheum but smaller than the Coliseum. The show will sell about 2,500 tickets. We will lose money, and the band will play to a partially empty room. This would be a perfect show for the new venue.
- **ZZ Top @ Overture Hall.** In 2015 we promoted this show in Milwaukee, Madison, and La Crosse. We would have preferred to do this show at the Orpheum in Madison but because the venue is not available to us, ended up putting the show at Overture Hall. Overture Hall is more expensive than the venues in La Crosse and Milwaukee and therefore we needed to charge more for tickets. Additionally, many people told us that the vibe of the room was not comfortable for this type of show. As a result, Madison

¹ These numbers are approximate, based on data available from Pollstar, an industry trade magazine.

² Based on Pollstar data.

performed the worst of the 3 dates. It was the only date that lost money for us. This is the type of show that would perform much better at our new venue which is much more suited for general admission audiences.

3. Madison Is Growing In Key Demographic Areas That Support Large Shows.

Madison's music scene will continue to grow as Madison grows. Favorable economic trends are clearly evident. Between 2010 and 2014, Madison's population within a thirty mile radius of the city center increased by 15,000. The population within this same radius over the next five years is projected to grow by 25,000, indicative of a predicted increase in our *rate* of growth. Additionally, the local economy remains strong, with an unemployment rate consistently below state and national averages. (Source: ESRI 2015).

Concert goers tend to be younger, with a heavier concentration among those under age 35. Due to the presence of the University of Wisconsin-Madison campus (45,000 students), and the increasing employment opportunities for the post-college demographic due to Epic and other high-tech enterprises, the city center is experiencing tremendous growth in residential, dining, and retail options. Madison is not only expanding its population, we're doing so with a demographic vibrancy particularly attuned to quality entertainment. Downtown living and downtown dining are on the upswing, and so is our music scene.

As Madison's music scene grows, its infrastructure needs to keep pace with demand. Overture Hall is a world-class venue (Cap: 2,255) and will continue to provide high-quality entertainment to area residents for years to come. However, the Overture is the home for the symphony, opera, ballet, and various local theater companies, while also hosting theatrical runs of Broadway shows. Consequently, dates we need for a given show are often not available. In other words, though Overture is a wonderful asset and well-suited for certain types of events, it is not equipped to meet Madison's growing demand for popular entertainment.

4. New Venues Have Been Shown To Drive Increased Market Growth.

At all levels in other markets, newly-designed, modern state-of-the-art venues with skilled and experienced in-house promoters see increased volumes in business, which in turn elevates the local music scene and further stimulates demand. Examples include:

- The Pageant, St. Louis, MO, opened in 2000
- LC Pavilion, Columbus, OH, opened in 2001
- Iron City, Birmingham, AL, opened in 2013
- State Theatre, Portland, ME, opened in 2010
- Stage AE, Pittsburgh, PA, opened in 2010
- House of Blues, Cleveland, OH, opened in 2014

Investments in state-of-the-art technology and venue infrastructure can also attract new business to the market. Birmingham and Portland are telling examples of how new or renovated venues can dramatically increase the volume of shows in markets not known to

have dynamic music scenes, spurring ticket sales by providing better quality patron experiences and attracting more events by providing better experiences for the artists.

This also speaks to the important element of *inter-city* competition, which differs in kind from *intra-city* vying for market share among venues. An investment in a state-of-the-art full-service entertainment venue will bring business to Madison that currently bypasses the city. Madison's chief competition in this regard is Milwaukee, 75 miles to the east. Though Madison's metropolitan population is roughly half of Milwaukee's (1,033,000 versus 2,178,000), our economy is healthier, with a median income of \$57,584 compared to Milwaukee's \$53,500. With our growing economy and demographic advantages, Madison will be able to successfully compete with Milwaukee for shows with the right venue.

The Milwaukee market is currently supporting six contemporary music venues (as opposed to performing arts venues such as The Milwaukee Theater or the Marcus Performing Arts Center that are comparable to the Overture) with a capacity of 1,200–4,000. Show volume for 2014 below as reported by Pollstar:³

- The Rave II/ Eagles Hall (Cap 1,200) 7 shows
- The Rave (Cap 1,800) 57 shows
- Eagles Ballroom Club Stage (Cap 2,500) 15 shows
- Eagles Ballroom (Cap 4,000) 32 shows
- Pabst Theater (Cap 1,339) 73 shows
- Riverside Theatre (Cap 2,400) 57 shows
- This is all in addition to Summerfest hosting over 700 bands per year.

Adding up the total, these 241 shows are the type we would be targeting with our new venue. Note this amount is more than three times the 75 events we've projected as a benchmark for our venue's success. We are confident of Madison's market potential for the simple reason that we ourselves have for years presented shows in Milwaukee for the lack of an available or suitable venue in Madison. In summary, though Milwaukee is twice the size of Madison, the disproportionate number of shows bypassing Madison for Milwaukee indicates a strong market potential for a new venue in Madison.

Furthermore, we have seen recently that shows playing both Madison and Milwaukee often perform the same or better in Madison. Recent examples include

- The Avett Brothers (sold 7,500 in Madison, in Milwaukee did not sell more than 4,000)
- Ziggy Marley (sold 900 in Madison, sold less than half that in Milwaukee)

This venue will be a state-of-the-art full-service facility, wired for the latest multi-media technology, capable of delivering big-city entertainment value to our customers and the very best in hospitality and performance quality for our artists. Located within the Capitol East Corridor, in the heart of Madison's urban renaissance, our venue will be easily accessible to local and regional fans.

³ These numbers are approximate, based on data available from Pollstar, an industry trade magazine.

We have worked in a wide range of venues across the United States, from clubs and theaters to arenas, amphitheaters, and even stadiums, experiencing the best and worst of what our industry offers to artists and audiences alike. For years now we have looked at retrofitting various buildings in Madison to open our dream venue in our own town, but it's always been apparent that our most optimal situation would be in building a brand new venue, breaking new ground, using best practices standards gleaned from a half-century of time-tested experience.

We have made a substantial investment to date in researching the market for a new venue, and have worked extensively with various vendors to advance the necessary elements to build and brand our enterprise. We have the relationships that will guarantee supply, as our years of successful engagements with agents and managers ensure us the artists will come. That supply of top-quality entertainment presented in a world-class venue will in turn stimulate additional demand, leading to a multitude of benefits for the local music market.

Articles About Orpheum Theatre and Live Nation



New music venue to open in 2015, aims to attract more artists

Orpheum owner says he's not worried, competition is good

Author: Velena Jones, vjones@wisctv.com

Published On: Jun 22 2014 10:11:10 AM CDT



MADISON, Wis. -

A new privately-funded live-music venue is coming to Madison by 2015, according to Frank Productions.

Frank Productions announced plans Thursday to build the venue in the 1000 block of East Washington Avenue.

According to Fred Frank, chief operating officer of Frank Productions, the currently nameless venue will be uniquely Madison.

"We intend to create a space that's both easy and exciting for artists, as well as a venue that the Madison community can support and be proud of. We want the venue to become a Madison destination," Frank said.

Frank said he wants to build the 46,000-square-foot music venue to accommodate touring artists and their fans, which Frank said the community has been missing.

"It's just going to be built for what the touring artists are looking for today. They can't play every venue across the country. They are going to play the ones where they think the best fans are and where the best facilities are," Frank said.

"This concert venue could bring a great deal of dynamism and excitement to the area," said Ledell Zellers, District 2 alder. "I'm encouraged that a local, multi-generational family business is interested in making this large of an investment in the near east side."

Zellers said neighbors will be involved in the planning process.

The 46,000-square-foot venue will hold an audience of 2,000 and be flexible enough to accommodate more intimate performances. The facility could also be used to host corporate events, community events and private parties.

Despite the new potential competition, Gus Paras, owner of the Orpheum in downtown, said he's not worried.

"Competition is always good. It's going to make us work harder, and that's good," Paras said.

Paras took over the Orpheum Theater last November and since then has spent over \$500,000 renovating the 1852 building.

A building, he said, historically will stand the test of time.

"You have to be open-minded and you have to work harder than the next guy to do a better job. It doesn't matter how big they make it, whatever they do. There is only one Orpheum," he said.

Frank said revitalizing the east side is the next big opportunity.

"Madison does really support its music, and we just think this is going to be a home run out of the park," Frank said.

Frank Productions said the project will be privately funded. They expect to begin construction in six months and hope to have the facility completed by 2015.

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http://host.madison.com/ct/news/local/govt-and-politics/national-entertainment-company-to-take-over-management-of-madison-s/article_3470dc98-c77c-525c-aaef-c676e0a92a9a.html

EDITOR'S PICK

National entertainment company to take over management of Madison's Orpheum Theater

ABIGAIL BECKER | The Capital Times | abecker@madison.com | [@abecker_4](https://twitter.com/abecker_4) Apr 21, 2016



MICHELLE STOCKER

Live Nation will soon take over the day-to-day operations of State Street's landmark Orpheum Theatre.

The historic Orpheum Theater in downtown Madison will soon see new management, pending City Council approval of a national entertainment company's liquor license application.

Live Nation Worldwide, Inc. will be taking over the day-to-day operations of booking shows at the venue and managing ticket sales. The company has partnered with a third-party vendor called DLS Events, LLC to run food and drink sales.

The Orpheum, at 216 State, is co-owned by Gus Paras and Henry Doane, although Paras' daughters, Eve and Anna, have managed the theater. The family also owns and operates the Comedy Club just a few doors down at 202 State St.

"We believe that Live Nation is a great opportunity for the theater," Eve Paras said.

The city's Alcohol License Review Committee approved a combination beer and liquor license for DLS Events at its meeting Wednesday. Live Nation has already secured a theater license at the council's March 29 meeting and does not need an additional entertainment license.

Paras said she expects a seamless transition in management since Live Nation has been booking shows at the Orpheum for the past two years. She said the company will be taking on a larger role at the theater.

"We think it's the next best step for the Orpheum," she said, mentioning Live Nation's resources and experience could bring more shows to the theater.

In the past year, the Orpheum has hosted 40 different shows, Paras said. Karen Foley, general manager at Live Nation, said she was unable to determine if that number would increase, but said she plans to work closely with the community and enhance the venue.

"We're not coming here to change anything," Foley said. "The (Paras) family has made the Orpheum amazing. I want to add to it."

Paras said the Orpheum is and will continue to be a family business, whether or not they are involved with the daily operations.

"We'll still own the theater, and we'll always be a part of it," Eve said.

Ald. Mike Verveer, District 4, said he also expects a smooth transition in management and that Live Nation has significant resources to bring more to Madison's music and arts scene.

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While the management transition is expected to be smooth, the landmark theater's rocky ownership history was clear at the meeting by the sight of Doane and the Paras family sitting on opposite sides of the council chambers. Doane spoke in opposition to the new license.

The Paras family acquired the building in late 2013 for \$1.9 million, when Gus Paras partnered with Doane, a local restaurateur who had purchased the building in 1999. Doane was a previous co-owner with Eric Fleming, who came into the business in 2003.

In the latest chapter of an ownership battle, Gus Paras and Doane are currently involved in litigation over Doane's claims that Paras improperly transferred the property to himself below market value among other complaints.

"A new license would further erode my interest in the building and business," Doane said Wednesday.

City attorney Roger Allen said the pending litigation between the feuding owners should not affect the ALRC's decision to grant a liquor license.

"It's somewhat of a tragedy that they've come to this point, but quite frankly the city doesn't have a dog in this fight," Allen said.

Share your opinion on this topic by sending a letter to the editor to tctvoice@madison.com. Include your full name, hometown and phone number. Your name and town will be published. The phone number is for verification purposes only. Please keep your letter to 250 words or less.

Background Articles About Live Nation/Clear Channel

billboard

ORIGINAL ARTIST INTERVIEWS.
INTIMATE PERFORMANCES.
BEHIND-THE-SCENES CONTENT.



Songkick Sues Live Nation and Ticketmaster for Antitrust

12/22/2015 by Andrew Flanagan






Songkick, fresh off two major presale projects with Adele (one that went smoothly and one that, well, didn't), is suing Live Nation and Ticketmaster, the world's largest concert promotions and ticketing companies, respectively, for antitrust violations, anticompetitive behavior and intentional interference.

Songkick Gets \$10 Million from Warner Music Group Owner Access Industries

Songkick alleges in its 68-page complaint, filed today in U.S. District Court of Central California, that Live Nation and Ticketmaster undertook a concerted effort to hamper its business and that the two companies employed their vastly dominant positions in the live event and ticketing industries to do so. (The complaint cites "industry data" that shows 70 percent of ticket sales come through Ticketmaster.com, and states that Live Nation "controls more than 60 percent of the concert promotion services market and it promoted 22 of the top 25 global tours in 2014." It also claims, for instance, that Ticketmaster's outsize profitability allows Live Nation to make loss-leading offers to potential clients, freezing out competitors.)

Live Nation Has Record Third Quarter on Festival, Ticketing Strength

A large portion of Songkick's complaint hinges on a "fan club policy" instituted by Ticketmaster. It's been a long-established practice for artists to receive an allotment of tickets with which to do as they please -- namely, sell them. Songkick's business model is centered around these presale bundles, which the company helps artists to package, promote, sell and gain insight from for their artist clients. The complaint maintains that, before Songkick's merger with Crowdsurge, Ticketmaster told the latter company's clients that they could only sell their presale allotments to a fan club, and that that club must adhere to a set of criteria in order for that artist to receive their presale disbursement of tickets. Songkick/Crowdsurge agreed to these rules, the complaint says, because it did not want to run afoul of Ticketmaster and parent company Live Nation's dominant market position. Songkick/Crowdsurge maintain the criteria around these fan clubs were purposefully capricious, allowing Ticketmaster to rescind, or threaten to rescind, presale allotments. "No pretense was too absurd" for Ticketmaster to claim a fan club did not meet its criteria.

Is Jay Z's Live Nation Deal Like the Formula for Coca-Cola?

The complaint mentions Live Nation director and CEO Michael Rapino thirteen times, concluding that the executive "personally and repeatedly engaged in the anticompetitive acts giving rise to this complaint."

One passage alleges a specific and dramatic instance of abuse by Live Nation and Ticketmaster:

Defendants threatened yet another artist (whose identity will be disclosed once a protective order is in place) that Defendants would not market the artist's tour and would moreover not permit the artist to use Paperless Ticketing (a technology designed to inhibit scalping) on any general sale tickets for the artist's tour if the artist opted to engage Songkick rather than Ticketmaster for artist presale ticketing services. If carried out, such threats to withhold marketing would clearly damage Defendants, because they would result in overall lower ticket sales for Ticketmaster's concert venue ticketing business, and would result in lower revenues for Live Nation's promotion business and Ticketmaster's venue clients. In a competitive market, such threats would be economically irrational. Ticketmaster's aggression therefore demonstrates the lengths to which Defendants were prepared to go in order to protect Ticketmaster's market power, including damaging themselves and their clients in order to preserve that power. In this specific instance, the threat worked. As the artist's management explained to Songkick: "[T]he Ticketmaster bullying is out of control and we're not going to be able to do all tour pre-sales off-platform. They are just sticking it to us too hard."

Songkick's Merger With CrowdSurge Adds Ticketing to Concert Discovery



Ticketmaster licensing its platform to competitors like AEG and divesting itself of Paciolan, a company which allowed venues to "host their own primary ticketing service on their websites." The stipulations were intended to ensure that at least two competitors would be present in the market. Additionally, the merged companies would not "be allowed to require that a client accept Live Nation as a promoter in order to access Ticketmaster's primary ticketing services, or vice versa." The Justice Department characterized the decree as using a "scalpel rather than a sledgehammer."

Live Nation and Ticketmaster did not respond to a request for comment.

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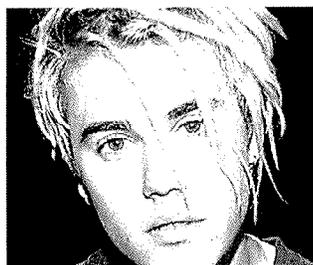
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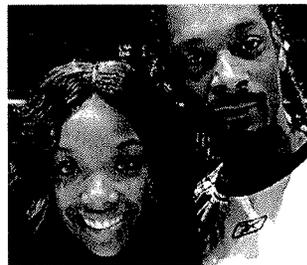
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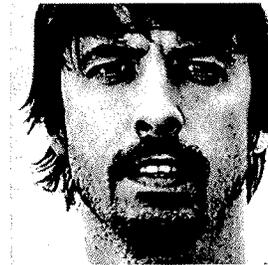
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Live Nation Squeezes Out Rival Promoters, Antitrust Action Says

BALTIMORE (CN) - Live Nation has monopolized the market for promoting live concerts, a Maryland music promoter claims in Federal Court. "Live Nation has wielded this power to entice and coerce artists to appear only at amphitheatres and other venues it owns, operates, or at which it controls booking," the lawsuit claims.



Promoter It's My Party Inc. and It's My Amphitheatre dba Merriweather Post Pavilion say Live Nation dominates 19 of the top 25 regional markets for large venues used by artists capable of drawing more than 8,000 fans to a concert.

The plaintiffs say the promotional business started to become highly concentrated around 1997, when a company called SFX Inc. began buying out competitive major independent promoters, including Bill Graham Presents, Fey Concerts and Pace Concerts. SFX also launched the trend of promoting all or most of an artist's tour, rather than only the artist's appearance in one market or region, the lawsuit claims.

Radio giant Clear Channel Communications bought SFX in 2000 and renamed it Clear Channel Entertainment. However, a string of antitrust suits in 2005 forced Clear Channel to divest Clear Channel Entertainment by creating Live Nation as a separate, publicly owned company, the Maryland companies say.

At that time, Live Nation cornered promotions for about 70 percent of the live music tickets sold nationwide, according to the lawsuit.

Clear Channel used its 1,200 radio stations to advertise only Live Nation-promoted concerts, the plaintiffs claims, forcing artists to use Live Nation's promotional services for fear that their songs wouldn't get radio time and their concerts wouldn't be adequately advertised.

"Where artists had sufficient popularity to resist Clear Channel's coercive conduct, Clear Channel used its enormous resources to outbid any competitors for the right to promote the artist," the plaintiffs add.

Live Nation then used its market dominance to offer super-competitive shares of concert revenues, often guaranteeing artists more than expected gross ticket sales, according to the lawsuit. These predatory tactics allowed Live Nation to net major artists such as Gwen Stefani, Nine Inch Nails, Kelly Clarkson, Coldplay, Dave Matthews Band and the Jonas Brothers, the complaint states.

"The ultimate object of Live Nation's scheme is to eliminate and prevent further competition, control all aspects of the music business, lower performance fees paid to artists and to charge super-competitive prices for concert tickets, remote ticket sales, concessions, parking, merchandise and other services," the plaintiffs claim.

The plaintiffs say Live Nation's actions violate federal and state antitrust law. They demand an injunction, plus actual and punitive damages.

Filing counsel is L. Barrett Boss with Cozen O'Connor in Washington, D.C.

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Many fear a merger would create a monopoly in the concert business

AP Associated Press

updated 2/6/2009 5:36:14 PM ET

LOS ANGELES — A proposed merger of concert promoter Live Nation Inc. and ticketing giant Ticketmaster Entertainment Inc. is expected to be announced within days, but antitrust concerns could delay its completion.

Board members for at least one of the companies were meeting Friday, and the announcement of the merger of equals was being planned for Monday morning, according to a person familiar with the situation.

The person spoke to The Associated Press on condition of anonymity because he was not authorized to speak publicly about the matter.

The merger negotiations were reported earlier by The Wall Street Journal.

The deal would match the world's dominant ticket seller, Ticketmaster, with Live Nation, which was once its biggest client. Live Nation is the world's No. 1 concert promoter, owns 140-plus venues and has multiyear comprehensive rights deals covering the tours of Madonna, Jay-Z, U2, Nickelback and Shakira.

Live Nation ended a long-term contract to sell its concert tickets through Ticketmaster last year, and launched its own ticketing service for its venues in January. That threatened to siphon at least 15 percent of Ticketmaster's revenue and had set the two companies up for a head-to-head fight to win ticketing contracts.

A merger would quell that fight — which could raise the ire of regulators, antitrust experts said.

"Live Nation became an important rival to Ticketmaster," said Marc Schildkraut, a Washington-based antitrust lawyer and former assistant director at the Federal Trade Commission's Bureau of Competition. "Ticketmaster turns around and says, 'Oops, let's buy Live Nation.' That could be a concern for antitrust authorities."

Because both companies are large — with market capitalizations of around \$400 million — they are required to submit a notice to the Federal Trade Commission and Justice Department for review of antitrust issues.

That review could take months — or even longer than a year — particularly in light of previous Justice Department investigations into allegations that Ticketmaster behaved like a monopoly.

In 1994, Pearl Jam complained to the government that Ticketmaster refused to agree to low concert ticket prices and fees, and that the grunge band couldn't organize a tour without Ticketmaster's cooperation. The case was dismissed a year later. Attorney General Janet Reno said then that new enterprises were entering the ticketing business.

Today, Ticketmaster is still the world's main force in ticketing.

It sold 141 million tickets in 2007. Aside from concerts, theater shows, and family events, it has deals with the NFL, NBA and NHL and the Premier League of U.K. football.

Although ticket resale sites have gained in popularity, such as eBay Inc.'s StubHub or RazorGator.com, they rely for their supply on ticket brokers or consumers who bought tickets mainly from Ticketmaster first and are reselling them at a profit.

Ticketmaster also recently got in trouble when it redirected Bruce Springsteen fans from its regular Web site to its reselling subsidiary, TicketsNow, which offered more expensive seats above face value, even though face-value tickets were still available. It has since apologized, but not before New Jersey's attorney general launched an investigation, and The Boss declared he was "furious."

"The one thing that would make the current ticket situation even worse for the fan than it is now would be Ticketmaster and Live Nation coming up with a single system, thereby returning us to a near-monopoly situation in music ticketing," Springsteen said on his Web site.



Live Nation CEO Michael Rapino

The companies plan to argue that the very technological advancements that allowed Live Nation to launch its own ticketing platform could allow other companies to do so as well. Live Nation's ticketing system is run by CTS Eventim AG, a German company that competes with Ticketmaster overseas and is the market leader in Europe.

AEG Live, a unit of the Anschutz Co. and the owner of The O2 Arena in London and Staples Center in Los Angeles, is also examining whether to sell its own tickets when its agreement with Ticketmaster for about 130 venues runs out in mid-2012.

One way that a Live Nation-Ticketmaster merger could benefit fans is that it would stop two giant players from competing with each other for a piece of concert tours. That battle over artists' tours — one of the last healthy segments of the music business — had bid up the amount that artists and their staff have been able to command from concert ticket sales.

Such competition prompted Live Nation to pay \$120 million for an all-encompassing "360" rights deal with Madonna for 10 years, and \$150 million for a similar deal with Jay-Z.

Now, perhaps if Ticketmaster and Live Nation merge, they could generate what Boston University professor Keith Hylton described as a form of reverse monopoly power: A single buyer can force multiple sellers, in this case artists, to reduce their fees, potentially driving down ticket prices.

Despite Ticketmaster's dominance in primary ticket sales, it has not been able to set higher ticket prices with impunity.

Even though North American concert ticket prices rose 8 percent last year on average to \$67.33, according to tracking firm Pollstar, many seats at less popular acts are still going empty.

Live Nation Chief Executive Michael Rapino told the AP last month that his company intended to improve that process. One of Live Nation's ideas was to raise prices on premium seats while lowering those in the back of the house.

"If we are smarter, and better understand how to sell 5 percent more tickets, instead of having dead inventory at midnight — even if you spent a dollar to get in — that's worth more than it being empty," he said.

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Antitrust Suits Piling Up For Clear Channel

By **Lindsay Fortado**

Law360, New York (October 3, 2006, 12:00 AM EDT) -- Clear Channel Communications Inc. has been slapped with another lawsuit accusing the entertainment giant of boosting concert ticket prices by preventing competition for concert promotion services nationwide.

The case, filed on Monday in the United States District Court for the District of Arizona by lead plaintiff Cheryl Hintzen, is an antitrust complaint on behalf of individuals who bought concert tickets from Clear Channel in Pheonix, Arizona and within a 200 mile radius of the city.

Hintzen is seeking class action status and a jury trial.

The suit alleges, "Through a series of mergers valued at nearly \$20 billion, and through other anti-competitive and predatory practices described below, Clear Channel has built a monopolistic, multimedia empire that has substantially harmed competition resulting in higher concert ticket prices and fewer offerings."

The lawsuit further alleges that Clear Channel acted monopolistically by limiting the radio airplay of musicians who don't use Clear Channel's concert promotion services; denying promotional air-time to musicians who use other promoters; refusing to accept advertising from other concert promoters; charging other promoters excess fees; limiting other promoters to undesirable time slots; excluding concerts promoted by competitors from radio updates of upcoming concerts; and inflating fees paid to artists in order to exclude competition in the market.

In June, Clear Channel was slapped with a similar lawsuit. Plaintiff Daniel Woodring filed the suit seeking class action status for individuals that purchased tickets to rock concerts in Kentucky, Indiana and sections of Ohio dating back to June 13, 1998.

Clear Channel, which owns about 1,200 radio stations in the United States, stands accused of curbing radio airplay for artists that eschewed using the company's promoter, while denying airtime to those that used competing promoters.

This is not the first time that the media giant has come under attack for alleged anti-competitive behavior.

Clear Channel has been hit with a bevy of class action antitrust lawsuits lately alleging that the company and its subsidiaries conspired to limit competition for concert promotion services.

The suits, which have been filed in district courts across the country, were recently consolidated in the U.S. District Court for the Central District of California.

The complaints allege that through mergers and takeovers, Clear Channel has built a concert promotion monopoly that has driven up ticket prices and limited concert offerings.

Several of the suits include plaintiffs that have a long history of litigation with Clear Channel.

A suit filed in the Eastern District of Pennsylvania was brought by purchasers of Clear Channel tickets that were involved in Heerwagen v. Clear Channel Communications, a 2003 class action against the company filed in the Southern District of New York.

A judge refused to certify the class in that case, ruling that the class, which included plaintiffs from across the country, would be more appropriate as a local or regional action, rather than a suit with national scope.

Though an appeal to the ruling is pending, the Pennsylvania plaintiffs filed their own suit "to toll the statute of limitations in order to protect class members in the Pennsylvania region and not for any other purpose."

The newly filed suit alleges that Clear Channel knowingly engaged in anti-competitive practices that grossly inflated their ticket prices.

From 1991 to 1996, concert ticket prices rose by 21%, while the Consumer Price Index rose by 15%.

In 2000, Clear Channel purchased SFX, which up to that point had been the dominant concert promotion company, having spent billions purchasing independent promoters in 1997.

The suit claims that after Clear Channel bought SFX, the company had the ability to book entire tours nationwide without working with independent or regional promoters, allowing the company to determine ticket prices without consulting other companies.

Plaintiffs allege that after Clear Channel and SFX merged, concert ticket prices rose by 61%, compared to the CPI's 13% increase.

"As a result of Clear Channel's illegal conduct, plaintiff and the class paid and continue to pay artificially high prices for concert tickets. In short, due to defendants' actions, plaintiff and the class have been deprived of the benefits of free and open competition across the nation," the complaint says.

The suit demands both punitive and trebled damages.

Clear Channel has already received an unfavorable verdict in one of the lawsuits the company was facing.

In March, a federal jury in Chicago ruled that Clear Channel must pay rival promoter Jam Productions Ltd. \$90 million for engaging in anti-competitive behavior to score a contract to promote motorcycle races.

Clear Channel has indicated that it intends to appeal that order.

Hintzen is represented by Hagens Berman Sobol Shapiro LLP, Wexler Toriseva Wallace LLP and Squitieri & Fearon LLP.

The case is Hintzen v. Clear Channel Communications Inc., in the U.S. District Court for the District of Arizona.

--By Lindsay Fortado, Lindsay.fortado@portfoliomediamedia.com
--Additional reporting by Anne Urda and Bailey Somers

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