ICM Partners Slams "Conspiracy" Claims By Boutique Agency In Anti-Packaging Suit; UTA Seeks Dismissal Too – Update

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by Dominic Patten
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UPDATE, 11:30PM: Now UTA has also responded to the second amended complaint by Lenhoff & Lenhoff in the ongoing anti-packaging suit. Like co-defendant ICM's response earlier today, the agency is dismissive – literally and figuratively of the boutique agency's antitrust claims and allegations that the so-called "Uber" agencies snatched their clients

"At bottom, the SAC reveals that Plaintiff's concern is not the welfare of directors and other artists seeking representation, who remain free as ever to choose between representation by large agencies, such as UTA, and smaller agencies, such as Plaintiff" says the filing (read it here) late Monday by lawyers Bryan Freedman and David Marmorstein of Freedman and Taitelman LLP and Steven Marenberg and Melissa Rabbani on Irell and Manella LLP for UTA. While some of the verbiage may differ, the gist and legal arguments are very much in line with what ICM was advocating earlier today. "Instead, Plaintiff's concern is over its ability to maintain its own clients—not by offering superior service or competitive prices, but by foreclosing UTA and other large agencies from access to them."

"The 'poaching' Plaintiff bemoans is, in fact, perfectly legitimate behavior evidencing healthy and vigorous competition among talent agencies" UTA motion adds.

Also like ICM earlier Monday, UTA want their motion to toss the SAC addressed at a December 21 hearing in federal court in downtown L.A. And they are pretty clear about how that hearing should go: "Enough is enough. The SAC should be dismissed, this time without leave to amend."

PREVIOUS, 3:07PM: Just over than a month after Lenhoff & Lenhoff filed a second amended complaint in its antitrust case against ICM Partners and UTA, the first agency has hit back today – hard. "Plaintiff attempts to conjure a Section 1 antitrust conspiracy claim from three baseless hypotheses, each of which takes the catch phrase 'conspiracy theory' to new heights since they are based on nothing more than rank speculation," said ICM Partners' attorneys in a blunt motion (read it here) to dismiss the latest complaint.

"Despite multiple attempts to amend its pleading, there is no factual allegation in the SAC that remotely suggests a causal link between Plaintiff's alleged injuries, i.e., the departure of Clients #1 and #2, and the various antitrust conspiracies that Plaintiff has concocted," Michael Garfinkel and Jacqueline Young of Perkins Cole LLP added of the allegations, which allege Sherman Act violations. Following the court's instructions of last month, today's filing proposes a December 21 hearing before federal Judge Beverly Reid O'Connell on the motion. With today the deadline for defendants' responses, a similar filing from UTA is also expected.

"In response to defendants' motions to dismiss, we believe that our Sherman Antitrust claim is seeding a case that will ultimately prevail, whether in the present venue or on appeal," Lenhoff & Lenhoff lawyer Philip Kaplan told Deadline today. "We've already prevailed on the Unfair Competition Claim, and we are confident that our Sherman Antitrust claim, along with the Interference claims, will withstand defendants' motions to dismiss. Ultimately, this is a test case that may ultimately lead to regulation and be a game changer for the industry."

Lenhoff & Lenhoff's October 2 filing alleged "that Defendants UTA and ICM have agreed and conspired with WME and CAA to form a 'cartel' or oligopoly." The result of that dealing "has been to foreclose competition and to protect Defendant/Uber agencies against competition." The SAC restated the allegations of the initial February 13 complaint that the bigger guys, because of a packaging system that is supposedly weighed in their favor, snatched two of Lenhoff & Lenhoff's producer clients in 2013. The first amended complaint in the case was filed in June.

On September 18, O'Connell tossed the plaintiff's claims of a monopoly among the big agencies but allowed the boutique agency to amend the complaint again – which they did. Pulling WME and CAA further into the mix, the SAC shifted Lenhoff & Lenhoff's focus to another aspect of the Sherman Act. Dropping the word "monopoly," they instead went for the potentially more loaded "oligopoly" instead. Neither CAA nor WME are named as defendants in the case.

"In addition to attempting to allege that UTA and ICM Partners entered into alleged anticompetitive agreements, Plaintiff sprinkles into the SAC nearly every buzzword available in antitrust jurisprudence, without any factual or logical support," ICM Partners said dismissively today.

Let's see if the judge agrees in next month's hearing in this David-and-Goliaths battle. Before that, a response from Lenhoff & Lenhoff is expected on November 23, with a reply from the defendants on December 7.

Bryan Freedman and David Marmorstein of Freedman and Taitelman LLP plus Steven Marenberg and Melissa Rabbani on Irell and Manella LLP are representing UTA in the case. Full disclosure: Freedman and Taitelman LLP have preformed legal work for Deadline's parent company PMC.