

LAW WEEK

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Defense Verdict Hinged On Personal Network



By **David Forster**

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A DENVER NIGHTCLUB owner who accused a rival — and former colleague — of siphoning talent away from his venues couldn't persuade a federal jury his losses were the result of unfair competition.

Regas Christou claimed that Brad Roulier used the market power of a popular online music store he helped create to draw top acts into his club and discourage them from performing at Christou's clubs.

Christou's clubs include The Church and Vinyl, and Roulier is an owner of Beta. The clubs have been listed among the hottest in the U.S. for electronic dance music

At trial, Roulier's attorneys argued that he didn't need to threaten or reward DJs to lure them into Beta when they came to Denver, said Robert Marsh of Silver & DeBoskey, a member of the defense team, which also included Martin Beier and Lisha McKinley.

Instead, Roulier, a DJ himself, leveraged his years of building relationships with DJs to recruit them to Beta, Marsh said.

"The essence of our position was that the people that took over the management of the artists (at Christou's clubs) after Brad left didn't have those established relationships," he said. "They had to build those relationships. That takes time, experience. That was why after Brad's departure there was a change in the club's ability to draw these top-tier talents."

Artists and agents testified at trial that decisions about where to perform often are driven by long-established relationships, Marsh said.

Beatport, and its ability to elevate an artist's career, was never used as a carrot or a stick, Marsh said. "No one at Beatport ever offered any incentive or any punishment for any artist to play at any club," he said.

But some of this may have gotten lost in the complexity of the case, he said. There were two days of testimony by economists that would have challenged the most sophisticated of jurors, he said.

Looking back, he said, he wishes he could have found a way to simplify the case more for the jury.

Another challenge, Vail said, is that because of the nature of the allegations, Christou's clubs had to show that more than half of their economic losses were the result of anticompetitive behavior by Roulier and Beta.

It may have been difficult for the jury to parcel out how much was attributable to the unfair practices alleged by the plaintiffs and how much to the competitive advantage alleged by the defense, he said.

Marsh agreed that the plaintiffs' economic arguments were a hurdle for them at trial, but for a different reason. Evidence showed that Christou's clubs remained profitable after Roulier's departure. They had to make some changes in response to the competition from Beta, but they still made money. This put plaintiffs in the position of having to argue that the clubs would have profited even more if not for the defendants' practices.

The jury didn't buy it, Marsh said. "Beta's success did not come at their expense." •

and draw some of the top DJs to perform.

Roulier used to work for Christou, recruiting acts to perform at his clubs and promoting the shows.

After Roulier and Christou parted ways, Roulier helped launch Beta. He also helped found Beatport, an online music source for electronic dance music. It's like a niche version of iTunes.

Beatport has become a popular site for DJs to promote and sell their music and also to download music created by other DJs free of digital rights limitations, allowing them to sample the music into new works of their own.

Christou claimed that the ties between Beatport and Beta created an incestuous relationship that benefited Beta at the expense of his clubs.

He claimed that Roulier used Beatport's power to feature and promote DJs to draw them into Beta and keep them away from Christou's clubs.

Beta has built itself into not just one of the top-ranked clubs in the nation, but in the world, Marsh said, and that alone is a powerful draw for DJs. The defense team also argued that DJs are drawn to Beta by some of its state-of-the-art amenities, including its sound system and lighting.

The bottom line, Marsh said, is that Roulier and Beta offered a more attractive package for top-tier artists.

"We had always viewed the heart of the case as being the right of free competition in the market," he said. "This was a case of legitimate business competition, not anticompetitive conduct."

The jury agreed. After 11 days of trial starting in late June, the jurors deliberated for about three hours before finding in Roulier's favor on all issues.

Jeff Vail, one of the attorneys representing Christou and his clubs, said there was evidence presented at trial that Beatport's market power was used as leverage to promote Beta and that there were threats and promises of promotion.