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The Times They Are A-Changin': Innovation in the Modern Music Festival

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THE TIMES THEY ARE A-CHANGIN’: INNOVATION IN THE MODERN MUSIC FESTIVAL

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"I can see a lone artist with a lot of tapes and electrical . . . like an extension of the Moog synthesizer — a keyboard with the complexity and richness of a whole orchestra, y'know? There's somebody out there, working in a basement, just inventing a whole new musical form. We'll hear about it in a couple years. Whoever it is, though, I'd like him to be really popular, to play at large concerts, not just be on records — at Carnegie Hall, to play at dances"

Jim Morrison, The Doors.¹

I. INTRODUCTION

Musical festivals are, and have always been, a way for friends and families to gather together to celebrate the latest and greatest in music, food, and entertainment. From large festivals in major metropolitan cities to small, intimate shows, music festivals have long been a source of enjoyment to music fans and a source of inspiration to up-and-coming musicians. This Article will explore innovation within the modern music festival, including legal, political, and operational changes that affect festivals across the country. So, as Emerson, Lake, and Palmer so eloquently expressed, "Welcome back my friends to the show that never ends, we're so glad you could attend, come inside, come inside."²

II. INFLUENCE OF MUSIC FESTIVALS OF THE PAST

An entire article could be written on the tremendous and invaluable influence of music festivals of the past on today's festivals. From location, to demographics, to marketing, to innovation, the music festivals of the sixties and seventies continue to influence today's events, both nationally and internationally. Below are a few examples of how former festivals shaped the way we plan, produce, and attend festivals today.

First and foremost, music festivals of the past shaped the direction and mission of today's festivals by presenting a simple question: What type of festival does the reader want to have? For example, is your festival marketed toward the younger, more socially-conscious crowd? Are you planning a family-centric festival? Or are you hosting a classic, rock-centered party with plenty of throwbacks to festivals of yesteryear? Each of these festival types has a myriad of concerns unique to each scenario showcased by the trials and successes of the early festivals.

1. Jerry Hopkins, *The Rolling Stone Interview: Jim Morrison*, ROLLING STONE (Jan. 6, 1969), <http://www.rollingstone.com/music/features/the-rolling-stone-interview-jim-morrison-19690726> [<https://perma.cc/HQC4-UURE>].

2. EMERSON, LAKE & PALMER, KARN EVIL 9 (Manticore Records 1973).

Fortunately for Summerfest,³ the early years of the festival encompassed all of the above demographics. For example, the early producers recognized the need for an affordable ticket so the community's youth could attend the festival.⁴ For this reason, the \$1.25 Youth Fest admission was reduced to \$0.50 if patrons brought in soda bottle caps.⁵ Echoed in today's promotions, in collaboration with supportive sponsors, Summerfest is able to reflect this commitment to the younger demographics, families, and financially-conscious guests by continuing a similar pricing strategy. Just as Summerfest 1968 received praise for these efforts,⁶ today's admission promotions continue to enjoy great success at the box office and have been among the most popular box office attractions.

One of the most obvious evolutions in Summerfest history is the changing landscape of Henry Maier Festival Park itself. In an effort to make the grounds more enjoyable to all patrons, Summerfest made its first capital improvements in the 1970s, ranging from a new roof on the main stage⁷ to a functional marketplace.⁸ In the 1980s, paved walkways replaced gravel paths,⁹ new bathroom facilities were added,¹⁰ and Summerfest welcomed several new stages, including the Amphitheater in 1987.¹¹ All of these projects reflected the continuing innovation within the festival landscape; festivalgoers deserved newer amenities, safer grounds, and high-level talent. By responding to popular demand, the festival demonstrated both its commitment to its guests and its potential for longevity. As Summerfest continues to adapt to the newest amenities, such as mobile phone charging stations, virtual reality, and concert streaming, it navigates the modern music festival landscape at a level expected from top-tier entertainment venues by offering the latest and greatest comforts to its guests.

3. Summerfest, located in Milwaukee, Wisconsin, <https://summerfest.com/> [<https://perma.cc/QQ2H-UPZ6>].

4. DAVE TIANEN, SUMMERFEST: COOLER BY THE LAKE: 40 YEARS OF MUSIC AND MEMORIES, 21 (Journal Sentinel Inc., 2007).

5. *Id.*

6. *Id.*

7. *Id.* at 29.

8. *Id.* at 30.

9. *Id.* at 41.

10. *Id.*

11. *Id.*

III. POLITICAL AND LEGISLATIVE CONCERNS OF THE MODERN MUSIC FESTIVAL

Although the music festival industry was built on feelings of “fighting the man,” the modern music festival recognizes the need, purpose, and helpfulness of political and legislative initiatives. The following is a discussion of how state and federal laws are incorporated into the operation of the modern music festival.

A. State law

The laws of the state of Wisconsin govern the majority of Summerfest operations. For this reason, the legal department must monitor changes to the legislative landscape for any changes to policies that would affect the safety and security of Summerfest guests. The below statutes encompass two of the more important legislative policies in recent years. Accompanied by a brief explanation, these two statutes were selected to show how the modern music festival innovates within and adapts to changes in state legislative policy.

1. Preservation of the Recreation Exception

One of the most important legal issues within the modern music festival is protecting the festival from liability, especially if that music festival serves alcoholic beverages. While responsible imbibing is encouraged for the enjoyment of all of-age patrons, overindulgence can lead to injury. Thankfully, the legislature has recognized this issue and instituted the so-called “recreation exception” to liability, codified in Wisconsin Statute section 895.52. In sum, the statute relieves the owners, officers, and all other management personnel of non-profit organizations from liability for injuries that occur on premises that are used for recreational purposes.¹² This interpretation means that all persons that elect to visit a theme park, a music festival, a farm used for tours, or other location used specifically for outdoor recreational activity may not hold the owner of the property liable for injuries sustained while on the property. As with any statute, there are exceptions (e.g., some state-owned properties are still liable, malicious failure to warn is still actionable, etc.), and these exceptions fully apply to those participating in traditional outdoor activities, such as ice fishing or even saying hi to your neighbor. So, the next time you see a patron at a fair attempting to capture a runaway steer, consider the recreational immunity statute, and let them know they are engaged in recreational activity and should watch their step because the fair organizer is immune from liability.¹³

12. Wis. Stat. §§ 895.52(1)–(2) (2015-16).

13. See *Schultz v. Grinnell Mut. Reinsurance, Co.*, 600 N.W.2d 243, 246 (Wis. Ct. App.1999).

2. Why is this important to the modern music festival?

First, the recreational immunity statute applies to non-profits, allowing organizations that could not afford to fully litigate an issue a reprieve from potentially expensive and reputation-harming action. The statute allows the non-profit to focus on hosting an activity that aligns with its mission. Secondly, it encourages personal accountability; if a patron enters a mosh pit, hopefully they will have the wherewithal to be aware of their surroundings. The combination of these important points creates a need for the exception, a functional and legal approach to ensuring that patrons act in a responsible manner, and a way for non-profits to continue to focus on their missions.

3. Overbroad Legislation: Knives and the Trespass Statute

In 2016, Wisconsin enacted Act 149, which modified the weapons regulation statute to remove “knives” from the list of weapons that may not be concealed and carried without a permit.¹⁴ This meant that there was no prohibition against openly carrying a knife in the state. Act 149 also removed “knife or switchblade knife” from the definition of weapon.¹⁵ As the reader may be aware, Summerfest does not allow the carrying-in of weapons of any kind, so this legislation presented a unique statutory conundrum for legal counsel. The new definition of weapon did not include knife, so were knives now allowed at Summerfest, under the statute? Was this the intention of the legislature when they drafted the language?¹⁶

The Act, as written, was seemingly overbroad enough to encompass Summerfest in its scope. However, a few provisions, and some quick research, were necessary to ensure the continued safety and security of Summerfest guests. First, Summerfest is a private event. The event is not sponsored by the City of Milwaukee and is produced by a private company. For this reason, the statute would not apply as broadly as if the event were conducted in a public forum, on City streets, or in another open setting. With this in mind, legal counsel for the event then searched for other legislation that could be used to deter the carrying-in of knives. The purpose of the research was to find a legal response for patron clarifications on our security policies and to ensure that no objects that could potentially cause bodily harm were permitted at the Park.

The answer came in the form of Wisconsin Statute section 943.13, encompassing issues relating to trespass to land. Under the statute, no person may enter any enclosed land of another, without the express or implied consent

14. Wis. Act 149, Assemb. B. 142 (2016), <https://docs.legis.wisconsin.gov/2015/related/acts/149> [<https://perma.cc/8828-D2R5>].

15. *Id.*

16. The author makes no attempt to ascertain the purpose of the legislation.

of the owner or occupant.¹⁷ In determining whether a person has implied consent to enter the land of another, the trier of fact shall consider the circumstances, including whether the owner or occupant acquiesced to previous entries by the person or by other persons under similar circumstances, the customary use of the land, whether the owner or occupant represented to the public that the land may be entered for particular purposes, and the general arrangement or design of any improvements or structures on the land.¹⁸ Further, no person may enter or remain on the land of another after having been notified by the owner not to enter or remain on the premises.¹⁹ A person has received notice from the owner or occupant if they have been notified personally, either orally or in writing, or if the land is posted.²⁰ Land is posted if either (a) a sign of certain dimensions and content is placed in at least two places for every forty acres to be protected or (b) there are markings at least one foot long, including the word “private land” and the name of the owner of the land, are marked in at least two conspicuous places for every forty acres to be protected.²¹

Let us break that all down real quick using Summerfest as an example. First, no person may enter Henry Meier Festival Park without the express or implied consent of Milwaukee World Festival (“MWF”), the occupant of the Park. Here, the Summerfest ticket functions as express consent; MWF has vended to the patron a ticket for entry, and this entry is so allowed by the holding of the Summerfest ticket. That being said, on each and every valid Summerfest ticket is the following language: “Entrance is subject to the policies and restriction posted at each entrance to the grounds.” Essentially, patrons may use their Summerfest ticket to enjoy Summerfest subject to all posted signage on the grounds, including that signage that refers to Wisconsin Statute section

943.13. For those still thinking that Summerfest is a public event, and thus impliedly invites the public to attend, we move to the next section of the statute. To determine implied consent, a trier of fact would consider the listed factors. Respectively, and in sum, MWF has never acquiesced to patrons bringing in knives to Summerfest, it is not customary to bring a knife to a music festival located on private property, Summerfest does not customarily have any attractions or areas dedicated to knives or knife-related hobbies, and the big fence and giant lake surrounding the grounds do not naturally lend themselves to an arrangement supporting the carrying of knives. Thus, there are no

17. Wis. Stat. § 943.13(1m)(a).

18. *Id.* §§ 943.13(1s)(a)–(d).

19. *Id.* § 943.13(1m)(b).

20. *Id.* § 943.13(2).

21. Wis. Stat. §§ 943.13(2)(am)(1)–(2) (2015–16).

circumstances, perceived or express, that would lead a trier of fact to believe that Summerfest welcomes knives on the premises.

Moving on, no patron may remain at Summerfest after being notified that they are no longer welcome at the Park. Personal notice would occur if a member of Summerfest Security has informed a patron that their presence is no longer desired on the grounds. Notification in writing includes signage posted at every entrance to the grounds, and inside the grounds, informing patrons that they may not remain at the park if they are in violation of any policies or procedures of MWF, such policies including “no knives.” Henry Maier Festival Park is also validly, suitably posted, as there are signs at each entrance to the grounds. For these reasons, the Park is protected from the open carry of knives through Wisconsin Statute section 943.13, relating the trespass of land.

B. Federal law

The modern music festival is not exempt from any federal regulation applicable to any compliant business. Federal guidelines and regulations provide valuable guidance on matters affecting the nation’s festivals and often fill in the gaps where state law is silent or gives minimal direction. The examples below illustrate how the modern music festival innovates to incorporate these regulations and how the regulations help preserve the community feel of the festival itself. Further, these deferral regulations often protect the interests of the modern music festival by providing uniform, nationwide protections for the festival’s intellectual property and related uses.

1. The Americans with Disabilities Act

The Americans with Disabilities Act (“ADA”) provides regulations pertaining to the public health and welfare to organizations and persons conducting business subject to the laws of the United States (so all of them). The ADA certainly applies to music festivals and all modern venues have adapted their policies to accommodate the provisions therein. There are several well-established policies within the ADA to which modern festivals must pay special attention; for outdoor festivals, those provisions must be implemented to an even higher standard. Summerfest and Congress (according to the Findings of the ADA)²² both agree that historically, there have been discriminatory practices against those with disabilities. Summerfest strives to be an open festival where all music fans may enjoy their favorite entertainment. The below examples are not the only instances of ADA compliance within the festival; indeed, as Summerfest upgrades its footprint and its amenities, the ADA is the foremost consideration in capital improvements. However, the

22. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(a) (2008).

following ADA matters illustrate the most pressing issues, and most satisfying resolutions, facing the Summerfest legal team.²³

Music festivals must comply with the ADA long before the festival season begins; the hiring of seasonal staff occurs weeks to months beforehand. This employment compliance begins with a look at the definitions within the Act. According to the ADA, “employer” means a person engaged in an industry affecting commerce with a certain number of employees working for a certain number of weeks and any of their agents.²⁴ Employers may not discriminate against any job candidate based on disability and must make reasonable accommodation to assist those employees in performance of their job.²⁵ Accommodations may include making existing facilities accessible and useable by individuals with disabilities, modified work schedules, reassignment, modification of training materials, or the use of interpreters.²⁶

So how does a music festival accommodate employees with disabilities, even those disabilities which may be non-obvious to the eye or those disabilities that are triggered by certain common or uncommon events, such as stress or bad weather? The answer is simple: by conducting the hiring process in a proactive and conscious manner, while also being equipped to handle emergency situations. For example, the modern music festival should use the most inclusive language possible in all position descriptions used to attract potential candidates. Summerfest position descriptions include the language:

Milwaukee World Festival, Inc., provides equal employment opportunity to all employees and applicants regardless of a person’s race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), age, national origin, medical condition, marital status, sexual orientation, veteran status, disability, or any other legally protected status. We also abide by the requirements of the Americans with Disabilities Act and state law governing employment of individuals with disabilities.²⁷

This language was supplemented by the actual text of the ADA and related research. One of the reasons the text is so detailed (and lengthy) is due to MWF’s dedication to responsible hiring practices, a practice reflected in many modern festivals. Secondly, Summerfest employees are encouraged to visit the

23. As of September 2017.

24. 42 U.S.C. § 12111(5)(A) (2008).

25. *Id.* § 12112(a).

26. *Id.* § 12111(9).

27. SUMMERFEST JOBS, footer of webpage, <https://jobs.summerfest.com/#/> [<https://perma.cc/5VG9-5TXF>] (last modified 2018).

first aid station should they feel unwell. This encouragement begins during every job orientation and is a key tenet in the employee trainings across all departments. Employees are also encouraged to watch out for and support one another. Finally, any employee that experiences a medical issue is required to bring the matter to their supervisor in order to receive prompt medical care. MWF has a well-established history of accommodation for their employees; historically, the organization has utilized a variety of accommodations including relocation to another area of the grounds, switching work schedules, consistent updating of training materials to encompass the latest developments in medical awareness, and the hiring of an interpreter to better communicate with every employee. All of these practices create an inclusive, proactive environment in which Summerfest employees may feel safe and secure.

Music festivals must also comply with the ADA as pertains to their venues, stadiums, and grounds. For an outdoor festival, compliance with these regulations may require more planning and foresight. Many key provisions within the ADA for festival planning involve accessibility, both for patrons utilizing wheelchairs and their guests. For example, lines of sight from these sections must be “comparable to those provided to other spectators.”²⁸ Further, a companion seat must be provided next to each wheelchair seating location.²⁹

To illustrate, Summerfest complies with these regulations and takes implementation one step further on its newest stages. For example, the Miller Lite Oasis stage was completely redone for 2017, with upgraded amenities including new accessible VIP areas and video screens. The ADA accessible seating areas were also upgraded with several notable improvements. First, the wheelchair accessible seating occupies the entirety of one side of the audience viewing area, at the front of the footprint. Second, the section is also at the same viewing level as the Front Row VIP area located on the side of the stage. The ADA section is integral in the design of the stage area, meaning that ADA guests are not isolated from the experience. Third, for added protection and to mitigate any hassles the ADA guests may encounter a security team is assigned to that area. Finally, the ADA and VIP areas share a private entrance, making the access path less traveled and crowded, thus creating a section much easier to navigate by wheelchair or scooter.

2. Trademark Protection

Music festivals enjoy the same intellectual property protections as any other business entity. In fact, copyright and trademark protections are among the

28. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., DISABILITY RIGHTS SECTION 2 (2017), <https://www.ada.gov/stadium.pdf> [<https://perma.cc/3C7T-297Q>].

29. *Id.* at 1.

most valued aspects of festival business; the symbols and logos used to represent the events provide measurable value to the event, the venue, and the organizations behind all of the above. However, intellectual property issues may arise when other groups do not realize the protected nature of the trademarks or copyrights. Such issues include duplication of the protected marks, appropriation of the marks in an unapproved manner, abuse of accepted use of the marks, and the depiction of the marks in unauthorized derivative works. These issues may arise when the public believes the event to be a public event, and thus, they have “ownership” of the festival when other businesses wish to capitalize on the success of the event, or when unknowingly use the name or logo in promotion of a new event. In any case, legal counsel for the music festival may exercise all rights in the protection of its marks. The following are some examples of how the modern music festival can use new technology to enforce its intellectual property rights, while still maintaining ownership and control over their public perception.

The magic of the internet will be discussed later in this Article, but a brief mention is due when discussing the widespread use of trademarks in the festival marketplace. The use of a simple Google Alert can notify legal counsel to the improper use of an organization’s marks or outright appropriation of a mark. Following the identification of improper use, it is essential that legal counsel then find information about the infringing use, including the name of the person or organization conducting the use, their location, and their event. From there, the attorney can either call or send a letter (of varying degrees of sternness) to the infringing party in order to put them on notice to correct the mistake. In many cases, the organizer is not aware the mark is actually protected at all. For example, as of today,³⁰ there are over 200 instances of improper use of the name “Summerfest” in the United States alone. Each of these instances were either brought to the attention of MWF’s legal counsel through internet notifications, sent directly to email, or mentioned by Good Samaritan patrons just “giving us a heads up.”³¹ In each of these instances, MWF counsel will either call each person or organization, or write a letter, informing the organizers of the Summerfests that they are infringing on one of MWFs valid registrations, and there are no exceptions to the trademark protection. In order to ensure the strength of the mark in these situations, MWF is required to exercise its trademark rights, lest the mark become generic. MWF must continuously monitor the use of Summerfest nationwide for several reasons. First, all MWF trademarks enjoy nationwide protection; legal counsel is entitled to enforce these rights across the United States. Secondly, the more pervasive the use of

30. Sept. 28, 2017.

31. The author would like to thank these Summerfest fans. You know who you are.

the mark, the more likely to create confusion in the minds of the festivalgoer. MWF fielded several phone calls after Summerfest 2017 from patrons wanting refunds for their Summerfest tickets. Unfortunately, MWF could not issue these refunds because these particular patrons had attended *other* Summerfests. These mix-ups create evidence of actual customer confusion, prevention of which is the goal of trademark law and unacceptable in such a specialized industry. Finally, MWF enforces its trademark rights with such care because Summerfest has created valuable goodwill in its communities, including Milwaukee, Wisconsin, and the Midwest at large. When there is evidence of actual confusion, there is a risk that an experience at another Summerfest will affect the public perception of the festival, even if the experience occurs at a small Summerfest in Arizona, for example. For this reason, it is absolutely imperative that MWF, and all modern music festivals, utilize all resources available to protect their trademark rights.

IV. TECHNOLOGICAL INNOVATION WITHIN THE MODERN MUSIC FESTIVAL

A. Streaming

One of the most important innovations in the modern music festival is the advent of streaming capabilities and services. Streaming, in a basic sense, allows a venue to bring a live concert experience to viewers via the internet or other remote viewing services. This service is becoming the standard of modern concert venues and festivals, both due, in part, to the desire of the venue to bring its concerts to those not present and the desire of the artists to perform for a large audience. Other considerations in the streaming process is the relative cost-effectiveness of streaming the concert versus the exposure for the act; would this streaming experience pay for itself in a return of new fans? In deciding this question, the streaming partners must decide which festivals or venues reach their desired audience. Which venues would be best, based on demographics, existing fans, time of year, and place on the tour? However, these streaming capabilities naturally come with several legal concerns, as well as a variety of non-legal concerns.

Streaming rights could involve several parties, namely the venue or some combination of parties on the band's side, namely the label, the songwriter, or the band themselves.³² In some cases, if the band is signed to a label, streaming rights and ownership would be discussed during private negotiation. In other cases, the band themselves may own their own streaming rights or have retained those rights during their label contract negotiation. In either case, either the

32. Interview with Bob Babisch, Vice President of Entertainment, Milwaukee World Festival, Inc., Milwaukee, Wis. (Sept. 7, 2017).

band itself or its label negotiates with the venue to make some important decisions regarding the look and feel of the streaming experience. Some questions decided between all parties are the look of the streaming: will it be a few select, impactful cameras or many dynamic shots? Will there be pyrotechnics included in the stream and who will pay for those extras? How will the venue and rights owners sell the content? Will the venue or the owner pay for the streaming capabilities and implementation? Will a sponsor? How is that sponsor chosen, and does the band have to like them? When the answers to these questions are decided, it is the responsibility of counsel to make sure all details are contracted accurately.

Within the streaming performance, there are several marketing concerns that will likely involve the legal department. Details of the streaming performance are handled prior to booking of the band and after tickets are already on sale.³³ However, what if a sponsor is added to defray the costs of the service?

The answer depends on the details of the sponsorship agreement. A successful sponsorship agreement will balance the financial needs of the venue, as well as support the sponsor's goals for the partnership, which could include increasing their goodwill or adding their name to a well-known festival. One common concern within a sponsorship agreement, especially for well-known venues or popular festivals, is the use of both the sponsor's and venue/festival's trademarks. If a sponsor requests for its logo to be present during the live stream for the duration of the show, the venue will decide how to translate that exposure into a financial payment and calculate the sponsorship accordingly. Conversely, while marketing the streamed event, will the sponsor have permission to use the venue or festival's logo? If so, the venue may be able to limit any other brands or logos used in those marketing efforts.

B. The Internet, Online Contests, and Legal Concerns of the Federal Trade Commission

It is well established that the advent of the internet has provided many valuable resources to legal professionals within the entertainment industry. One of the interweb's more notable uses is the dissemination of information for a large audience. Many companies take advantage of this feature to market to certain demographics or track data on information reception, perception, and capitalization. The modern music festival is no stranger to this type of large-scale marketing; in fact, increasing the festival's reach is in its best interest. Increased awareness of the event can lead to an increased fan base, larger names in booking, and increased revenues. But how is this online presence regulated?

33. *Id.*

How can the modern music festival reconcile its marketing efforts with the structure and regulation of new laws? The example below is how online marketing can function successfully within the directives of the Federal Trade Commission.

The Federal Trade Commission, or the FTC, has a very simple mission: Protect consumers and promote competition.³⁴ In furtherance of this mission, the FTC protects consumers by “stopping unfair, deceptive, or fraudulent practices in the marketplace,” as well as enforcing antitrust laws to keep markets open and free, with healthy competition.³⁵ Naturally, the FTC has an interest in the regulation of marketing efforts that may be deceptive or otherwise injurious to the public.

The FTC has recently issued new guidance to navigate the new wave of marketing efforts by companies, namely the use of online marketing, “influencer” marketing, endorsements, and social media practices.³⁶ It is likely that the modern music festival may utilize any or all of these initiatives to promote their event, in the way that best fits its mission or audience. Further, a festival’s sponsors may undertake similar initiatives to capitalize on the relationship with the festival. The key to navigating these options, according to the FTC, is to disclose the relationship between the event and the sponsor, in order to ensure that the consumer (or the audience) understands there is a financial relationship between the two. By presenting all information to the consumer, the FTC should be satisfied that no unfair or deceptive practices are being undertaken by the festival or sponsor.

As an example, the modern music festival may utilize online platforms to host promotions, sweepstakes, or contests. Under some state laws, these terms are used interchangeably. However, according to the FTC, all legitimate sweepstakes are free and winners are determined by chance.³⁷ Contests are conducted using a measurement of skill and may require payment of funds.³⁸ For example, a festival may host a bacon eating contest, the winner of which is determined by who can eat the most bacon in a certain amount of time.³⁹ At the end of the day, most modern music festivals are utilizing sweepstakes or

34. *What We Do*, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc/what-we-do> [https://perma.cc/NM8A-SG9S].

35. *Id.*

36. *The FTC’s Endorsement Guides: What People Are Asking, Social Media Contests*, FED. TRADE COMM’N (Sept. 2017), <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking#socialmediacontests> [https://perma.cc/A6W5-9NWC].

37. *Consumer Information, Prize Scams*, FED. TRADE COMM’N (April 2014), <https://www.consumer.ftc.gov/articles/0199-prize-scams> [https://perma.cc/6B5P-5EQ5].

38. *Id.*

39. *Big Gig BBQ 2017 “Win a Keg-a-Que” Contest Official Rules*, BIG GIG BBQ (2017), <https://www.biggigbbq.com/rules> [https://perma.cc/72Q3-X7MH].

giveaways to engage with consumers online, especially through social media platforms, such as Facebook or Twitter.⁴⁰ By way of example, let us consider a social media contest, and required disclosures therein, hosted by MWF. Below are *some* requirements of the FTC when designing an online sweepstakes; the following is not an extensive list.

First, disclosures are required. If a sweepstakes is utilizing a prize provided by a sponsor, the organization should disclose the relationship between the two companies, especially if there is an endorsement of the product. A simple, “Company X has provided this prize at no cost to us,” is sufficient.⁴¹ The FTC leaves no room for assumptions in the mind of consumers; it is not obvious that a prize given away in a sweepstakes was given to a company for free. Therefore, music festivals should be clear in their verbiage of both the name of the sweepstakes as a whole and the use of any identifying insignia associated with the promotion. For example, if a music festival is giving away a signed guitar to the first person to comment on a Facebook post using the hashtag #SummerfestSweepstakes2017, the use of “sweepstakes” should be clear enough to denote in the mind of the consumer that they are participating in a sweepstakes, there is no financial obligation, and they are receiving a prize at no cost. The name Summerfest Sweepstakes is also clear enough to show the same.

So what else is likely required in social media promotional posts? Basically, whatever else is required by the online platform (i.e., Facebook or Twitter). According to Facebook rules relating to promotions, organizations are responsible for the lawful operation of that promotion, including the official rules of the promotion, offer terms and eligibility requirements, and compliance with applicable rules governing the promotion.⁴² All of these are straightforward elements of a promotion and are likely already considered before the contest is put online. Additional language required by Facebook, however, includes a complete release of Facebook by each entrant or participant and acknowledgement that the promotion is not sponsored by, endorsed by, or administered by Facebook. Based on the guidance from FTC, this requirement makes sense; the goal of the disclosures is to make clear in the mind of the consumer the origin of the promotion. If Facebook is not actually affiliated with the promotions presented by an organization, or music festival, the producing organization should state so, in the interest of clear disclosure to public.

40. Both Facebook and Twitter are registered trademarks of the respective owners, and the author does not assert ownership of these marks.

41. *The FTC’s Endorsement Guides: What People Are Asking*, *supra* note 37.

42. *Facebook Pages Terms*, FACEBOOK, (last revised Mar. 30, 2017) https://www.facebook.com/page_guidelines.php [<https://perma.cc/XQQ4-LDFA>].

While not officially outlined by the FTC, there are some additional elements that should be included in official rules for promotions. These additional elements include an alternative method of free participation so that no purchase is necessary, the term of the promotion, the number of prizes, the cash value of the prizes, and the odds of winning each prize, and the manner of selection of winners.⁴³ All of these pieces of information serve to provide the most detail possible to the consumer, which is the purpose of the official FTC guidance. Together with the official FTC regulations, the modern music festival may conduct successful social media contests and utilize these platforms to their fullest marketing potential.

V. CONCLUSION

In conclusion, the music festival industry is alive and well, and continues to be a place of enjoyment for people of all ages. The modern music festival is invited to share the same opportunities for innovation as are available to all modern venues, including streaming and sponsorship. With this great power comes the great responsibilities of compliance with all legal requirements therein, including ADA and FTC compliance. It will certainly be interesting to see the evolution of the modern festival industry, but for now, the festival scene is just as rockin' as ever before.

43. Sara Hawkins, *Social Media Promotions and the Law: What you Need to Know*, SOCIAL MEDIA EXAMINER (Aug. 19, 2011), <https://www.socialmediaexaminer.com/social-media-promotions-and-the-law-what-you-need-to-know/> [<https://perma.cc/H72W-C3W5>].

