

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**TUNICA WEB ADVERTISING, INC. and
CHERRY L. GRAZIOSI**

PLAINTIFFS

V.

CIVIL ACTION NO. 2:03CV234-P-D

**TUNICA CASINO OPERATORS ASSOCIATION, INC.,
TUNICA COUNTY TOURISM COMMISSION,
BARDEN MISSISSIPPI GAMING, LLC (d/b/a “Fitzgerald’s Casino and Hotel”),
BL DEVELOPMENT CORP. (d/b/a “Grand Casino Tunica”),
CIRCUS CIRCUS MISSISSIPPI, INC. (d/b/a “Gold Strike Casino Resort”),
ROBINSON PROPERTY GROUP, Ltd. Partnership (d/b/a “Horseshoe Casino &
Hotel”),
TUNICA PARTNERS II L.P. (d/b/a “Harrah’s Tunica Mardi Gras Casino”),
BALLY’S OLYMPIA LIMITED PARTNERSHIP (d/b/a “Bally’s Saloon & Gambling
Hall”),
HWCC-TUNICA, INC. (d/b/a “Hollywood Casino Tunica”),
BOYD TUNICA, INC. (d/b/a “Sam’s Town Hotel & Gambling”), and
SHERATON TUNICA CORPORATION (d/b/a “Sheraton
Casino & Hotel”)**

DEFENDANTS

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

As their First Amended Complaint in this action, the Plaintiffs submit the following:

The Parties

1. Plaintiff Tunica Web Advertising, Inc. (hereafter, “TWA”) is a corporation organized under the laws of Maryland, which during all times relevant to this proceeding has maintained and continues to maintain its principal place of business in Maryland.
2. Plaintiff Cherry L. Graziosi, who is the sole owner and the chief executive officer of Plaintiff TWA, is now and was during all times relevant to this proceeding a

resident of the State of Maryland.

3. Defendant Tunica Casino Operators Association, Inc. (hereafter, "TCOA"), is a Mississippi non-profit corporation, with its principal place of business in Robinsonville, Tunica County, Mississippi, which may be served with process through service on its Registered Agent in Mississippi, Jim Warren, at his office address of 200 South Lamar Street, Suite 900N, Jackson, Mississippi 39201.

4. Defendant Tunica County Tourism Commission (hereafter, "TCTC"), purports to be a public or governmental entity created under the laws of Mississippi, and maintains its principal place of business in Tunica County, Mississippi. TCTC also does business under the name "Tunica Convention and Visitors Bureau." TCTC may be served with process through service on its Chairman, Penn Owen, Jr., or on its Executive Director, Webster Franklin, at its office address of 13625 U.S. Highway 61 North, Tunica, Mississippi 38676.

5. Defendant Barden Mississippi Gaming, LLC is a Mississippi company with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of "Fitzgerald's Casino and Hotel." It may be served with process through service on its Registered Agent in Mississippi, Domenic Mezzetta, at 711 Lucky Land, Robinsonville, Mississippi 38664. (References hereafter to the term "nine casino Defendants" shall mean Defendant Barden (or "Fitzgerald's") and the remaining eight casino companies and operations named and described in Paragraphs 6 through 13 below.)

6. Defendant BL Development Corporation is a Minnesota corporation with its principal place of business in Tunica County, Mississippi, where it does business as

a licensed casino under the name of “Grand Casino Tunica.” It may be served with process through service on its Registered Agent in Mississippi, Corporation Service Company, at 506 South President Street, Jackson, Mississippi 39201.

7. Defendant Robinson Property Group Limited Partnership is a Mississippi partnership with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Horseshoe Casino - Hotel” (or “Horseshoe Casino & Hotel”). It may be served with process through service on its Registered Agent in Mississippi, Bob McQueen, 1021 Casino Center Drive, Robinsonville, Mississippi 38664.

8. Defendant Tunica Partners II, L.P. is a Mississippi partnership with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Harrah’s Tunica Mardi Gras Casino.” It may be served with process through service on its Registered Agent in Mississippi, Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201.

9. Defendant Boyd Tunica, Inc. is a Mississippi corporation with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Sam’s Town Hotel & Gambling.” It may be served with process through service on its Registered Agent in Mississippi, John J. Phillip, 1477 Casino Strip Boulevard, Post Office Box 220, Robinsonville, Mississippi 38664.

10. Defendant Bally’s Olympia Limited Partnership is a Delaware corporation with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Bally’s Saloon & Gambling Hall.” It may be served with process through service on its Registered Agent in Mississippi,

Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201.

11. Defendant HWCC-Tunica, Inc. is a Texas corporation with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Hollywood Casino Tunica.” It may be served with process through service on its Registered Agent in Mississippi, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232-9099.

12. Defendant Sheraton Tunica Corporation is a Delaware corporation with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Sheraton Casino & Hotel.” It may be served with process through service on its Registered Agent in Mississippi, Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201.

13. Defendant Circus Circus Mississippi, Inc. is a Mississippi corporation with its principal place of business in Tunica County, Mississippi, where it does business as a licensed casino under the name of “Gold Strike Casino Resort.” It may be served with process through service on its Registered Agent in Mississippi, John R. McCarroll, III, 728 Goodman Road East, Post Office Box 190, Southaven, Mississippi 38671.

Jurisdiction and Venue

14. This action being between citizens of entirely different states, and involving matters in controversy which exceed \$75,000 in value, this Court has subject matter jurisdiction pursuant to 28 United States Code Sec. 1332(a).

15. This action is also being brought in part pursuant to the Sherman Antitrust Act, 15 United States Code Sec. 1 et seq., this Court has subject matter jurisdiction

pursuant to 15 United States Code Sec. 15, and 28 United States Code Sec. 1331 by virtue of the federal antitrust questions raised.

16. All of the Defendants' actions and agreements as set forth below having taken place within Tunica County, Mississippi, and all of the Defendants' principal places of business being within the same County, the venue of this action in the Delta Division of the Northern District of Mississippi, within which Tunica County, Mississippi is contained, is lawful pursuant to 28 United States Code Sec. 1391.

The Facts

17. Between October 13, 2000 and the date of the filing of this action, and continuously during all other times relevant to the events set forth hereafter, Plaintiff TWA has been the sole and exclusive owner of all rights to control the use and content of an internet website (or "domain name"), on and as a part of the worldwide computer-based internet, known and registered by TWA as "Tunica.com".

18. During all of the same period of time, Plaintiff Graziosi has served as the President, Chief Executive Officer, and sole owner of TWA.

19. During May or June of 2001, Defendant TCTC entered a written contract with Plaintiff Graziosi in which TCTC both (A) purchased from Graziosi exclusive rights to two different internet websites or domain names, namely the sites known as "tunicamississippi.com" and "tunicamiss.com," and (B) released and agreed not to assert any "claims or rights of any kind or nature in the ownership use, control of use, marketing, sale, or any other lawful use of the domain name 'tunica.com,'" the website or domain name which is the subject of this action.

20. Beginning in the year 2000, the Plaintiffs began to solicit advertising and

other fee-based and marketing-related agreements and relationships from each of the nine casino Defendants, who together constitute or control the casino industry in Tunica County and thereby constitute or control the predominant market demand for advertising on the internet to internet users inquiring about Tunica County, Mississippi (which makes up the third-largest casino marketplace in the United States as measured by revenue generated). Commercial relationships with all or most of the nine casino Defendants have at all relevant times been a commercial necessity for the commercially viable development of the Plaintiffs' Tunica.com website and its economic potential.

21. Beginning in November of 2000, and continuing through May or June of 2001, TWA entered and maintained a contract with Defendant Circus Circus Mississippi, Inc. (d/b/a "GoldStrike Casino Resort") under the terms of which Defendant Circus Circus paid TWA a monthly amount for rights to place advertising material on the "Tunica.com" site owned and controlled by TWA.

22. During late May or early June of 2001, each of the nine casino Defendants (and the TCOA) through their General Manager, Executive Director, or other executives and agents, entered together, beginning at a meeting held through and with the Defendant TCOA in Tunica County, Mississippi, an agreement, combination and conspiracy under the terms of which each such Defendant agreed with all other such Defendants not to enter into any advertising or other commercial or marketing agreements with either of the Plaintiffs, and otherwise to boycott the Plaintiffs and to refrain together from paying either Plaintiff for the placement of any advertising (or the conduct of any transaction) on or through the website "Tunica.com".

23. As a result of and in compliance with the agreement, combination and

conspiracy referred to in the immediately preceding paragraph, Defendant Circus Circus terminated, cancelled and discontinued its contract and its negotiations aimed at entering further contracts with the Plaintiffs.

24. Continually since May of 2001, the same casino Defendants and the TCOA, through their respective General Managers, Executive Directors, or other agents acting within their authority as agents and on behalf of such Defendants, have maintained their joint and agreed horizontal boycott of the Plaintiffs' website through a concerted refusal to deal with the Plaintiffs.

25. As a result of the Defendants' continuing contract, combination, conspiracy, refusal to deal and boycott, the Plaintiffs have been prevented and stopped from being able to enter any significant advertising or other marketing contract with any individual Defendant (which, but for the Defendants' boycott conspiracy, would have been entered), and indeed from receiving substantial revenue from advertising or otherwise directly from any Tunica County casino, and have suffered resulting lost revenue and market value continuously since the institution of the boycott. Because of that horizontal boycott, the market value of Tunica.com is substantially lower than it would now be if the same Defendants had not engaged in the boycott.

26. The boycott conspiracy and refusal to deal by such Defendants has been continually motivated by the joint commercial and anti-competitive purpose and objective of enabling the Defendants to exercise substantial control over, and to avoid costs to the nine private casino Defendants of participating in, the emerging marketplace of information and transactions communicated through internet websites the domain names of which include a reference to and are specific to "Tunica" as a

destination (in substantial part through their effective control and development of one or more internet sites operated by the Defendant TCTC at substantial cost to taxpayers but at little or no cost to the nine casino Defendants).

27. Each of the nine casino Defendants (or corporate owners or affiliates of such casino operators) owns or controls an internet website or domain name, and is thus in part a competitor of the Plaintiffs (in addition to being the principal potential customers of the Plaintiffs) within the market of uses of internet domain names specific to Tunica as a destination.

28. As a part of and pursuant to the same horizontal boycott conspiracy and concerted refusal to deal, the nine casino Defendants have filed in this action claims of trademark infringement in a further joint effort to prevent the plaintiffs from participating effectively in that market.

29. As a part of and pursuant to the same horizontal boycott conspiracy and concerted refusal to deal, the Defendants have continued to conceal the fact of their agreement and conspiracy, in part through false denials of their joint consensus and agreement in the course of this litigation.

30. The same Defendants' boycott conspiracy as described above, having taken place (and continuing to take place) substantially among and through the influence of the nine casino Defendants, constitutes a horizontal boycott and refusal among competitors to deal with a third party, and is otherwise a contract, combination and conspiracy in restraint of interstate trade and commerce which is illegal under and prohibited by Section 1 of the Sherman Antitrust Act, 15 United States Code Sec. 1.

31. The Plaintiffs, having been injured in their business and property by

reason of the restraint of trade described above and forbidden by Section 1 of the Sherman Antitrust Act, are entitled to recover threefold (or “treble”) the lost profits, loss of value, and other damages sustained by them, as well as the other remedies provided pursuant to 15 United States Code Sec. 15(a).

32. In willfully and deliberately undertaking a conspiracy jointly to destroy or restrain the economic benefit or value of the Plaintiffs’ property represented by the Tunica.com internet website, the Defendants have acted and continue to act with gross and reckless disregard for the statutory and common law rights of the Plaintiffs to market their website in a freely competitive and unrestricted marketplace, and further committed a willful and tortious wrong, for which the nine casino Defendants and the TCOA are jointly liable to the Plaintiffs for punitive damages in an amount which, considering the net worth and financial capacity of each Defendant herein, would be sufficient to deter the Defendants from engaging in similar anticompetitive conduct in the future, sufficient to deter other casino owners and managers throughout the national casino industry from utilizing purported trade associations such as the TCOA as vehicles and platforms for engaging in felonious anticompetitive collusion in the casino marketplace generally, and sufficient to compensate the Plaintiffs for their public service in holding such casino corporations accountable for such misconduct in violation of the felony provisions of the Sherman Antitrust Act and otherwise.

33. By actively supporting and assisting in the implementation of the remaining Defendants’ boycott conspiracy described above, the TCTC breached its contract with Plaintiff Graziosi, otherwise described in Paragraph 19 above, through which it became obligated not to interfere with rights to the control, marketing, sale or

other lawful use of the domain name "Tunica.com", causing the Plaintiffs substantial damages as a result of such material breaches of contract.

Count 1: Sherman Antitrust Act - Conspiracy in Restraint of Trade

34. By virtue of their agreed conduct as set forth above, the nine casino Defendants and the TCOA are each liable jointly and severally to the Plaintiffs for threefold the amounts of damages and losses caused to the Plaintiffs by the unreasonable and illegal restraints of trade undertaken through such Defendants' horizontal boycott and refusal to deal, in an amount to be proven at the trial hereof, together with a further amount reflecting threefold the further losses and damages suffered as a result of any continuation of the same boycott during the pendency of this litigation, and statutory pre-judgment interest from the date of the service of the original Complaint herein, and attorneys' fees and other costs of proceeding with the litigation instituted herein, all pursuant to 15 United States Code Sec. 15(a).

35. The same Defendants are also jointly liable to the Plaintiffs for punitive damages under the common law of Mississippi in consideration of their willful and intentional violation of the Sherman Antitrust Act as set forth above.

Count 2: Mississippi Antitrust Act - Conspiracy in Restraint of Trade

36. By virtue of the same Defendants' agreed conduct as set forth in Count 1 above, each of them (and thus all Defendants herein except for the TCTC) is liable jointly and severally to the Plaintiffs pursuant to Mississippi Code Sections 75-21-3 and 75-21-9, in an amount to be proven at the trial hereof, and for the civil penalties provided therein, together with attorneys' fees and costs.

37. The same Defendants are also jointly liable to the Plaintiffs under the common law of Mississippi for punitive damages in consideration of their willful and intentional violation of the antitrust statutes of Mississippi and the contractual and competitive rights of the Plaintiffs.

Count 3: Intentional Interference with Business Relations

38. By virtue of their intentional and willful conduct as set forth above, calculated and intended without legal right or justifiable cause on the same Defendants' part to cause the Plaintiffs losses of value and revenue in their lawful business, and having caused such losses and damages, the Defendants (other than Defendant TCTC) are jointly liable to the Plaintiffs in an amount to be proven at the trial hereof.

39. The same Defendants are also jointly liable to the Plaintiffs under the common law of Mississippi for punitive damages in consideration of their willful and intentional interference in the Plaintiffs' business opportunities and potential contractual relationships.

Count 4: Breach of Contract

40. Through its own conduct as set forth above, Defendant TCTC breached its contract with Plaintiff Graziosi described in Paragraph No. 19 above, and is liable to Plaintiff Graziosi for the damages caused thereby in an amount to be proven at the trial hereof.

Relief Requested

Accordingly, the Plaintiffs each respectfully request a trial by jury, and a resulting judgment to include the following relief (and any further relief which the Court may find

to be justified by the evidence and by a jury's verdict):

1. A monetary judgment requiring the Defendants (other than the Defendant TCTC) to pay to the Plaintiffs an amount to be proven at the trial hereof, reflecting treble damages pursuant to 15 United States Code Sec. 15(a);

2. A monetary judgment requiring the Defendants to pay to the Plaintiffs an amount in compensatory damages to be proven at the trial hereof;

3. A monetary judgment requiring the Defendants to pay to the Plaintiffs an additional amount in punitive damages;

4. A monetary judgment requiring the Defendants to pay to the Plaintiffs pre-judgment interest on any amount of damages recovered;

5. A declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, adjudicating and declaring that the agreement reached and the related conduct engaged in by the Defendants (other than the TCTC) is an illegal boycott and restraint of trade within the meaning of the Sherman Antitrust Act, 15 United States Code Sec. 1;

6. An injunction, pursuant to 15 United States Code Sec. 4 and otherwise, temporarily and permanently enjoining the Defendants from utilizing votes among the nine casino Defendants taken purportedly as a part of the TCOA as a vehicle and method of entering unlawful boycotts and other conspiracies in restraint of trade in the casino marketing industry; and

7. An award of reasonable attorneys' fees, court costs, and litigation expenses in a further amount determined by the Court after the return of any verdict in this proceeding.

This the ____ day of _____, 2005.

Respectfully submitted,

TUNICA WEB ADVERTISING, INC. and
CHERRY L. GRAZIOSI
By their Attorneys,
PIGOTT, REEVES, JOHNSON & MINOR

By: _____
Brad Pigott (Mississippi Bar No. 4350)
Pigott, Reeves, Johnson & Minor, P.A.
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CERTIFICATE OF SERVICE

I have this day caused a true copy of the foregoing First Amended Complaint to be served via United States Mail, postage pre-paid, on the following counsel of record in this matter at the following physical address of such counsel:

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This the ____th day of _____, 2005.

BRAD PIGOTT