

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

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

PLAINTIFFS

VS.

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

**TUNICA CASINO OPERATORS ASSOCIATION,
INC., ET AL.**

DEFENDANTS

**DEFENDANTS BARDEN MISSISSIPPI GAMING, LLC, BL DEVELOPMENT
CORPORATION, SHERATON TUNICA CORPORATION, BALLY'S OLYMPIA
LIMITED PARTNERSHIP, TUNICA PARTNERS II, L.P., BOYD TUNICA, INC. AND
ROBINSON PROPERTY GROUP LIMITED PARTNERSHIP'S RENEWED MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Barden

Mississippi Gaming, LLC, BL Development Corporation, Sheraton Tunica Corporation, Bally's Olympia Limited Partnership, Tunica Partners II, L.P., Boyd Tunica, Inc. and Robinson Property Group Limited Partnership ("Defendants") submit this Renewed Motion for Summary Judgment and move this Court to enter judgment as a matter of law on all of Plaintiffs' remaining claims.

In support of this Motion, Defendants would show unto the Court as follows:

1. Plaintiffs' claims fail because:
 - a. TWA cannot produce any admissible evidence to show concerted action by the Defendants.
 - b. TWA cannot establish an unreasonable restraint on trade by the Defendants for the following reasons:
 - c. TWA contends that the relevant market for its antitrust claims is internet advertising of Tunica County, Mississippi, as a travel destination to the exclusion of all other forms of advertising, including print, broadcast, outdoor, and direct mail. TWA has totally failed to meet its burden of proving that any such relevant market exists, thereby requiring the dismissal of its antitrust claims.

- d. TWA has failed to provide any evidence that the Defendants have market power within the relevant market or that their independent decisions to refuse to lease TWA's domain name or to advertise on TWA's website have had a substantial adverse effect upon competition in the relevant market. There are multiple media sources available to advertise Tunica as a travel destination, including print, broadcast, outdoor, and direct mail.
- e. After TWA began operating its own web site, TWA made a variety of different offers to different Casino Defendants asking them to purchase advertising on TWA's website. Their separate rejections of TWA's different proposals cannot support a Sherman Section One claim.
- f. TWA's offers were not worth the price TWA was asking. Refusal to purchase a product for more than it is worth does not violate the antitrust laws.
- g. TWA has failed to establish it has suffered an antitrust injury proximately caused by Casino Defendants.
- h. Because TWA's federal antitrust claim fails, its state antitrust claim must also fail. The Mississippi federal courts have expressly ruled that the two claims are analytically identical.

2. Each of these reasons results in Plaintiffs' claims failing as a matter of law. Since there is no genuine issue of material fact in dispute, Defendants are entitled to judgment as a matter of law of all of Plaintiffs' claims.

3. In support of this Motion, Defendants rely upon the following, which are submitted with Defendants supporting Memorandum of Authorities:

- (A) First Amended Complaint;
- (B) Relevant portions of Cherry Graziosi's deposition and exhibits thereto;
- (C) Webster Franklin Affidavit;
- (D) November 24, 2004 Order;
- (E) December 20, 2005 Order;
- (F) December 5, 2005 Agreed Final Judgment of Dismissal with Prejudice;
- (G) November 23, 2005 Order;
- (H) December 19, 2005 Order;
- (I) Rule 1006 Summary;

- (1) Relevant portions of Kim Fritz deposition and exhibits thereto;
- (2) Relevant portions of Jon Lucas deposition and exhibits thereto;
- (3) Relevant portions of Domenic Mezzetta deposition and exhibits thereto;
- (4) Relevant portions of Matt Gallagher deposition and exhibits thereto;
- (5) Harrah's Response to Plaintiffs' Interrogatories;
- (6) Relevant portions John Osborne deposition and exhibits thereto;
- (7) Relevant portions of Rudi Schiffer deposition and exhibits thereto;
- (8) Relevant portions of Robert McQueen deposition and exhibits thereto;
- (9) Relevant portions of Richard White deposition and exhibits thereto;
- (J) Relevant portions of Eric Weik deposition and exhibits thereto;
- (K) Relevant portions of Karen Sock deposition and exhibits thereto;
- (L) May 14, 2001 Minutes of TCTC;
- (M) May 15, 2001 Letter from Hank Thomas to "Members";
- (N) Relevant portions of Clyde Callicott's deposition and exhibits thereto;
- (O) May 30, 2001 TCOA Minutes;
- (P) Brown Affidavit;
- (Q) Kim Moss May 18, 2005 Expert Report;
- (R) Sample pages from TWA's website;
- (S) April 9, 2001 Email from Cherry Graziosi to Clyde Callicott;
- (T) April 17, 2001 Email from Clyde Callicott to Cherry Graziosi;
- (U) June 6, 2001 Email from Clyde Callicott to Cherry Graziosi;
- (V) August 30, 2002 Email from Clyde Callicott to Cherry Graziosi;
- (W) Collective Group of Emails between Cherry Graziosi, Clyde

- Callicott & Rudi Schiffer;
- (X) November 2002 Transcript of telephone conversation between Graziosi and Clyde Callicott;
 - (Y) Plaintiff's Responses to Circus Circus' Interrogatories;
 - (Z) Expert Report of Alex Tajirian
 - (AA) Memo from Alex Tajarian to Brad Pigott; and
 - (BB) December 19, 2005 Memorandum Opinion.

4. Defendants incorporate by reference the Memorandum of Authorities in Support of their Renewed Motion for Summary Judgment being submitted herewith.

WHEREFORE, premises considered, Defendants respectfully request that this Court enter an Order dismissing Plaintiffs' claims with prejudice. Defendants further requests such other relief as the Court deems proper.

This the 25th day of October, 2007.

Respectfully submitted,

BL DEVELOPMENT CORPORATION (d/b/a Grand Casino Tunica); SHERATON TUNICA CORPORATION (d/b/a Sheraton Casino & Hotel); BALLY'S OLYMPIA LIMITED PARTNERSHIP (d/b/a Bally's Saloon & Gambling Hall); TUNICA PARTNERS II L.P. (d/b/a Harrah's Tunica Mardi Gras Casino); BOYD TUNICA, INC. (d/b/a Sam's Town Hotel & Gambling Hall); and ROBINSON PROPERTY GROUP LIMITED PARTNERSHIP (d/b/a Horseshoe Casino & Hotel)

s/ April D. Reeves

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s/ Robert J. Mims

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2007, I electronically filed the Memorandum Brief of Defendants Barden Mississippi Gaming, LLC, BL Development Corporation, Sheraton Tunica Corporation, Bally's Olympia Limited Partnership, Tunica Partners II L.P., Boyd Tunica, Inc. and Robinson Property Group Limited Partnership In Support of Their Renewed Motion For Summary Judgment with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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