

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

**TUNICA WEB ADVERTISING, INC.**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 2:03CV234-A-D**

**TUNICA CASINO OPERATORS ASSOCIATION, INC., et al.**

**DEFENDANTS**

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
CASINO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

The Plaintiff, through counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, submits that the Casino Defendants' Motion for Summary Judgment in this proceeding should be denied, in the light of the genuine issues of disputed material facts reflected in the accompanying exhibits and Plaintiff's Memoranda of Law, including genuine factual issues for trial as to whether or not:

- (1) The casinos through their general managers and other representatives, through and as a result of an "Emergency Meeting" of the Defendant Casino Operators Association ("TCOA") on May 30, 2001, reached an understanding or agreement "to not utilize" the Tunica.com internet website;
- (2) The casinos conformed to such an understanding or agreement since May of 2001, by refusing since that time to enter any advertising relationship with the Plaintiffs' Tunica.com website (and in part through a renewed "vote" in November of 2002 to "ban advertising" on Tunica.com);
- (3) The casinos have substantial market power in the Tunica market;
- (4) The casinos control access to any element essential for Tunica.com to

- compete effectively as a private internet website in the Tunica market;
- (5) The relevant geographic market for analyzing the casinos' conduct is Tunica County, Mississippi;
  - (6) The relevant product market (or "submarket") for analyzing the casinos' conduct is online advertising with respect to Tunica as a travel destination;
  - (7) The casinos' conduct has damaged competition in the relevant submarket (to the extent that the casinos' boycott is not subject to a "*per se* unreasonable" standard of analysis); and
  - (8) The casinos intentionally interfered with business relations of Tunica.com;
  - (9) Plaintiff Tunica Web Advertising, Inc. ("TWA") has lost past and future profits as a proximate result of a boycott agreement or intentional interference by the casinos.

The casinos having acknowledged both the corporate separateness and validity of Plaintiff TWA as the exclusive owner of all rights to the domain name (and any resulting internet website named) Tunica.com, and Plaintiff Graziosi's ownership of all stock in that legally separate corporation, Plaintiff Graziosi acknowledges that it is TWA which owns the antitrust and intentional interference claims asserted in Counts 1, 2 and 3 of the First Amended Complaint herein.

This Response applies both to the Motion for Summary Judgment filed on behalf of Hollywood Casino, and the separate Motion for Summary Judgment filed by the remaining seven Casino Defendants.

As evidence demonstrating such genuine issues of material facts, the Plaintiff further submits herewith the following exhibits:

- (1) Transcript of Deposition of Plaintiff (Selected Excerpts, and Exhibits 9 and 22 thereto);
- (2) Defendants' Joint Motion to Strike Plaintiffs' Summary Judgment Response Exhibit 9 (May 17, 2004);
- (3) Plaintiffs' Response in Opposition to Defendants' Joint Motion to Strike Plaintiffs' Summary Judgment Response Exhibit 9);
- (4) Order Denying Defendants' Joint Motion to Strike (November 17, 2004);
- (5) Transcript of Deposition of Former Grand Casino General Manager Karen Sock (Excerpts, and Exhibit 4 thereto, and Exhibits 6 and 7 to Cantor Deposition, incorporated as exhibits to Sock deposition testimony);
- (6) Transcript of Deposition of Fitzgerald's Casino General Manager Dominic Mezzetta (Excerpts);
- (7) Transcript of Deposition of Tunica County Tourism Commission Director Webster Franklin (2004) (Excerpts);
- (8) Transcript of Deposition of Former Marketing Director/Manager for Sam's Town, Gold Strike, Grand, Sheraton's and Bally's Casinos Clyde Callicutt (Excerpts, and Exhibits 64, 65 and 67 thereto);
- (9) Transcript of (Second) Deposition of Webster Franklin (2005)(Excerpts, and TCTC Internet Consultant's 2002 Year-End Report);
- (10) Transcript of Deposition of Margaret Devine (Excerpts);
- (11) Transcript of Deposition of Bally's Casino General Manager Peter Burns (excerpts);
- (12) Transcript of Deposition of Horseshow Casino General Manager Robert

McQueen (excerpts);

- (13) Official Quarterly Survey Information Published by Mississippi Gaming Commission (Jan. 2001 through March 2005);
- (14) Plaintiff TWA's Responses to First Set of Discovery Requests Propounded by Circus Circus Mississippi, Inc.;
- (15) Defendant Bally's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (16) Defendant Fitzgerald's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (17) Defendant Gold Strike Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (18) Defendant Grand Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (19) Defendant Harrah's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (20) Defendant Hollywood Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (21) Defendant Horseshoe Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (22) Defendant Sam's Town Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;
- (23) Defendant Sheraton Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Request for Admissions;

- (24) United States Census Data: "2002 County Business Patterns for Tunica, MS.," published at [www.census.gov/epcd/cbp/map/02data/28/143.txt](http://www.census.gov/epcd/cbp/map/02data/28/143.txt).
- (25) Defendant Bally's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (26) Defendant Fitzgerald's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (27) Defendant Gold Strike Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (28) Defendant Grand Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (29) Defendant Harrah's Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories'
- (30) Defendant Hollywood Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (31) Defendant Horseshoe Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (32) Defendant Sam's Town Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (33) Defendant Sheraton Casinos' Responses to Plaintiffs' 2<sup>nd</sup> Interrogatories;
- (34) Defendant Bally's Casinos' Responses to Plaintiffs' First Interrogatories
- (35) Defendant Fitzgerald's Casinos' Responses to Plaintiffs' First Interrogatories;
- (36) Defendant Gold Strike Casinos' Responses to Plaintiffs' First Interrogatories;
- (37) Defendant Grand Casinos' Responses to Plaintiffs' First Interrogatories;
- (38) Defendant Harrah's Casinos' Responses to Plaintiffs' First Interrogatories;
- (39) Defendant Hollywood Casinos' Responses to Plaintiffs' First

Interrogatories;

- (40) Defendant Horseshoe Casinos' Responses to Plaintiffs' First Interrogatories;
- (41) Defendant Sam's Town Casinos' Responses to Plaintiffs' First Interrogatories;
- (42) Defendant Sheraton Casinos' Responses to Plaintiffs' First Interrogatories;
- (43) Opinion Report by Expert Alex Tajirian;
- (44) Deposition of Defendants' Expert Kimberly Moss (Excerpts);
- (45) Advisory Committee Notes to FRE Rule 801 (Excerpts);
- (46) Original Advisory Committee Commentary Re: FRE Rule 801 (56 F.R.D. 183) (Excerpts);
- (47) Affidavit of Cherry Graziosi; and
- (48) Deposition of Defendants' Expert William Shughart (Excerpts).

Given the summary judgment standard applicable in such complex antitrust cases, and the many factual disputes demonstrated through the accompanying exhibits and Brief, the casinos' Motion for Summary Judgment should be denied.

This the 22nd day of November, 2007.

Respectfully submitted,  
TUNICA WEB ADVERTISING, INC.

By: S/J. Brad Pigott  
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**CERTIFICATE OF SERVICE**

I, J. Brad Pigott, do hereby certify that I have this day caused a true and correct copy of the foregoing Response to be filed with the Clerk of the Court via the ECF system which sent notification of same to the following counsel of record in the above-referenced matter, and also to be served upon each such counsel through prepaid United States Mail:

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THIS the 22<sup>nd</sup> day of November, 2007.

s/Brad Pigott  
BRAD PIGOTT