IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

SURESHOT GOLF VENTURES, INC.,	§	CIVIL ACTION NO. 20–1738
Plaintiff,	§	
v.	§	
TOPGOLF INTERNATIONAL, INC.,	§	JURY DEMANDED
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff SureShot Golf Ventures, Inc. ("SureShot") respectfully files this action for treble damages under the antitrust laws of the United States against Defendant Topgolf International, Inc. d/b/a Topgolf Entertainment Group ("Topgolf").

I. PROCEDURAL HISTORY

1. Plaintiff SureShot filed a Complaint alleging antitrust violations in this District on January 17, 2017 (hereinafter, *SureShot I*). The District Court dismissed the action with prejudice on the pleadings. SureShot appealed to the Fifth Circuit Court of Appeals. On October 9, 2018, the Fifth Circuit affirmed the District Court's dismissal, but modified the order to reflect dismissal without prejudice. The Fifth Circuit affirmed "[b]ecause the case is not ripe," and thus did not "analyze whether SureShot alleged a cognizable antitrust injury as required for antitrust standing." *SureShot Golf Ventures v. Topgolf Int'l, Inc.*, 754 Fed. Appx. 235, 241 n.3 (5th Cir. 2018). The Fifth Circuit's opinion concluded that the Complaint in *SureShot I* was

"ambiguous about the nature and immediacy of SureShot's injury, and the remainder of its complaint reads in hypotheticals and future threatened injury." *Id* at 240.

2. As alleged below, additional facts establish that SureShot's antitrust complaint is not only ripe, but once again satisfies the elements for antitrust standing and injury, as the "feared actions" that result from anti-competitive conducts are reflected in both market realities and Topgolf's near complete domination of the golf entertainment market. *Id*. at 241.

II. INTRODUCTION

3. The antitrust laws forbid a monopolist from foreclosing competition by vertical integration that makes rival entry or growth more costly, riskier, and less likely. For example, a firm who otherwise acquired its monopoly by lawful means may not, with the intent to foreclose entry of a new rival, acquire essential technology or patents and then effectively make its use by rivals economically infeasible.

4. These harms are not theoretical. The Draft Vertical Merger Guidelines by the Department of Justice and Federal Trade Commission, issued in January 2020, identify the harms, such as those suffered by Plaintiff SureShot, as inimical to maintaining competitive markets for the benefits of consumers and market participants at various levels.[1] Indeed, "Example 5" of the Draft Vertical Merger Guidelines largely mirrors the allegations in this case. Importantly, the Guidelines observe that, as applied to the facts of this case, the analysis should focus on whether

[1] *See* https://www.ftc.gov/news-events/press-releases/2020/01/ftc-doj-announce-draft-vertical-merger-guidelines-public-comment.

following Topgolf's (the dominant company) purchase of Protracer (the supplier of a key ingredient or product), the "merged firm may find it profitable to refuse to supply the ingredient to any rivals or potential rivals if doing so would deter SureShot (the company considering entering the relevant market) from entering, or prevent it from financing entry …." Topgolf would not have purchased Protracer if it was not profitable for them both, and the facts here establish that the "likely result was that competition in the relevant market [was] substantially lessened …."

5. Not unexpectedly, the Federal Trade Commission investigated Topgolf's acquisition of Protracer because of its potential anti-competitive harm to the market and competitors. Plaintiffs do not at this time know the status of the FTC's investigation or conclusions.

6. Topgolf is the dominant business in operating golf entertainment facilities. Other than a handful of other golf entertainment facilities, if that, it is the dominant golf entertainment business in the United States. These centers combine "luxury simulator experience and golf ball tracing tech" with video games, hospitality, and other forms of entertainment, such as video games. Topgolf prides itself as "the only entertainment center of its kind" and the global leader in sports entertainment. At or near the time of the filing of *SureShot I*, Topgolf was operating approximately 28 U.S. locations, and three U.K. locations. As of March 2020, Topgolf venues alone had increased to "60 locations across the U.S. and internationally."

7. Since *SureShot I*, Topgolf's market dominance has only increased, with the assistance of Callaway Golf Company, one of the leading golf equipment makers

in the world. Topgolf Entertainment Group is the umbrella company of the various Topgolf brands and "is a global sports and entertainment community that connects nearly 100 million fans in meaningful ways …." TEG's "brand expressions includ[e] Topgolf venues, Lounge by Topgolf, Toptracer, Toptracer Range, Topgolf Swing Suite, Topgolf Studios, Topgolf Live and World Golf Tour [WGT] by Topgolf." *See* https://press.topgolf.com/about-us.

8. From its inception in 2000 until 2016, Topgolf was the only interactive entertainment, food and beverage golf facility in the United States. Thus, Topgolf enjoyed the entire market share in the industry and the unfettered power to set monopoly prices. When Topgolf learned that a new competitor—Plaintiff SureShot—was to enter the golf entertainment market using a proprietary technology that Topgolf did not use in its business—technology that would create a more-interactive and friendly consumer experience—Topgolf undertook intentional, predatory action to foreclose new competition from emerging SureShot. It did so by purchasing Protracer, the company that created and owned the unique technology that is at the heart of this case. Protracer and SureShot had signed a licensing agreement in April 2015. In late May 2016, Topgolf announced its acquisition of Protracer. SureShot learned then for the first time that its competitor, Topgolf, had purchased Protracer.

9. This anticompetitive behavior by a monopolist eliminates or reduces competition in the high-end golf entertainment market, thereby drastically reducing or eliminating consumer choice in the market, in violation of the antitrust laws.

III. PARTIES

10. Plaintiff SureShot Golf Ventures, Inc. is a Texas corporation. SureShot was injured in its business by reasons of Defendant's illegal conduct forbidden by the antitrust laws.

11. Defendant Topgolf International, Inc. is registered as a foreign for-profit corporation engaging in interstate and international commerce. Summons may be served on its Texas registered agent, C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136, or wherever else it may be found.

IV. JURISDICTION AND VENUE

12. This action is brought under Sections 4 and 7 of the Clayton Act, 15 U.S.C. §§ 15, 18, to recover treble damages, costs, and attorney's fees for the injuries sustained by Plaintiff SureShot because of Defendant's violations of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 7 of the Clayton act, 15 U.S.C. § 18.

13. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337 and Sections 4 and 7 of the Clayton Act, 15 U.S.C. §§ 15(a), 18.

14. Venue is appropriate in this District under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b), (c) and (d) because during the relevant period Defendant resided or transacted business in this District, a substantial portion of the affected commerce described herein was carried out in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

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