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# Praxis

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## Antitrust

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### The UFC's Biggest Bout Yet: Its Fighters' Antitrust Lawsuit

There currently is an antitrust litigation that is enveloping the mixed martial arts (MMA) world. Six current and former MMA fighters have filed a class action lawsuit against the company that owns the Ultimate Fighting Championship (UFC), Zuffa, LLC, for violations of the Sherman Act. [*Cung Le, et al. v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC*, Case No. 5:14-cv-05484, U.S. Dist. Ct. N.D. of California.] A review of the docket indicates that the UFC will have to go a few more rounds before it has another opportunity for a knockout.

The putative class plaintiffs allege that the UFC has monopoly or monopsony power in two markets: (1) the market for promotion of live MMA bouts, and (2) the market for professional MMA fighting services. The plaintiffs claim that the UFC receives 90 percent of the revenues from MMA bout promotion and that MMA fighters do not have the ability to work for MMA promoters other than the UFC.

The plaintiffs' claims regarding the UFC's allegedly anticompetitive scheme partly rely on the fighters' exclusive-dealing contracts with the UFC, which include: (1) a champion's clause that allows the

UFC to extend a fighter's contract when he or she is a champion (and most marketable); (2) an ancillary rights clause that grants the UFC the fighters' exclusive and *perpetual* worldwide personality and identity rights for all commercial purposes; (3) a promotions clause that requires the fighters to promote bouts for no additional compensation; and (4) a sponsorship and endorsement clause that grants the UFC the sole discretion to approve a fighter's sponsorship and endorsement deals. The plaintiffs also claim that the UFC has retaliated against fighters who work or threaten to work for other promoters and against fighters who have refused the UFC's contractual terms.

The Amended Complaint also attributes statements to Zuffa's owners and officers as evidence of anticompetitive intent. The plaintiffs allege, for example, that Zuffa's president boasted: "There is no competition. We're the NFL. You don't see people looking at the NFL and going, 'Yeah, but he's not the best player in the world because there's a guy playing for the Canadian Football League or the Arena League over here.' We're the NFL. **There is no other guy.**" (emphasis in original). The president also allegedly posted a video to YouTube that showed a tombstone that listed the dates of death for other MMA promoters. After reading the other promoters' names, the president allegedly

referred to himself as the grim reaper.

In February 2015, the defendant moved to dismiss the pleading on *Twombly* grounds. [*See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).] Zuffa's primary argument was that the plaintiffs had failed to plausibly allege that its exclusive dealing agreements with fighters were anticompetitive. At a September 2015 hearing, the court issued an oral decision denying Zuffa's motion.

Since the court's ruling, the parties have been engaged in wide-ranging discovery. A review of the court's discovery rulings indicates that Zuffa must produce documents from at least 22 custodians and must respond to 25 interrogatories. The court also increased the number of depositions available under the Federal Rules to 45 per side.

More recently, a third party has challenged the expansive nature of the discovery sought in the *Zuffa* litigation. On February 22, 2017, Bellator Sport Worldwide, LLC, a rival MMA promotion company, filed a motion to quash subpoenas served by the plaintiffs and Zuffa. Bellator claims that while it has produced thousands of pages of documents in response to the subpoenas, it objects to producing documents concerning its contracts and negotiations as well as its revenues and expenses. Bellator objects to producing these confidential materials to its rival and to the athletes with whom it negotiates. Bellator's motion to quash has not yet been fully briefed.

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