12-4

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA

CASINO CITY, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	Case No. 04-557-B-M3 (FJP)
	:	
UNITED STATES DEPARTMENT OF JUSTICE	:	
	:	
Defendant	:	

DEFENDANT'S UNOPPOSED MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

NOW COMES, Defendant United States Department of Justice, through undersigned counsel, which respectfully moves this Court as follows:

1.

Defendant desires to file the attached Reply Memorandum in support of its Motion to Dismiss and seeks leave of court to do so.

2.

Plaintiff's counsel has been contacted regarding the instant Motion for Leave and has indicated that Plaintiff does not object to the Court's granting of same.

WHEREFORE, Defendant prays for entry of an order granting it leave to file the attached Reply Brief.

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA

CASINO CITY, INC.	:	
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Plaintiff	:	
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v.	:	Case No. 04-557-B-M3 (FJP)
	:	
UNITED STATES DEPARTMENT OF JUSTICE	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on this 3rd day of December, 2004, I caused to be served upon the following by First-class mail, postage prepaid, the foregoing Unopposed Motion for Leave to File Reply Brief in Support of Defendant's Motion to Dismiss, proposed Order, and Reply Brief in Support of Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6):

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UNITED STATES DISTRICT COURT FOR THE
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CASINO CITY, INC.	:	
Plaintiff	:	
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REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)

INTRODUCTION

Plaintiff Casino City Inc.'s response to defendant's motion to dismiss succeeds only in establishing that not every constitutional issue involving the Internet presents difficult questions. Defendant's initial memorandum established that application of 18 U.S.C. § 2 to advertising of illegal Internet gambling activity is constitutional because, *inter alia*, there is no constitutional right to advertise illegal activity.

In response, Casino City argues that the activity it is advertising is not "per se" illegal because there are places in the world where Internet gambling is legal, and because plaintiff cannot control the community where its advertisements appear due to the nature of the Internet. The businesses for which it advertises, however, are illegal everywhere in this country. Further, even if U.S. law were less uniform on Internet gambling, there simply is no constitutional right to aid a criminal business in violating federal and state law. Plaintiff's claim also fails as a matter of law because the overbreadth doctrine – which the Supreme Court used to address the issue of varying community standards in non-commercial Internet speech cases relied on by plaintiff –

does not apply to commercial speech. Casino City's response also does nothing to undermine the conclusion that, as a matter of law, the challenged application satisfies the test for evaluating restrictions on commercial speech that, unlike here, advertises only legal activity and is not misleading.

Casino City has also failed to establish that the Court should even reach these questions because it lacks standing. It persists in its failure to make the basic allegation that it advertises for businesses that accept bets from U.S. customers, and therefore has not even alleged that it engages in the activity which it claims is unconstitutionally prohibited by statute. In addition, in asserting a "credible threat of prosecution" it fails to account for the fact that it (1) has received no contact from the Justice Department while others have been contacted and/or subpoenaed, (2) is only one of countless advertisers of Internet gambling, and (3) waited more than a year to file suit without abating its activities.

ARGUMENT

I. THE COURT LACKS JURISDICTION OVER PLAINTIFF'S CLAIMS

A. Plaintiff Fails to Allege the Requisite Intention to Engage in Conduct that Is Proscribed by Statute

To establish standing in a pre-enforcement First Amendment challenge to a statute, the plaintiff must establish an intent to violate the challenged provision and a credible threat of prosecution. *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). The Department of Justice's ("DOJ") initial brief demonstrated that Casino City has failed to allege even the requisite intention to engage in a course of conduct proscribed by statute, let alone a credible threat of prosecution for such a violation. Memorandum of Law in Support of

Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) ("Def. Mem.") at 9-12. In response, Casino City asserts that "DOJ's argument is just plain wrong," but just saying it does not make it so. Casino City, Inc.'s Memorandum of Law in Response to Defendant's Motion to Dismiss ("Pl. Mem.") at 10.[1]

The only individuals or entities that the DOJ letter relied on by plaintiff identifies as even potentially subject to prosecution are advertisers for "Internet gambling and offshore sportsbook operations *that accept bets from customers in the United States*," Def. Mem. at 10 (quoting Compl., Ex. A) (emphasis added). Casino City seeks to establish standing by asserting only that it "places advertisements for offshore sports books and online casinos" and that it "has no control over the offshore sports books and online casinos that place advertisements, including the proceeds they generate." Pl. Mem. at 10. Casino City thus still does not allege that the companies for which it advertises "accept bets from customers in the United States." Accordingly, notwithstanding its attempt to cover up this omission with conclusory statements, it lacks standing to maintain its constitutional challenge for this reason alone.[2]

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[1] In addition, defendant pointed out that Casino City also failed to allege that "the statutory criteria for aiding and abetting apply to its relationship with its customers." Def. Mem. at 10-11. Casino City does not respond to this argument.

[2] Casino City notes that defendant's memorandum is "replete with comments" that advertising of Internet gambling is illegal. Pl. Mem. at 11. In these sections, defendant is assuming that Casino City has alleged that its customers illegally accept bets from U.S. residents, because without such an allegation, it would lack standing to pursue its claim.

B. Plaintiff Has Failed to Allege a Credible Threat of Prosecution

Generally, even if plaintiff's complaint could be read to allege a violation of the United States laws against Internet gambling, defendant's initial memorandum demonstrated that Casino City has failed to establish a "credible threat of prosecution." Def. Mem. at 12-15. Without disputing any of defendant's assertions as to the lack of a credible threat, plaintiff argues that it is sufficient in a First Amendment case that it intends to engage in the proscribed conduct and that DOJ has not disavowed prosecution against it. Pl. Mem. at 9. While in certain factual contexts, these facts could suffice to establish a credible threat, "[t]his inquiry," as plaintiff's authority states, "is always case-specific," and the facts in this case simply do not support plaintiffs' assertion. *See New Hampshire Right to Life Political Action Committee v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996) (cited in Pl. Mem. at 5-6 and 8-9).

First, defendant's memorandum established that plaintiff lacks standing because it is only one of countless advertisers of Internet gambling, and in *Navegar, Inc. v. United States*, 103 F.3d 994 (D.C. Cir. 1997), this was sufficient to preclude plaintiff's claim.[3] Def. Mem. at 12-13. Plaintiff does not deny that there are countless advertisers of Internet gambling in various media, but asserts that its situation "most closely resembles" the portion of the statute in *Navegar* where standing was upheld. Pl. Mem. at 13. That portion of the statute, however, "in effect single[d] out the appellants as its intended targets, by prohibiting weapons that only the appellants make." *Id.* at 1000. It was therefore "clear to whom these provisions of the Act would [have been]

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[3] The Court in *Navegar* held that the plaintiffs lacked standing to challenge portions of a statute that "could be enforced against a great number of weapon manufacturers and distributors" where no "special priority" had been "placed upon preventing [the plaintiffs] from engaging in specified conduct." *Id.* at 1001.

applied were they to be applied at all," and there were only *two* such companies. *Id.* at 994, 1000. This situation is thus the exact opposite of Casino City's.

Second, Casino City completely fails to account for its willingness to continue to advertise Internet gambling without filing suit for more than a year after the DOJ letter that forms the basis for its assertion of standing. *See* Def. Mem. at 14. This differentiates Casino City from plaintiffs in cases that it relies on, who took the threat of prosecution sufficiently seriously that they ceased engaging in the conduct at issue and/or brought suit shortly after the purported threat became apparent.[4] The concern in First Amendment standing cases is that plaintiffs should not be forced to subject themselves to prosecution or engage in self-censorship. Companies that are truly "between a rock and a hard place" do not wait a year or more to seek judicial alleviation of the squeeze. Casino City also does not allege that it would cease advertising if this lawsuit were found not to be justiciable but instead, asserts only that ***if*** it had to stop advertising, it would lose a great deal of money. Pl. Mem. at 12.

Additionally, the authority cited by Casino City helps to illustrate that more is required to establish standing than the applicability of the statute to a plaintiff's conduct (which Casino City

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[4] *Gardner*, 99 F.3d at 11-12 (plaintiff filed suit within weeks of a conversation with a state official prior to engaging in the illegal conduct); *American Booksellers Assoc., Inc. v. Virginia*, 802 F.2d 691, 693 (4th Cir. 1986), *questions certified by*, *Virginia v. American Booksellers Assoc., Inc.*, 484 U.S. 383 (1988) (plaintiff filed suit "approximately two weeks after the effective date of the amendment"); *Bland v. Fessler*, 88 F.3d 729 (9th Cir. 1996) (plaintiff ceased using automatic dialers "immediately" upon notice that it violated California law and filed suit challenging the law five months later); *Allen, Allen, Allen, & Allen v. Williams*, 254 F. Supp. 2d 614, 619 (E.D. Va. 2003) (firm ceased running the advertisement at issue after learning that a Bar Committee was reviewing the advertisement in response to a complaint from a competitor, and filed suit at the same time that it began to run a modified advertisement) (cited in Pl. Mem. at 6-7).

has yet to allege, as discussed in the prior section) and a failure by the government to disavow prosecution. Pl. Mem. at 8-9.[5] Regardless, Casino City identifies no decision finding a credible threat where plaintiff was one of innumerable potential violators of the statute, there was no contact with the enforcing authority, and where the plaintiff failed to treat the threat as serious by continuing to engage in the same conduct for a long period of time prior to filing suit.

Casino City seeks to bolster its claim of standing by alleging that it has suffered economic injury based upon lost revenue opportunities purportedly resulting from DOJ's threats of prosecution – *i.e.*, unsuccessful negotiations with the A&E network to make Casino City a sponsor of The History Channel. Pl. Mem. at 12 and Affidavit of Michael Corfman ¶ 6. It is speculation, however, to assert that the negotiations alleged by Casino City would have resulted in an actual agreement with A&E but for the DOJ letter.[6] Moreover, while they would not help to establish standing in any event, the assertions in the affidavit of Casino City's president as to

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[5] In *Gardner*, for example, the plaintiff successfully asserted a credible threat of prosecution after a state official informed the plaintiff that "infractions" of the challenged statute "'would be noticed' and that the state would commence enforcement actions against any persons who violated the" statute. 99 F.3d at 11. Likewise, as shown in defendant's initial memorandum, the plaintiffs in various cases in this circuit that have found standing have each had different reasons for genuinely fearing prosecution beyond the fact that the government had not disavowed prosecution. Def. Mem. at 12 note 4. Casino City addresses one of these cases and incorrectly assumes that the plaintiff in that case was "one of presumably many television broadcasters" challenging a limitation on advertising rates. Pl. Mem. at 11 (*citing KVUE, Inc. v. Moore*, 709 F.2d 922, 930 (5th Cir. 1983)). In fact, there would only have been a small number of broadcast television stations in a particular county.

[6] *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992) ("when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish"); *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976) (plaintiff must establish an injury that results from the "challenged action of the defendant, and not injury that results from the independent action of some third party not before the court").

A&E's reasoning for not dealing with Casino City may not be considered because they are hearsay. *See Sharp v. Bivona*, 304 F. Supp. 2d 357, 362 (E.D.N.Y. 2004) (*citing Kamen v. AT&T*, 791 F.2d 1006, 1011 (2d Cir. 1986)) (hearsay statements in affidavits may not be considered in resolving a motion to dismiss for lack of jurisdiction).

More importantly, it is also speculation to say that the prospective relief that it seeks would result in a successful deal with A&E or some other company that would otherwise be thwarted. Pl. Mem., Corfman Aff. ¶ 6; *see City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983) (to establish standing to seek prospective equitable relief, a plaintiff must establish a "real and immediate" threat of injury). Casino City, for example, identifies no imminent revenue opportunity that is currently threatened but would likely be concluded if its challenge is successful.[7]

II. CASINO CITY HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

A. The Challenged Application Does Not Violate the First Amendment Because It Addresses Only the Advertising of Unlawful Activity

DOJ's initial memorandum established that Casino City's First Amendment claim lacks merit because the challenged application applies only to advertisements for illegal activity, and because there is no First Amendment right to advertise illegal activity. Def. Mem. at 18-19; *see, e.g., Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 563-64 (1980). In response, plaintiff argues that the Internet is a medium that can be

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[7] *Lujan*, 504 U.S. at 562 (in relying on the effect of regulation of a third party to establish standing, "it becomes the burden of the plaintiff to adduce facts showing that" the third party's "choices have been or will be made in such manner as to produce causation and permit redressability of injury").

accessed from anywhere in the world and therefore "creates a new challenge for the U.S. Supreme Court in relation to the First Amendment." Pl. Mem. at 20-21. Because the challenged application would allegedly prevent plaintiff from advertising in jurisdictions where Internet gambling is legal, plaintiff argues, defendant "cannot assert that the advertisements placed by Casino City concern per se illegal conduct." *Id.* at 21.

This argument has no merit. Internet gambling is illegal throughout this country. Compl. Ex. A, DOJ Letter ("With very few exceptions limited to licensed sportsbook operations in Nevada, state and federal laws prohibit the operation of sportsbooks and Internet gambling within the United States, whether or not such operations are based offshore").[8] Plaintiff does not claim that there is any state where it is legal for its customers to operate. Instead, the only such jurisdiction that plaintiff identifies is Antigua, a foreign country. Pl. Mem. at 19 note 8. Cases cited by Casino City involving sexually explicit speech and the Internet where relevant community standards arguably differ from state to state, are therefore inapplicable to this case.

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[8] As Casino City apparently recognizes, Internet sportsbook gambling violates the Wire Act, 18 U.S.C. § 1084, wherever it is conducted in this country. Pl. Mem. at 19 note 8. Plaintiff correctly notes that violations of 18 U.S.C. §§ 1952 and 1955, which prohibit both sportsbook and non-sportsbook gambling, require that the conduct at issue be illegal in the state where the violation takes place, but plaintiff identifies no state where its customers can operate legally, and their conduct is thus also prohibited by federal law throughout the country. Defendant also notes that it disagrees with the decision of the Fifth Circuit Court of Appeals in *In re Mastercard Int'l, Inc.*, 313 F.3d 257, 262-63 (5th Cir. 2002), cited in Pl. Mem. at 24 note 12, that 18 U.S.C. § 1084 does not apply to casino gambling, but the decision is binding in this circuit.

Pl. Mem. at 19-21.[9] Because it is illegal for plaintiff's customers to operate anywhere in this country, plaintiff's Internet theory is grounded before it can even take flight.

While veiling the point behind broad and general statements about the "broad global impact" of the Internet, Pl. Mem. at 19, Casino City appears to suggest that activity advertised via the Internet should not be deemed illegal under the first prong of *Central Hudson* if it is legal anywhere in the world. It identifies no support in any judicial decision, however, for a rule that would allow the world's most permissive legal regime to influence in any way the ability of this country to enforce its laws.

It is also worth noting that even if Internet gambling were legal in many U.S. states, this case would still not present a difficult constitutional question. The Supreme Court has stated unequivocally that speech advertising illegal activity is not protected by the First Amendment; it has not sanctioned a third category of speech that advertises conduct that is not "per se illegal." *See* Def. Mem. at 18-19; *see Central Hudson*, 447 U.S. at 564 (government may prohibit "commercial speech related to illegal activity"). Internet gambling operations that accept bets from U.S. customers are violating the law, and Internet advertisements of such operations thus "concern illegal activity." The fact that these criminal businesses may be operating legally in other countries with the help of Casino City's advertisements in no way mitigates the seriousness of such violations, or Casino City's complicity in them.[10]

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[9] Nor does this case have anything to do with *Greater New Orleans Broadcasting Assoc., Inc. v. United States*, 527 U.S. 173 (1999) (cited in Pl. Mem. at 22), which involved the advertising of lawful casino gambling.

[10] Casino City also misunderstands the Second Circuit Court of Appeals' decision in (continued...)

Casino City's argument also fails because the overbreadth doctrine, which the Court has used to analyze the problem of varying community standards in the arena of sexually explicit Internet speech, does not apply in the commercial speech context.[11] *See Waters v. Churchill*, 511 U.S. 661, 670 (1994) (*citing Bates v. State Bar of Arizona*, 433 U.S. 350, 380-81 (1977)) ("Nor has the possibility that overbroad regulations may chill commercial speech convinced us to extend the overbreadth doctrine into the commercial speech area"); *United States v. Kaufman*, 985 F.2d 884, 895 (7th Cir. 1993) (citing numerous cases) ("Commercial speech is not open to an overbreadth analysis."). Thus, the argument that a prohibition on advertising of Internet gambling in jurisdictions where it is illegal may chill the advertising of such activity in jurisdictions where it is legal, cannot establish the unconstitutionality of the statute.

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[10](...continued)
Swedenburg v. Kelly, 358 F.3d 223 (2d Cir.), *cert. granted on different issue*, 124 S. Ct. 2391 (2004) (cited in Pl. Mem. at 22). The Court's concern in that case was that the statute at issue would have prohibited advertisements for wine distributors that operated legally in other jurisdictions *and* did not violate New York law because they did not accept orders from New York customers. *Id.* at 241 (noting that the New York statute "plainly encompasses a broader prohibition than the solicitation of orders by unlicensed, out-of-state wineries for direct shipment of wine to New York consumers," and that the statute prohibited wineries from advertising on the Internet with order forms that were legal in their own states "even if [the forms] contained language limiting sales to states in which such orders were lawful"). Plaintiff does not allege that the businesses for whom plaintiff advertises acknowledge or take any steps to prevent the violations of law that their conduct entails.

[11] *See Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 584, 591-92 (2002). As explained by Justice Thomas, joined by three other justices, the argument is that speech that may be permissible in one jurisdiction may be impermissible in another, and thus that speakers on the Internet would be forced "to abide by the 'most puritan community's' standards." *Id.* at 577. While differences on the precise mode of analysis resulted in different opinions, a majority of the Court in *Ashcroft* analyzed the question using the overbreadth doctrine. *Id.* at 584, 591-92.

Even if the overbreadth doctrine applied, the Supreme Court has emphasized that "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Given the fact that as stated *supra*, Internet gambling is illegal throughout the country, it would be impossible to conclude that a prohibition on advertising Internet gambling operations that accept bets from U.S. residents is substantially overbroad.

Finally, the cases relied upon by Casino City are inapplicable because they address statutes that regulate speech that could not be prohibited entirely in *any* jurisdiction without satisfying strict scrutiny.[12] Additionally, the Supreme Court has strongly suggested that it would be constitutional to prohibit the transmission of obscene material, even if to do so would prohibit non-commercial speech that would be viewed as obscene in some communities but not obscene in others. *Reno v. American Civil Liberties Union* 521 U.S. 844, 878 n.44, 883 (1997); *see Ashcroft*, 535 U.S. at 584 (Thomas, J., Rehnquist, C.J., and Scalia, J.) (noting the Court's "prior suggestion that the application of the CDA to obscene speech was constitutional"). The constitutionality of a prohibition on the transmission of obscenity, which like advertisements for illegal activity may be prohibited entirely, only further demonstrates the basic error of Casino City's Internet argument.

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[12] *Ashcroft*, 535 U.S. at 569 (addressing a statute prohibiting communications containing material that is harmful to minors but not necessarily obscene); *Reno*, 521 U.S. 844 (1997) (striking down the Communications Decency Act's [CDA] prohibition on the knowing transmission of "indecent" material to anyone under the age of 18).

B. The Challenged Application Satisfies the Remainder of the *Central Hudson* Test

Defendant's initial memorandum established that the challenged statutory application also satisfies, as a matter of law, the elements of the test for restrictions on commercial speech that, unlike here, advertises legal activity. Def. Mem. at 19-22. Specifically, defendant established that preventing the advertising of illegal Internet gambling directly advances DOJ's substantial interest in reducing illegal Internet gambling and that there is a "reasonable fit" between that goal and the challenged method of advancing it. *Id.*; *Central Hudson Gas & Electric Corp.*, 447 U.S. at 563-64.

In response, Casino City inexplicably asserts that it is "just too early" in this case to determine that the government has a substantial interest in reducing illegal Internet gambling. Pl. Mem. at 24. As stated previously, however, the Supreme Court has concluded on three separate occasions that the government had a substantial interest in reducing even legal gambling. Def. Mem. at 20. In any event, whatever the federal government's interest in reducing legal gambling activity, there is no basis for contending that the government lacks a substantial interest in enforcing laws proscribing illegal gambling.[13]

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[13] While the Supreme Court suggested in *Greater New Orleans Broadcasting Assoc., Inc. v. United States*, 527 U.S. 173, 186 (1999) (cited in Pl. Mem. at 23), that Congress' interest in reducing gambling in jurisdictions where it was permitted by federal and state law was more equivocal, it nonetheless found that the government "had identified substantial interests." *See id.* at 185, 188. Moreover, nothing in the opinion gainsays the government's interest in enforcing criminal gambling prohibitions. To the contrary, the Court specifically recognized that it was not its "function to weigh the policy arguments on either side of the nationwide debate over whether and to what extent casino and other forms of gambling should be legalized." *Id.* at 187.

Defendant's initial memorandum also noted that Internet gambling poses unique dangers due to its easy accessibility, and reinforced the assertion by pointing to the preamble to Louisiana's statute prohibiting gambling by computer. Def. Mem. at 21. Casino City's lone response misses the point by arguing that defendant's reliance on the preamble is "misplaced" because the Louisiana law does not prohibit advertising. Pl. Mem. at 24. DOJ, however, referred to the statute to confirm its interest in reducing illegal Internet gambling because of its easy accessibility. Casino City offers nothing to undermine this point.

Casino City further asserts that it is "conjecture" and "legally insufficient" to assert that a prohibition on advertising illegal Internet gambling will reduce such gambling by reducing the ability of such operations to solicit customers. Pl. Mem. at 25. In fact, the connection between advertising an activity and increased incidence of the activity is the very reason that Internet gambling businesses pay Casino City money to advertise for them, and indeed, it is the foundation upon which the entire advertising industry rests.[14]

Moreover, Casino City's assertion that any alleviation of the harm would not be material because foreign companies could still advertise illegal gambling falsely assumes that foreign companies that advertise illegal activity in this country are not subject to U.S. law. Pl. Mem. at 25-26. Regardless, the elimination of all advertising of Internet gambling in content that originates in the United States (which Casino City suggests could encompass 60 percent of all

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[14] *See Central Hudson*, 447 U.S. at 569 ("There is an immediate connection between advertising and demand for electricity"); *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 628 (1995) (commercial speech restrictions may be justified based on "history, consensus, and 'simple common sense'"); *United States v. Edge Broadcasting Co. T/A*, 509 U.S. 418, 428 (1993) (relying on the "commonsense judgment" that prohibition on lottery advertising directly advanced the policy of supporting North Carolina's anti-gambling laws).

content) would obviously go a long way to reducing the ability of illegal Internet gambling businesses to solicit customers. Pl. Mem. at 25 note 13; *see Edge Broadcasting Co.*, 509 U.S. at 432-35 (1993) (holding that the fact that "11 percent of radio listening time" in the relevant area would remain free of "invitations to gamble" meant that the regulation at issue directly advanced the government's interest).

Finally, defendant's memorandum asserted that the challenged application "could not be any more narrowly tailored because it only prohibits the advertising of illegal activities, and only when such conduct violates the prohibitions of 18 U.S.C. § 2." Def. Mem. at 22. In response, plaintiff ignores this sentence, quotes only the introductory sentence, and then asserts that there are other alternatives, but does not identify any. Pl. Mem. at 26. Absent some suggestion from plaintiff for how the government could accomplish its goal of substantially reducing the ability of illegal gambling businesses to solicit customers, there is no basis for denying the government's motion. In the end, what Casino City refers to as "conjecture" and "conclusory" is merely stating the obvious.

CONCLUSION

For the foregoing reasons and for the reasons discussed in defendant's initial memorandum, Casino City's complaint should be dismissed either for lack of jurisdiction or for failure to state a claim upon which relief can be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA

CASINO CITY, INC.

Plaintiff

v.

UNITED STATES DEPARTMENT OF JUSTICE

Defendant

Case No. 04-557-B-M3 (FJP)

ORDER

CONSIDERING *Defendant's Unopposed Motion for Leave to File Reply Brief in Support of Its Motion to Dismiss*:

IT IS HEREBY ORDERED that the motion is granted and that *Defendant's Reply Brief* be filed.

Baton Rouge, Louisiana, this 6 day of December, 2004.

JUDGE FRANK J. POLOZOLA
UNITED STATES DISTRICT COURT