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Million Dollar Babies Do Not Want To Share: An Analysis of Antitrust Issues Surrounding Boxing and Mixed Martial Arts and Ways to Improve Combat Sports

Daniel L. Maschi

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MILLION DOLLAR BABIES DO NOT WANT TO SHARE:
AN ANALYSIS OF ANTITRUST ISSUES SURROUNDING
BOXING AND MIXED MARTIAL ARTS AND
WAYS TO IMPROVE COMBAT SPORTS

I. INTRODUCTION

Coined by some as the “biggest fight in combat sports history” and “the money fight,” on August 26, 2017, Ultimate Fighting Championship (UFC) mixed martial arts (MMA) superstar, Conor McGregor, crossed over to boxing to take on the biggest name in the sport, the undefeated Floyd Mayweather.¹ The fight is estimated to have received over 4.5 million pay-per-view buys, which brings it close to the all-time pay-per-view record.² Although the actual figures have been kept secret due to a confidentiality agreement, it is estimated that Mayweather earned \$230 million and McGregor earned \$70 million.³ The fight was surprisingly competitive, but ultimately ended with Mayweather defeating McGregor via technical knockout in the tenth round and retiring with a perfect 50–0 record as one of the richest athletes of all time.⁴ In light of

1. *Floyd Mayweather Jr. vs. Conor McGregor: “The Money Fight”*, SPORTS ILLUSTRATED (Aug. 27, 2017), <https://www.si.com/boxing/photo/2017/08/27/floyd-mayweather-jr-vs-conor-mcgregor-money-fight> [<https://perma.cc/7BEC-NR7T>] (showcasing photos from fight).

2. See A.J. Perez & Steven Marrocco, *Mayweather vs. McGregor: Fight Nears Record for Pay-Per-View Buys*, USA TODAY (Sept. 1, 2017), <https://www.usatoday.com/story/sports/boxing/2017/09/01/floyd-mayweather-conor-mcgregor-showtime-pay-per-view-numbers/626671001/> [<https://perma.cc/JQ44-HA5S>] (detailing estimated final numbers for fight which are yet to be determined according to Showtime executive vice president Stephen Espinoza). The pay-per-view record of 4.6 million purchases was set in 2015 by Mayweather when he fought Manny Pacquiao. See *id.*

3. See *What Is the Prize Money for McGregor vs Mayweather and How Much Did Floyd Mayweather Jr. Take Home?*, TELEGRAPH (Aug. 30, 2017, 9:29 AM), <http://www.telegraph.co.uk/boxing/0/prize-money-mcgregor-vs-mayweather-much-purse-will-winner-get/> [<https://perma.cc/U88M-5DKL>] (detailing estimated fight purses, which depend largely on ultimate pay-per-view numbers and variety of other variables). The Nevada State Athletic Commission confirmed that the absolute minimum each fighter earned was \$100 million for Mayweather and \$30 million for McGregor, although it is estimated their actual purses far exceeded that. See *id.*

4. See Rob Woollard, *Fifty and out as Mayweather Stops Brave McGregor*, YAHOO! SPORTS (Aug. 27, 2017, 7:05 AM), <https://sports.yahoo.com/boxing-fifty-mayweather-stops-brave-mcgregor-053959523-box.html> [<https://perma.cc/N2WL-RHJB>] (detailing Mayweather-McGregor fight). “After this fight, Mayweather should join Michael Jordan and Tiger Woods as the first three athletes to make more than \$1 billion.” See Ahiza Garcia, *Floyd Mayweather Will Join Billionaire Athletes Club*, CNN MONEY (Sept. 5, 2017), <http://money.cnn.com/2017/08/27/news/companies/>

this unique fight, and the fact that McGregor made more in his professional boxing debut than he did in all the fights of his UFC career combined, the question of how fighters are compensated in MMA compared to professional boxing becomes prevalent.⁵

A recent study analyzed all the payouts in professional boxing and MMA events held in Nevada, Florida, and California, and the evidence showed that boxers, on average, make more money than their MMA counterparts.⁶ In addition, the study showed that almost all the high-paying purses in MMA are paid out to fighters in the UFC, which is by far the most dominant promotional company in the sport.⁷ This discrepancy in pay, however, is not due to the sport of boxing itself generating more money than MMA.⁸ To the contrary, the UFC has seen higher revenues than boxing in recent years, and “[t]he UFC’s FOX deal pays almost twice as much as that of the HBO and Showtime’s current boxing budgets combined. The UFC also regularly sells more pay-per-views and generates more revenue per year than boxing does.”⁹ When asked about possible causes of this discrepancy in pay, professionals involved in the business of both sports indicated three major reasons: the “lack of competition in MMA, the power of the UFC brand, and the presence of federal law covering boxing.”¹⁰

floyd-mayweather-billionaire-athletes/index.html [https://perma.cc/7JW3-NBZF] (quoting CEO of Mayweather Promotions, Leonard Ellerbe). In addition to breaking financial records, Mayweather broke the record for longest undefeated streak in boxing, previously held by legend Rocky Marciano. See Josh Peter, *Floyd Mayweather Eclipses Rocky Marciano’s Career Mark with Win vs. Conor McGregor*, USA TODAY (Aug. 27, 2017, 8:43 AM), https://www.usatoday.com/story/sports/boxing/2017/08/26/floyd-mayweather-passes-rocky-marciano-wins-record/605894001/ [https://perma.cc/Y6JW-557Z] (detailing Mayweather breaking Marciano’s long held record of 49-0).

5. See Bryanna Fissouri, *MMA and Boxing Are Both Better for Mayweather vs McGregor*, BOXING INSIDER, https://www.boxinginsider.com/columns/mma-still-wins-despite-mcgregors-defeat/ [https://perma.cc/9RM2-FGBF] (last visited Aug. 27, 2017) (explaining that McGregor has been vocal proponent for increased pay in UFC, but made millions more in his very first professional boxing bout).

6. See John S. Nash, *Why Do Boxers Make More than MMA Fighters?*, BLOODY ELBOW (Aug. 23, 2016), https://www.bloodyelbow.com/2016/8/23/12512178/why-do-boxers-make-more-than-mma-fighters [https://perma.cc/P23N-E9ML] (analyzing pay distributions for professional boxing and MMA events in several states).

7. See *id.* (explaining discrepancy between UFC fighter purses and fighters in other MMA promotions).

8. See *id.* (explaining boxing does not in fact generate more revenue per year than UFC).

9. *Id.* (comparing UFC’s deal with FOX, to deals to broadcast boxing on HBO and Showtime).

10. *Id.* (citing reasons given by managers, promoters, and attorneys, for pay discrepancy between MMA athletes and professional boxers).

Despite the factors previously noted as contributing to MMA fighters earning less on average than their boxing counterparts, those same factors have also contributed to MMA's rapid growth in popularity.¹¹ In a way, many of the UFC's areas of strength are also professional boxing's areas of weakness, and former UFC owner, Lorenzo Fertitta, has even stated that "[b]oxing provide[s] a tremendous roadmap, from a case study standpoint, as far as what to do and what not to do. It fe[els] like boxing ha[s] become too fragmented, [with] too many titles at too many weights."¹² It is no secret that professional boxing has been declining in popularity for years, which is due in part to the success of the UFC drawing away fans, but is primarily due to an excessive number of sanctioning bodies awarding too many championship belts across a plethora of weight classes, in addition to problems with corruption and difficulty organizing fights between rival promotions.¹³

A prime example of a fight that helped boxing in the short term, but also highlighted key issues in the sport, was the 2015 fight

11. See Andy Bull, *The Fight Game Reloaded: How MMA and UFC Conquered the World*, GUARDIAN (Mar. 4, 2016, 8:43 AM), <https://www.theguardian.com/sport/2016/mar/04/the-fight-game-reloaded-how-mma-conquered-world-ufc> [<https://perma.cc/YXC3-L9F4>] (explaining how UFC rose to prominence and business tactics used to grow popularity of MMA in United States).

12. *Id.* (quoting Lorenzo Fertitta, "[t]oday, the UFC has eight weight classes. Boxing has 17, multiplied by the many different governing bodies").

13. See Zachary Alapi, *7 Creative Changes for Boxing to Catch Back Up to MMA*, BLEACHERREPORT (Sept. 12, 2012), <http://bleacherreport.com/articles/1332450-7-creative-changes-for-boxing-to-catch-back-up-to-mma> [<https://perma.cc/K9AX-JU6E>] (discussing potential changes for sport of boxing which could help it regain popularity). See also *Boxing Enters Somewhere Behind Golf: Fixing the Sweet Science's Irrelevance in the American Sports Culture*, BAD LEFT HOOK (Feb. 14, 2012, 9:52 PM), <https://www.badlefthook.com/2012/2/14/2798986/boxing-american-main-stream-sports-culture-analysis> [<https://perma.cc/U7RF-A2D7>] (examining problems in boxing which have led it to become increasingly irrelevant in sports culture today).

In 1926 . . . [Ring magazine], began awarding belts to the world champion in each weight division in boxing, and for the next 50 years these belts were one of the greatest prizes to be gained in the sport. By the late 1980's the major sanctioning bodies that governed much of boxing (the International Boxing Federation, World Boxing Council, and World Boxing Association) were each awarding their own belts to their champions. Given the proliferation of champions because of the number of sanctioning groups and the increasing number of weight divisions, in the 1980's Ring magazine stopped its practice of awarding a belt to each champion and instead awarded belts to only undisputed champions.

Michael Poliakoff et al., *Boxing*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/sports/boxing> [<https://perma.cc/DPP5-76GG>] (last visited Aug. 12, 2017). For further discussion of sanctioning organizations, see *infra* notes 148–155 and accompanying text.

between Floyd Mayweather and Manny Pacquiao.¹⁴ The fight was one that fans wanted to see for years, however issues over the terms of the fight, as well as animosity between Pacquiao's promoter, Top Rank, and Mayweather's own company, Mayweather Promotions, resulted in years of delay.¹⁵ Because boxing lacks any central control, the past decade has seen individual interests frequently get in the way of organizing the most compelling fights.¹⁶ "[B]oxers are essentially freelancers who look to their promoters to create fights and define their futures. . . . [However] [t]he business of boxing is brutal, and there's tremendous infighting as the men behind the boxers strive for market supremacy."¹⁷ When the Mayweather-Pacquiao fight finally happened, it shattered records as predicted, bringing in 4.4 million pay-per-view buys and generating a total of more than \$500 million—\$350 million of which went to the fighters.¹⁸ Despite these incredible numbers and its advertisement as the "fight of the century," the fight was relatively lackluster and resulted in Mayweather winning an easy decision victory, which left many fans disappointed.¹⁹

In contrast to professional boxing, MMA experiences very few problems staging highly anticipated matchups between top fighters because the best fighters in the sport are (for the most-part) signed

14. See Gary Andrew Poole, *The Fight to Organize the Fight of the Century*, ATLANTIC (May 2, 2015), <https://www.theatlantic.com/entertainment/archive/2015/05/mayweather-versus-pacquiao/392036/> [<https://perma.cc/PV2J-BE5P>] (discussing reasons why Mayweather vs. Pacquiao took so long to organize).

15. See *id.* (describing nature of rivalry between promoters who aligned with rival television companies). Top Rank partnered with HBO, while Mayweather Promotions partnered with Showtime, which resulted in further difficulty organizing a fight. See *id.*

16. See *id.* (describing factors that contributed to difficulty in organizing Mayweather vs. Pacquiao).

17. *Id.* (describing how business of professional boxing operates).

18. See Cork Gaines, *The Mayweather-Pacquiao Fight Numbers Are in—They Shattered Expectations by Tens of Millions of Dollars*, BUSINESS INSIDER (May 12, 2015), <http://www.businessinsider.com/floyd-mayweather-manny-pacquiao-revenue-2015-5> [<https://perma.cc/3HEW-K66M>] ("That shatters the previous record of 2.48 million PPV buys set by Mayweather and Oscar De La Hoya in 2007, and it blows away the pre-fight estimates of 3.0-3.8 million buys.").

19. See Kelefa Sanneh, *Ultimate Fighting Versus Boxing*, NEW YORKER (May 22, 2015), <http://www.newyorker.com/news/sporting-scene/ultimate-fighting-versus-boxing> [<https://perma.cc/L39M-XSUQ>] (analyzing anti-climactic mega-fight's impact on boxing and how it competes with UFC). In addition to disappointing fans, the fight opened the door to dozens of lawsuits filed by fans who accused Pacquiao of "misleading them by not disclosing a shoulder injury that, he said, prevented him from being his best." *Id.*

with one promotion, the UFC.²⁰ In addition, UFC president, Dana White, often publicly admonishes fighters who put on dull fights and rewards fighters with bonuses for exciting bouts.²¹ The UFC's business model is one that directly benefits itself, as the promoter, because the "UFC is their own league and they appoint their own champion who is going to fight for the title. Everything is done within while in boxing [there are] different sanctioning bodies [The UFC is] a promoter, regulator, sanctioning body, everything."²²

In light of this clear advantage that the UFC has over boxing's chaotic atmosphere, there have been renewed efforts by some of boxing's biggest players to make the sport more orderly.²³ In particular, in 2015, notorious boxing manager, Al Haymon, launched Premier Boxing Champions ("PBC"), a television series backed by Waddell & Reed, which has broadcast deals with several networks.²⁴ As a result of Haymon's efforts, he was met with an antitrust lawsuit from Oscar De La Hoya's Golden Boy Promotions, which claimed that Haymon engaged in anticompetitive behavior.²⁵ In 2017, a judge in the Central District of California granted the defendant's motion for summary judgment in a detailed opinion, which essen-

20. See Nash, *supra* note 6 ("[A]ccording to the Fight Matrix rankings, every male fighter in the top three of their division and roughly 85% of all top 10 fighters in the ten divisions that the UFC promotes are under contract with the UFC.").

21. Sanneh, *supra* note 19 ("In the U.F.C., White is known for his willingness to criticize fighters, even winning ones, who fail to entertain; fighters can also earn fifty-thousand-dollar bonuses for exciting performances. Boxing doesn't have a boss to browbeat fighters who disappoint, or a system to directly reward ones who excel.").

22. Nash, *supra* note 6 (quoting interview with Warriors Boxing executive Leon Margules).

23. See Sanneh, *supra* note 19 (describing advent of PBC in comparison to UFC).

24. See *id.* ("Mayweather's powerful adviser, Al Haymon, announced the launch of Premier Boxing Champions (PBC), a series backed by [asset management company] Waddell & Reed, [which] has broadcast arrangements with NBC and CBS, as well as a number of cable networks . . . [and took over] boxing programming on ESPN, replacing "Friday Night Fights," a long-running boxing and boxing news show."). Investment firm Waddell & Reed invested \$500 million in PBC in 2015. See *How Good is the PBC for Boxing*, UCN LIVE (Apr. 26, 2016), <http://ucnlive.com/how-good-is-pbc-for-boxing/> [<https://perma.cc/7FFB-X8PR>] (providing overview of how PBC came to be and its effects on boxing). "Haymon's PBC, is now in the midst of a potential UFC-style takeover, right down to the production and streamlined teams." Patrick Connor, *Bigger than Antitrust: Boxing and the Ali Act*, BAD LEFT HOOK (May 19, 2015), <https://www.badlefthook.com/2015/5/19/8627119/bigger-than-antitrust-boxing-and-the-ali-act> [<https://perma.cc/DL59-WUJV>].

25. See *Golden Boy Promotions, LLC v. Haymon*, No. CV 15-3378-JFW, 2017 WL 460736, at *2 (C.D. Cal. Jan. 26, 2017) (concerning Golden Boy Promotions, LLC lawsuit against Haymon).

tially stated that Golden Boy had been unable to present any evidence of harm to competition or anticompetitive business practices.²⁶

This comment aims to conduct an overall comparison of professional boxing and MMA, the legal issues the sports face today and what changes can be made to improve the futures of the sports and the livelihoods of the fighters.²⁷ In Part II, this comment will discuss the background and history of the sports of boxing and MMA, give an overview of federal laws that are relevant to the discussion, and discuss recent antitrust litigation in both sports.²⁸ Part III(A) will analyze the differences between the structures of boxing and MMA, and discuss why boxing's structure is the direct cause of its problems.²⁹ Part III(B) will discuss the UFC's monopoly on MMA and its effects on fighters, as well as the impact of the Muhammad Ali Boxing Reform Act.³⁰ And Part III(C) will explain why the current litigation facing the UFC, *Le v. Zuffa*,³¹ though similar to the recent antitrust lawsuit of *Golden Boy Promotions, LLC v. Haymon* ("Golden Boy"),³² is more likely to succeed.³³ Additionally, this section will offer ways in which both sports can be improved.³⁴ This article argues that boxing and MMA should learn from one another to improve both themselves and the economic well-being of the fighters.³⁵ Boxing should form a more coherent, organized system with fewer weight classes and sanctioning bodies, and MMA should be subject to the Muhammad Ali Boxing Reform Act ("Ali Act") to protect fighters from getting taken advantage of by the UFC, which dominates the sport.³⁶

26. *See id.* at *19 (describing holding).

27. For further discussion of the backgrounds of boxing and MMA, see *infra* notes 37–98 and accompanying text. For further discussion of the legal issues the sports face today and what changes can be made, see *infra* notes 141–280 and accompanying text.

28. *See infra* notes 37–140 and accompanying text (explaining background of boxing and MMA).

29. *See infra* notes 148–182 and accompanying text (analyzing problems due to structure of boxing and UFC dominance).

30. *See infra* notes 183–229 (analyzing UFC and effects of Muhammad Ali Boxing Reform Act).

31. 216 F. Supp. 3d 1154 (D. Nev. 2016).

32. No. CV 15-3378-JFW, 2017 WL 460736 (C.D. Cal. Jan. 26, 2017).

33. *See infra* notes 230–271 and accompanying text (comparing cases).

34. *See infra* notes 230–271 and accompanying text (comparing cases).

35. For further discussion of the problems professional boxing and MMA face and the solutions, see *infra* notes 141–147 and accompanying text.

36. For further discussion of the problems professional boxing and MMA face and the solutions, see *infra* notes 148–280 and accompanying text.

II. BACKGROUND OF BOXING AND MIXED MARTIAL ARTS

A. The Sweet Science's Sour History

The sport of boxing, fondly referred to as “the sweet science,” has ancient origins and was prevalent in ancient Egyptian, Greek, and Roman cultures.³⁷ After the rise of Christianity and the fall of the Roman Empire, boxing disappeared for centuries until it reemerged in 1681, when a formal bareknuckle bout was recorded to have taken place in London for the first time.³⁸ The first formal set of rules for boxing known as the “Broughton Rules,” were adopted in 1743, followed by the London Prize Ring Rules in 1838, and finally the Marquis of Queensberry Rules in 1867 (which are the rules that govern boxing today).³⁹ The Queensberry Rules introduced the use of gloves and timed rounds of three minutes each, and instituted the rule that any fighter who was knocked down, and could not get back up within ten seconds, was declared knocked out and the fight was over.⁴⁰

Boxing remained illegal in Britain and the United States for most of the 19th century, due to its perception as a “throwback to a less-civilized past.”⁴¹ However, relaxed enforcement of the law and boxing’s ever-growing popularity caused authorities to reconsider its value in society around the end of the nineteenth century, and, as dominance in the sport started to shift from England to America, prize-fighting was finally legalized and regulated by New York in 1896.⁴² The twentieth century saw professional boxing grow into a big business and become a path to riches for various ethnic groups in the United States.⁴³ Although some states resisted legalization due to concerns about encouraging violent behavior, by 1920 nearly all states had legalized boxing.⁴⁴ Once boxing was legalized,

37. Poliakoff et al., *supra* note 13 (describing ancient origins of boxing).

38. *See id.* (describing boxing’s disappearance from society for hundreds of years until its reemergence in Great Britain in seventeenth century).

39. *See* John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL’Y REV. 7, 9 (2004) (describing modern history of boxing).

40. *See Boxing’s Legal Status*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/sports/boxing> [<https://perma.cc/7FF4-9FVH>] (last visited Aug. 27, 2017) (describing history of boxing beginning in England).

41. *Id.* (“Perceived by the courts as a throwback to a less-civilized past, prizefighting was classified as an affray, an assault, and a riot.”).

42. *See* McCain & Nahigian, *supra* note 39, at 10 (describing history of boxing in America).

43. *See* ENCYCLOPEDIA BRITANNICA, *supra* note 40 (detailing how boxing was practiced widely by Irish and Italian immigrants, as well as Jewish and African Americans).

44. *See* McCain & Nahigian, *supra* note 39, at 11 (describing evolution of legalization of boxing in United States).

the emergence of radio and television played an important role in growing the audience, and the sport ultimately became extremely popular.⁴⁵ This newfound technology and popularity enabled twentieth century boxers such as Jack Dempsey, Joe Louis, Ray Robinson, Rocky Marciano, Muhammad Ali, and Ray Leonard to become American icons.⁴⁶

1. *Problems with Corruption: Business of Boxing Was Not a Fair Fight*

Unsurprisingly, as boxing and its stars began to grow in popularity, promoters consistently attempted to maximize profits and, in doing so, frequently exploited the athletes.⁴⁷ By the middle of the twentieth century, the influence organized crime became problematic and the International Boxing Club of New York (“IBC”) essentially operated as a front for the mafia.⁴⁸ The corruption brought by organized crime led to “fixed fights, bribed judges, and boxing promotions [used] as front[s] for gambling and money laundering schemes.”⁴⁹ In 1953, the Department of Justice launched an investigation and filed a civil antitrust action against the IBC, claiming violations of Sections 1 and 2 of the Sherman Antitrust Act (“Sherman Act”).⁵⁰ The Supreme Court held, in *United States v. Interna-*

45. See *id.* (explaining evolution of boxing in America). See also ENCYCLOPEDIA BRITANNICA, *supra* note 40 (“After World War II television took on an increasingly important role in professional boxing. Because of its popularity and relatively low production costs compared with other sports, professional boxing became a regular feature of network programming throughout much of the 1950’s and early ‘60s.”).

46. See *The Best Boxers of the 20th Century*, RANKER, <http://www.ranker.com/list/best-boxers-of-the-20th-century/ranker-sports> (last visited Aug. 28, 2017) (listing best boxers of twentieth century). This list is in chronological order by decade and is not comprehensive. See *id.*

47. See McCain & Nahigan, *supra* note 39, at 11 (explaining rise of exploitation of professional boxers in twentieth century).

48. See McCain, *supra* note 39, at 11–12 (explaining corruption of IBC and organized crime’s impact on boxing in 1950s). Organized crime also directly extorted some fighters, such as Joe Louis. See *id.*

49. See *id.* at 11 (explaining corruption of IBC and organized crime’s impact on boxing in 1950s). Organized crime also directly extorted some fighters, such as Joe Louis. See *id.*

50. See *United States v. Int’l Boxing Club of N.Y.*, 348 U.S. 236, 242 (1955) (stating that other corporations and individuals named as defendants included Madison Square Garden Corporation, James D. Norris, and Arthur M. Wirtz). See also Katherine Figueroa, *The Twelfth Round: Will Boxing Save Itself?* 36 LOY. L.A. ENT. L. REV. 171, 176 (2016) (explaining how DOJ alleged defendants in *International Boxing Club of N.Y.* restrained and monopolized “the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests in the United States”). For further discussion of the Sherman Act, see *infra* notes 99–107 and accompanying text.

tional Boxing Club of New York,⁵¹ that the defendants engaged in interstate commerce when promoting professional boxing contests, and, therefore, the Sherman Act applied to the sport, unlike professional baseball which is exempt.⁵²

The Supreme Court decision in *International Boxing Club of New York* encouraged Congress to keep a close eye on boxing, which continued to experience persistent problems with corruption in subsequent decades.⁵³ Crooked promoters, such as Don King, became famous for questionable business practices, but, nonetheless, promoted seven of Muhammad Ali's bouts, as well as the bouts of other legendary fighters such as Sugar Ray Leonard, Leon Spinks, Roberto Durán, Julio César Chávez, Mike Tyson, Evander Holyfield, and Felix Trinidad, from the 1970s to the 1990s.⁵⁴ King was criticized for his coercive contractual clause that "required a boxer who wished to challenge a fighter belonging to King to agree to be promoted by King in the future should he win. Thus, no matter which boxer won, King represented the winner."⁵⁵ In addition, King was investigated by the FBI for allegedly paying off the International Boxing Federation ("IBF") for the purposes of obtaining better rankings for his fighters.⁵⁶ Don King was perhaps the most infamous boxing promoter, but he was not the only one.⁵⁷ Complaints concerning the rankings of all the various professional boxing organizations—such as the World Boxing Council ("WBC"), the World Boxing Association ("WBA"), and the IBF—favoring particular promoters over others have been widespread for years.⁵⁸

51. 348 U.S. 236 (1955).

52. *See id.* at 241–45 (holding because boxing constituted interstate commerce, government could proceed with trial to prove defendants had conspired to monopolize market for championship boxing in United States).

53. *See* Figueroa, *supra* note 50, at 176 ("Beginning in 1960, Senator Estes Kefauver, Chair of the Senate Subcommittee on Antitrust and Monopoly, commenced a four-year investigation into the sport.").

54. *See* Don King, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Don-King> [<https://perma.cc/2C3D-GEJD>] (last visited Aug. 27, 2017) (detailing life of Don King and fighters that sued him).

55. *Id.* (describing coercive contracts used by Don King).

56. *See id.* (explaining that FBI seized thousands of documents related to King's illegal business practices).

57. *See* ENCYCLOPEDIA BRITANNICA, *supra* note 40 (discussing issues regarding rankings of professional boxing organizations).

58. *See id.* (discussing issues regarding rankings of professional boxing organizations). For further discussion of the various professional boxing organizations, see *infra* notes 151–155 and accompanying text.

2. *The Year 2000 and Onward: In the Later Rounds, Boxing Is on the Ropes*

During the 1990s, heavyweight champion, Mike Tyson, became an international superstar, known for his incredible knockout power and violent nature both in and out of the ring.⁵⁹ Every time Tyson fought, it became a massive media event.⁶⁰ Tyson also contributed one of the most shocking moments in boxing history, when he bit off a piece of Evander Holyfield's ear during a televised championship fight in 1997.⁶¹ The spectacle momentarily placed boxing back in the limelight, however the overall health of the sport continued to decline.⁶² Since the advent of the twenty-first century, boxing lost a significant amount of its relevance in American sports culture.⁶³ The sport that previously dominated front page news "entered 2012 somewhere behind golf, auto racing and poker . . . on the American sports hierarchy."⁶⁴ Although boxing has declined in popularity, it has not been completely knocked out.⁶⁵ As previously noted, many speculate that the rise of MMA—which is spearheaded by the UFC and its president, Dana White—

59. See Steve Silverman, *Boxing: Breaking Down the Steady Decline of the Sweet Science*, BLEACHERREPORT (Oct. 13, 2012), <http://bleacherreport.com/articles/1370083-boxing-breaking-down-the-steady-decline-of-the-sweet-science> [https://perma.cc/ENZ5-ECA6] (examining factors which have led to decline in popularity of boxing).

60. See *id.* (explaining how Mike Tyson captivated America).

61. See ENCYCLOPEDIA BRITANNICA, *supra* note 40 (detailing Tyson's infamous moment when he bit off Holyfield's ear, as well as when he tried to fight Lennox Lewis at press conference in 2002 and was subsequently denied license by Nevada Athletic Commission).

62. See Silverman, *supra* note 59 (examining factors which have led to decline in popularity of boxing).

63. See *id.* (examining factors which have led to decline in popularity of boxing).

64. *Boxing Enters Somewhere Behind Golf: Fixing the Sweet Science's Irrelevance in the American Sports Culture*, *supra* note 13 (examining problems in boxing which have led it to become increasingly irrelevant in sports culture today).

65. Clyde Haberman, *Boxing Is a Brutal, Fading Sport. Could Football Be Next?*, N.Y. TIMES (Nov. 8, 2015), <https://www.nytimes.com/2015/11/09/us/boxing-is-a-brutal-fading-sport-could-football-be-next.html> (explaining decline of boxing in sports culture).

[T]he vaunted prizefighting of old is on the ropes. News media attention tends to be scant. Major bouts, such as they are, are consigned to pay-per-view showings. Once in a while, a fighter comes along to stir excitement, a Floyd Mayweather Jr. or a Manny Pacquiao, but that's the exception. The professional ranks today are mired in a bewildering array of weight divisions—[seventeen] where once there were eight—and in an alphabet soup of multiple sanctioning organizations.

Id.

has contributed to boxing's decreased popularity, due to the much more straightforward nature of the sport.⁶⁶

B. The Rapid Rise of Mixed Martial Arts: A Challenger Emerges to End Boxing's Reign

Although MMA is a very new sport in modern American culture, it has ancient roots like boxing.⁶⁷ In 648 B.C., the ancient Greeks created a sport called "pankration," where, unlike wrestling, the object was to fight until one man admitted defeat.⁶⁸ Pankration had "no weight divisions, no time limits, and the combatants were confined to a twelve by fourteen-foot square."⁶⁹ Pankration competition remained a popular spectator event from the thirty-third Olympiad until Roman Emperor Theodosius outlawed the Olympic Games in the fourth century.⁷⁰ Forms of mixed combat did not reemerge until the 1920s, when *Vale Tudo* became popularized in Brazil, which was a sport that utilized various fighting styles such as Muay Thai, Luta Livre wrestling, boxing, and a new discipline called Brazilian jiu-jitsu.⁷¹

The sport of MMA mixes different martial arts and fighting styles from around the world, which is exactly what the name implies.⁷² For many years, people pondered which of the various martial arts and fighting styles is the most superior.⁷³ The earliest semblances of MMA matches in twentieth-century America were exhibition bouts—where practitioners of various different fighting styles would compete against one another—notably include when Muhammad Ali fought Japanese professional wrestler, Antonio In-

66. See Silverman, *supra* note 59 (examining factors which have led to decline in popularity of boxing).

67. See Jeffrey B. Same, Comment, *Breaking the Chokehold: An Analysis of Potential Defenses Against Coercive Contracts in Mixed Martial Arts*, 2012 MICH. ST. L. REV. 1057, 1061–62 (2012) (discussing ancient origins of MMA in Greece known as Pankration).

68. See *id.* (discussing ancient origins of MMA in Greece known as Pankration).

69. Michael Kim, *Mixed Martial Arts: The Evolution of a Combat Sport and Its Laws and Regulations*, 17 SPORTS L.J. 49, 50–51 (2010) (discussing historical origins of MMA).

70. See Same, *supra* note 67, at 1061–62 (discussing disappearance of MMA for centuries).

71. See *id.* at 1062 (discussing reemergence of Mixed forms of combat in Brazil). *Vale Tudo* is translated as "anything goes." See Kim, *supra* note 69, at 51.

72. See Brendan Maher, *Understanding and Regulating the Sport of Mixed Martial Arts*, 32 HASTINGS COMM. & ENT. L.J. 209, 214 (2009) ("MMA is a hybrid combat sport whose participants engage in and combine a variety of fighting disciplines within one match.").

73. See *id.* at 214–15 (explaining origins of MMA).

oki, and when “Judo” Gene Lebell fought professional boxer, Milo Savage.⁷⁴ However, by the 1990s, the age-old question of which fighting discipline is the best remained.⁷⁵ Brazilian jiu-jitsu pioneer, Rorion Gracie, attempted to answer that question in 1992, when he partnered with Art Davie and Bob Meyrowitz to establish the UFC.⁷⁶

1. *MMA in America and the Ultimate Fighting Championship’s Fight to Survive*

The first UFC event was an eight-man, single-elimination tournament which featured “a kickboxer, a savate fighter, a karate expert, a shootfighter, a sumo wrestler, a professional boxer, and Rorion’s younger brother, a Brazilian Jiu-Jitsu blackbelt named Royce Grace.”⁷⁷ Originally, the UFC had minimal rules and was promoted simply “as a competition to determine the most effective martial art.”⁷⁸ The UFC was designed to be an “anything-goes” competition, without rounds, weight classes, judges, or safety equipment.⁷⁹ This strategy of promoting the UFC as a “blood sport” caused it to find massive pay-per-view success, and it became the most-watched non-boxing pay-per-view event in history.⁸⁰

This bold marketing technique, however, also prompted backlash from politicians and lawmakers, ironically including Senator John McCain, who led efforts to ban MMA altogether despite his steadfast support of boxing.⁸¹ In light of this criticism and political pressure, the UFC took steps to make the sport more respectable,

74. *See id.* at 214 (detailing twentieth century exhibition bouts took place between boxers, wrestlers, and other marital artists); Steven Rondina, *Before Mayweather-McGregor: History’s Most Famous, Notorious Crossover Fights*, BLEACHERREPORT (Aug. 7, 2017), <http://bleacherreport.com/articles/2724947-before-mayweather-mcgregor-historys-most-famous-notorious-crossover-fights> [https://perma.cc/Z25K-ZJU8] (detailing twentieth century exhibition bouts took place between boxers, wrestlers, and other marital artists). Gene Lebell is revered as a founding father of American mixed martial arts, and he was the first person to show that styles like judo were very effective against boxing. *See id.*

75. *See Maher, supra* note 72, at 215 (explaining premise upon which UFC was built).

76. *See Same, supra* note 67, at 1062 (explaining how UFC came to be).

77. Kim, *supra* note 69, at 51 (detailing first UFC tournament).

78. *See The UFC*, UFC, <http://www.ufc.com/discover/ufc/index> [https://perma.cc/X74Y-T35X] (last visited Aug. 12, 2017) (describing origins of UFC).

79. *See Same, supra* note 67, at 1062 (describing how UFC events were marketed early on); *see also Maher, supra* note 72, at 125–26.

80. *See Same, supra* note 67, at 1063 (detailing UFC’s early success).

81. *See id.* (“Most notably, Senator John McCain of Arizona took the floor of the United States Senate in 1996, characterized the sport as ‘human cockfighting’ and urged the states to prohibit or ban the sport altogether.”).

such as introducing weight classes, banning kicks to downed opponents, instituting five-minute rounds, and increasing involvement with state athletic commissions.⁸² In 2001, casino executives, Frank and Lorenzo Fertitta, formed Zuffa, LLC, purchased the UFC for \$2 million, and continued the effort to implement a set of unified rules and regulations in order to legitimize the sport.⁸³ Zuffa approached various athletic commissions in an attempt to seek out independent regulation, and, ultimately, it combined rules from “the Olympic sports of Greco-Roman and Freestyle wrestling, boxing, taekwondo and judo,” to create the unified rules of MMA, which now consists of an eight-page rule book.⁸⁴ As the UFC evolved, so did MMA athletes, and today, professional MMA is a sport where “hybrid athletes are required to know various disciplines in order to compete at an elite level in a regulated environment where safety is paramount.”⁸⁵

2. *The UFC Knocks Out Its Competition*

The UFC spearheaded efforts to legitimize the sport of MMA over the next decade, and, under the supervision of its President, Dana White, it became “the fastest-growing sports organization in the world, [and now] also boasts the most successful and longest-running sports reality show in history, *The Ultimate Fighter*.”⁸⁶ In 2011, the UFC officially became part of American mainstream sports culture when it secured a landmark seven-year deal to be broadcast by FOX Sports.⁸⁷ Three years later, in July of 2015, the UFC signed a six-year, \$70 million sponsorship deal with Reebok, and, today, “the UFC produces more than 40 live events annually and is the largest Pay-Per-View event provider in the world, broadcasting in over 129 countries and territories, to nearly 800 million TV households worldwide, in 28 different languages.”⁸⁸

82. See Kim, *supra* note 69, at 52 (discussing changes that UFC made to clean up its image due to political backlash).

83. See *id.* at 52–53 (discussing Zuffa’s purchase of UFC).

84. See Bull, *supra* note 11 (explaining how UFC rose to prominence and business tactics used to grow popularity of MMA in United States).

85. *The UFC*, UFC, <http://www.ufc.com/discover/ufc/index> [<https://perma.cc/ZC7Q-TGU6>] (last visited Aug. 12, 2017) (summarizing legitimate safety standards of UFC).

86. *Id.* (summarizing history of UFC’s rise to prominence in mainstream sports culture).

87. See *id.* (“In 2011, the UFC burst into the mainstream with a landmark seven-year broadcast agreement with FOX Sports Media Group.”).

88. *Id.* (detailing how large UFC has grown today).

During the course of the UFC's rise to the top, Zuffa systematically bought out the competition.⁸⁹ Rival promotions, such as World Fighting Alliance ("WFA"), Pride, International Fight League ("IFL"), World Extreme Cagefighting ("WEC"), and Strikeforce, were all eliminated by Zuffa in the same way from 2006 to 2013: their content library and fighter contracts were acquired, and they were subsequently disbanded.⁹⁰ In acquiring the fighter contracts of those organizations, the UFC enlisted major international stars, such as "Mauricio 'Shogun' Rua, Wanderlei Silva, Nick Diaz, Jose Aldo, [and] Urijah Faber, [who] have all produced increased revenue streams for the UFC, and at the same time diluted the talent pool outside the UFC."⁹¹ Today, the UFC has essentially taken over the entire sport of MMA, with its only major competition coming from Viacom-owned Bellator and the World Series of Fighting ("WSOF").⁹²

In June 2016, Frank and Lorenzo Fertitta sold the UFC for \$4 billion to a group led by William Morris Endeavor-International Marketing Group ("WME-IMG"), and Dana White stayed on as President.⁹³ This sum set a record for the largest purchase in sports history, and with it, Zuffa netted a 2,000% return on its original purchase price of \$2 million in 2001.⁹⁴ Despite its phenomenal success, the UFC faced some controversy in recent years when the Fed-

89. See Chris Harty, *5 MMA Organizations Bought out by UFC*, RICHEST (Jan. 16, 2014), <http://www.therichest.com/sports/mma-sports/5-mma-organizations-bought-out-by-ufc/> [<https://perma.cc/73YW-RT6K>] (listing process by which Zuffa acquired and disbanded rival MMA promotions).

90. See *id.* (listing process by which Zuffa acquired and disbanded rival MMA promotions).

91. Greg Byron, *Industry Dominance: The UFC and Its 'Monopoly' in the MMA Market*, MMA CORNER (Jan. 24, 2014), <http://themmacorner.com/2014/01/24/industry-dominance-the-ufc-and-its-monopoly-in-the-mma-market/> [<https://perma.cc/9PFC-LYSC>] (describing how UFC cornered MMA market).

92. See *id.* (describing how UFC cornered MMA market). In response to allegations that the UFC was a monopoly, Dana White cited UFC's major competitor, Viacom's Bellator, when he stated, "[a]s far as the other thing that he said that we're a monopoly, Viacom is our competitor They have a \$40 billion dollar market cap—\$40 billion dollars. I'm never going to see \$40 billion as long as I live, neither will the UFC. So, we're not a monopoly either." *Id.*

93. See *Meet the New Owners Who Paid \$4 billion to Buy the UFC*, FOX SPORTS (July 11, 2016), <http://www.foxsports.com/ufc/story/ufc-sold-new-owners-ari-emanuel-wme-img-patrick-whitesell-4-billion-071116> [<https://perma.cc/G3UY-3XUE>] (examining those involved in purchase of UFC by conglomerate WME-IMG).

94. See Robby Kalland & Adam Silverstein, *UFC Sells for \$4 Billion to WME-IMG Group, Dana White Remains President*, CBS SPORTS (July 11, 2016), <https://www.cbssports.com/mma/news/reports-ufc-sells-for-4-billion-to-wme-img-dana-white-remains-president/> [<https://perma.cc/MS8U-APMW>] (detailing consequences of UFC's sale). "WME-IMG are joined by a Michael Dell-headed private equity group and global investment firm KKR as UFC's new ownership group." *Id.*

eral Trade Commission's (FTC) Bureau of Competition opened an antitrust investigation of Zuffa in 2011, after its purchase of the fight promotion, Strikeforce.⁹⁵ That investigation was ultimately closed in 2012.⁹⁶ However, disputes with fighters who allege the UFC engages in coercive and monopolistic practices continue to persist and have culminated in an ongoing antitrust lawsuit which was filed in 2014.⁹⁷ As a result of this problem, many in the MMA community have asserted that the Ali Act, which was passed in 2000 to regulate boxing, should be extended to regulate MMA.⁹⁸

C. A Preliminary Look at the Sherman Act and the Muhammad Ali Boxing Reform Act

1. *The Sherman Act Ensures the Competition Can Fight for the Belt*

The Sherman Act prohibits restraint of trade and monopolies in all major industries, including the sports industry, which means it is applicable to boxing and MMA.⁹⁹ The relevant portions of the Sherman Act, which was enacted by Congress in 1890 and was the first and most important federal antitrust law, are as follows:

Section 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

Section 2: Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other

95. See Brett Okamoto, *Court Denies UFC Motion to Dismiss Antitrust Charges; Suit Moves Forward*, ESPN (Sept. 25, 2015), http://www.espn.com/mma/story/_/id/13741330/court-denies-ufc-motion-dismiss-antitrust-lawsuit [<https://perma.cc/BBY4-6WQD>] (explaining that judge denied UFC's motion to dismiss lawsuit of former fighters, despite FTC having found no wrongdoing in 2012).

96. See *id.* (explaining that 2012 FTC investigation into UFC found no wrongdoing).

97. See *id.* (explaining that judge denied UFC's motion to dismiss lawsuit of former fighters). See also Complaint at 2, *Golden Boy Promotions, LLC v. Haymon*, No. CV 15-3378-JFW, 2017 WL 460736 (C.D. Cal. Jan. 26, 2017) (detailing plaintiff's pleadings). For further discussion of the lawsuit, see *infra* notes 135–139 and accompanying text.

98. See Marc Raimondi, *Click Debate: What's All This Talk About the Ali Act Coming to MMA?*, MMA FIGHTING (June 12, 2016), <https://www.mmafighting.com/2016/6/12/11911444/click-debate-whats-all-this-talk-about-the-ali-act-coming-to-mma> [<https://perma.cc/2N9R-7FR9>] (discussing potential for Ali Act to apply to MMA). See also 15 U.S.C. § 6301 (2012) (detailing regulations on professional boxing). For further discussion of the Ali Act, see *infra* notes 108–117 and accompanying text. For further discussion of Congress's effort to extend the Ali Act to MMA, see *infra* note 117 and accompanying text.

99. See 15 U.S.C. § 1 (2012); see also *infra* notes 99–107 (explaining Sherman Act and its application).

person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.¹⁰⁰

The Sherman Act promotes competition so long as it enhances allocative efficiency, but condemns acts that harm competitors without producing offsetting gains in efficiency.¹⁰¹ To establish liability under Section 1, a plaintiff must prove “(1) the existence of an agreement, and (2) that the agreement was an unreasonable restraint of trade.”¹⁰² In order to establish a violation of Section 2, plaintiffs must demonstrate four elements: “(1) specific intent to control prices or destroy competition; (2) predatory or anticompetitive conduct directed at accomplishing that purpose; (3) a dangerous probability of achieving ‘monopoly power’; and (4) causal antitrust injury.”¹⁰³

Essentially, in an effort to maintain competition in business, the Sherman Act made agreements “in restraint of trade” illegal, as well as attempts to monopolize.¹⁰⁴ The Sherman Act is aimed “not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself.”¹⁰⁵ In *Northern Pacific Railway Co. v. United States*,¹⁰⁶ the Supreme Court stated “the Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.”¹⁰⁷

100. *Id.* §§ 1–2.

101. See John Stevens, *Antitrust Law and Open Access to the NREN*, 38 VILL. L. REV. 571, 576 (1993) (discussing Sherman Act).

102. *Aerotec Int’l, Inc. v. Honeywell Int’l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016).

103. *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1432–33 (9th Cir. 1995).

104. See *Sherman Antitrust Act*, ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/history/united-states-and-canada/us-history/sherman-antitrust-act> [<https://perma.cc/8T5H-L8FC>] (last visited Sept. 12, 2017) (providing an overview of Sherman Act).

105. *Aerotec Int’l*, 836 F.3d at 1175 (quoting *Spectrum Sports, Inc. v. McQuilgan*, 506 U.S. 447, 458 (1993)).

106. 356 U.S. 1 (1958).

107. *Id.* at 4. See generally *The Antitrust Laws*, FED. TRADE COMM’N, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> [<https://perma.cc/Z3Z8-9WX9>] (last visited Aug. 12, 2017) (giving overview of 15 U.S.C. §§ 1–7).

2. *The Muhammad Ali Boxing Reform Act: Professional Boxing's Referee*

The Ali Act, is a federal law that was introduced in 1999 and enacted on May 26, 2000 by the 106th Congress to “(1) protect the rights and welfare of professional boxers, (2) aid state boxing commissions with the oversight of boxing, and (3) increase sportsmanship and integrity within the boxing industry.”¹⁰⁸ In passing the Ali Act, Congress made the following findings:

(1) Professional boxing is not governed by any league, association, or any form of an established organization like majority of other professional sports. (2) The state officials are not ensuring the protection of the boxers and are not aware or informed of contracts boxers have agreed to. (3) Promoters are taking advantage of the sport by conducting dishonest business affairs. Promoters are not being punished due to some states being less strict about the legal terms that are stated in contracts. (4) There is no rating system provided to rank professional boxers thus ratings are subjected to manipulation by those in charge. (5) There has been a major interference in the sport because of open competition by restrictive and anti-competitive bodies. (6) There are no restrictions placed on contracts that boxers agree to with promoters and managers. It is necessary to enforce a national contract reform which will guarantee the safety of professional boxers and the public from unlawful contracts and to enhance the integrity of the sport.¹⁰⁹

Essentially, the Ali Act was passed in response to rampant corruption and exploitation of boxers by promoters and was subject to congressional hearings and investigations for decades.¹¹⁰ Promot-

108. 145 CONG. REC. 28886 (1999) (stating purpose of Ali Act). See generally Professional Boxing Safety Act of 1996, 15 U.S.C. § 6301 (Supp. II 1996), amended by 15 U.S.C. § 6301 (2012) (detailing regulations on professional boxing).

109. John S. Nash, *Coker on Expanding the Ali Act to MMA: 'I Think It's a Pretty Good Idea'*, BLOODY ELBOW (Aug. 11, 2015), <https://www.bloodyelbow.com/2015/8/11/9125603/ufc-mma-bellator-scott-coker-interview-ali-act> [https://perma.cc/N38G-4DXN]. Nash provides a summary of Congress's findings in reference to the Ali Act, which was published in the United Statutes at Large in 2000. See Muhammad Ali Boxing Reform Act, PUB. L. NO. 106-210, 144 STAT. 322(3) (2000), <https://www.gpo.gov/fdsys/pkg/STATUTE-114/pdf/STATUTE-114Pg321.pdf> [https://perma.cc/BZP7-87DW].

110. See Scott Baglio, Note, *The Muhammad Ali Boxing Reform Act: The First Jab at Establishing Credibility in Professional Boxing*, 68 FORDHAM L. REV. 2257, 2280-81 (2000) (detailing legislative efforts to regulate boxing since 1960 and reasons for

ers, such as Don King and Bob Arum, who were at risk of being adversely affected, opposed the passage of the Ali Act.¹¹¹ Despite opposition from powerful adversaries, the Ali Act ultimately passed in 2000, and represented a dramatic step forward to protect the interests of boxers, encourage fair competition, and improve the overall integrity of the sport.¹¹² Key provisions in the bill include a limitation on coercive contracts, an objective rankings criteria, and financial disclosure requirements for promoters and sanctioning organizations.¹¹³

Since its passage, some argue that the Ali Act has not gone far enough to regulate and reform professional boxing, which is a still fraught with allegations of misconduct amongst its array of world sanctioning organizations and promoters.¹¹⁴ Even if the Ali Act has fallen short in solving all of professional boxing's ailments, it has been effective in protecting the economic interests of the fighters.¹¹⁵ As a result of the Ali Act's successes, there have been proactive efforts to expand its reach to MMA.¹¹⁶ In fact, Markwayne Mullin, a politician and former mixed martial artist, introduced a bill to Congress in May 2016 to do just that.¹¹⁷

passage of Ali Act). The Ali Act was really just an addition to the Professional Boxers Safety Act ("PBSA") of 1996, which "takes the regulation of boxing a step further by protecting boxers outside of the ring from exploitation through unethical business practices." *Id.* at 2281.

111. *See id.* (explaining that Senator "Harry Reid of Nevada, who ha[d] previously stated that boxing's most powerful promoters, Don King and Bob Arum, [were] his most important constituents" blocked final draft of Ali Act before its ultimate passage).

112. *See* McCain & Nahigian, *supra* note 39, at 21 (describing benefits and aims of Ali Act).

113. *See id.* (describing most important aspects of Ali Act). *See generally* 15 U.S.C. § 6307(a)–(f).

114. *See, e.g., id.* at 22 (explaining problems that persist despite passage of Ali Act and PBSA).

115. *See* Cristina Groschel, Comment, *Down for the Count: The Muhammad Ali Boxing Reform Act and Its Shortcomings*, 26 NOVA L. REV. 927, 940 (2002) (detailing strengths of Ali Act).

116. *See* Brett Okamoto, *Ali Act Amendment Could Expand Federal Law's Coverage to MMA*, ESPN (May 19, 2016), http://www.espn.com/mma/story/_/id/15589773/bill-aims-expand-muhammad-ali-boxing-reform-act-mma [<https://perma.cc/4JBU-J7KH>] (discussing efforts to expand Ali Act to MMA).

117. *See id.* (discussing efforts to expand Ali Act to MMA).

Mullins' H.R. 5365 "died" when the 114th Congress ended in January 2017, as does any bill which is not made into law before the end of the Congress in which it was submitted. On January 3rd Mullins' reintroduced the bill under the name H.R.44 in the 115th Congress, which runs until January 3rd, 2019. H.R. 44 has 11 co-sponsors (8 Republicans and 3 Democrats).

Tim Bissell, *UFC Spent an Estimated \$420,000 Lobbying the Ali Act in 2016*, BLOODY ELBOW (May 13, 2017), <https://www.bloodyelbow.com/2017/3/13/14894754/ufc->

D. Antitrust Litigation: Promoters Get the Fight Taken to Them

In light of the incredible success of the UFC, one of the most powerful men in boxing, Al Haymon, has attempted to imitate the MMA business model (without running afoul of the Ali Act), which, unsurprisingly, has led him into trouble in the boxing community.¹¹⁸ Haymon founded the management company Haymon Sports LLC in 2013, and he currently manages over 200 boxers, including “Floyd Mayweather Jr., the world’s highest paid athlete in 2014 and 2015; Amir Khan; and current welterweight champions Danny Garcia and Keith Thurman.”¹¹⁹ Haymon expanded his business beyond just management services in 2015, when he created the television series PBC, with the purpose of increasing the sport’s exposure and bringing boxing back into the mainstream by airing fights on primetime network television.¹²⁰ PBC marked a significant change in the boxing business model, and, according to Haymon, “[t]he PBC was an attempt to bring boxing back to free television, to reverse the long-term trend of declining interest in the sport, and to improve the opportunities available to the fighters and particularly, those that Haymon Sports managed or advised.”¹²¹ Haymon’s ultimate goal in creating PBC, was to turn it into a “major sports property” that was structured like a league similar to the UFC.¹²²

ali-expansion-act-spent-an-estimated-420000-lobbying-2016-mma-boxing-politics-mullins-us-news [https://perma.cc/D3UT-4WGW].

118. See Bryan Graham, *With Boxing’s Return to Prime-Time Network TV, Al Haymon Makes His Move*, GUARDIAN (Mar. 6, 2015), https://www.theguardian.com/sport/2015/mar/06/with-boxings-return-to-prime-time-network-tv-al-haymon-makes-his-move [https://perma.cc/3VBU-TX6Y] (“[Premier Boxing Champions] is the brainchild of Al Haymon, the reclusive Harvard-educated businessman widely regarded as boxing’s most powerful figure Haymon’s designs for the Premier Boxing Champions franchise are predicated on the absorption of upfront risk for greater back-end gains.”).

119. *Golden Boy Promotions, LLC v. Haymon*, No. CV 15-3378-JFW, 2017 WL 460736, at *3 (C.D. Cal. Jan. 26, 2017) (describing factual history of case including Haymon’s management of top fighters).

120. See Graham, *supra* note 118 (“Haymon, backed by private investors, has spent \$20m to purchase airtime for 20 shows this year on NBC and NBC Sports Network, an inversion of the traditional sports TV model where the network pays for the rights to air an event. He will recoup costs by pocketing revenue on advertising during PBC shows—but also in building the profiles of the fighters he’s contracted on a platform with far greater reach than premium cable.”).

121. *Golden Boy Promotions*, 2017 WL 460736, at *3 (quoting defendant Al Haymon). “Ultimately, Haymon Sports successfully entered into exclusive agreements with NBC, CBS, ESPN, Fox Sports 1, and SpikeTV.” *Id.* at *4.

122. *Id.* at *3 (detailing goals for PBC). “Waddell & Reed, a private equity firm, invested \$585 million into the PBC venture.” *Id.*

In 2015, Golden Boy Promotions (the majority of which is owned by retired boxer Oscar De La Hoya) and part-owner Bernard Hopkins filed a \$300 million lawsuit against Haymon and his companies, alleging that they were attempting to monopolize professional boxing in violation of both the Ali Act and Sections 1 and 2 of the Sherman Act.¹²³ Top Rank Promotions filed a very similar lawsuit against Haymon a few months later seeking \$100 million in damages, but that case settled within the same year.¹²⁴

On January 26, 2017, the United States District Court for the Central District of California granted Haymon's motion for summary judgment.¹²⁵ The court first held that the plaintiffs lacked sufficient evidence to demonstrate that Haymon violated Section 1 of the Sherman Act.¹²⁶ In particular, the plaintiffs failed to demonstrate that Haymon made his boxing management services contingent on whether fighters rejected competitors' boxing promotion services (known as an illegal "tying arrangement").¹²⁷ In addition, the plaintiffs could not establish that Haymon possessed sufficient economic power in the relevant market to have engaged in tying arrangements, or that there were significant barriers to market entry for new managers.¹²⁸ To the contrary, the court, quoting the plaintiffs' expert witness, noted that boxing as a sport has "not naturally evolved towards having a single entity controlling most or all of the professionally televised events in the sport."¹²⁹

The court also rejected the claim that Haymon attempted monopolization in violation of Section 2 of the Sherman Act because

123. See Figueroa, *supra* note 50, at 198 (discussing dispute amongst promoters).

124. See *id.* at 199 (discussing further dispute amongst promoters); see also Dan Rafael, *Top Rank's Bob Arum Settles Lawsuit with PBC Creator Al Haymon*, ESPN (May 20, 2016), http://www.espn.com/boxing/story/_/id/15618555/bob-arum-top-rank-reaches-settlement-premier-boxing-champions-al-haymon-lawsuit [<https://perma.cc/BEN7-W2KU>] (detailing Bob Arum's settlement with Haymon). As part of the settlement agreement, Haymon waived his exclusivity agreements with the Television networks he had contracted with. See *Golden Boy Promotions*, 2017 WL 460736, at *3.

125. See *Golden Boy Promotions*, 2017 WL 460736, at *1 (providing holding).

126. See *id.* at *8 (holding plaintiffs failed to prove violation of Section 1 of Sherman Act).

127. See *id.* ("In contrast, six boxers . . . have submitted declarations that unequivocally state, 'neither Mr. Alan Haymon, Haymon Sports, or anyone acting on their behalf has ever pressured or coerced me to either (i) work with any particular promoter (including Golden Boy), or (ii) not work with any particular promoter (including Golden Boy).'").

128. See *id.* at *12 (holding without properly defined market, it is impossible to accurately determine defendants' market share).

129. *Id.* at *13 (quoting plaintiffs' expert witness Dr. Knueper's report on the evolution of boxing market).

there was insufficient evidence to demonstrate that Haymon's exclusive television agreements were anticompetitive, or that Haymon blocked a substantial share of venues from Golden Boy.¹³⁰ Lastly, plaintiffs alleged that Haymon violated the Ali Act, by acting as both a manager and promoter, however, the court held that the plaintiffs lacked standing because the only parties with standing under the Ali Act are boxers and government agencies, not promoters.¹³¹

On February 28, 2017, Golden Boy filed an appeal to the Court of Appeals for the Ninth Circuit.¹³² On October 25, 2017, however, the parties requested that the Ninth Circuit dismiss the appeal with prejudice, and it was dismissed.¹³³ If the parties had not mutually agreed to dismiss the appeal, the Ninth Circuit's review of the district court's decision would have been able to shed light on a pending antitrust case against the UFC which has been filed in the same circuit, *Le*.¹³⁴ In 2014, "[e]lite professional MMA fighters"—including former UFC fighters Cung Le, Nathan Quarry, and Jon Fitch—filed an antitrust action under Section 2 of the Sherman Act against the UFC's former parent company, Zuffa LLC.¹³⁵ The multi-million-dollar lawsuit accuses the UFC of "illegally maintaining monopoly and monopsony power by systematically eliminating competition from rival promoters, artificially suppressing fighters' earnings from bouts and merchandising and marketing activities through restrictive contracting and other exclusionary practices."¹³⁶ On October 16, 2016, the United States District Court for the District of Nevada denied Zuffa's motion to dismiss the lawsuit.¹³⁷

130. *See id.* at *15–*16 ("There are numerous alternative venues in most major metropolitan areas of the United States.")

131. *See id.* at *17–*18 (discussing parties with standing under Ali Act).

132. *See* Plaintiff's Motion to Appeal, Golden Boy Promotions, LLC v. Haymon, No. 17-55259 (9th Cir. Feb. 28, 2017), ECF No. 1 (filing appeal of District Court's grant of summary judgment to Haymon).

133. *See* Stipulation for Dismissal of Appeal, *Golden Boy Promotions*, No. 17-55259 (9th Cir. Oct. 25, 2017), ECF No. 12.

134. For further discussion of *Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154 (D. Nev. 2016), see *infra* notes 135–140 and accompanying text.

135. *See Le*, 216 F. Supp. 3d at 1159 (explaining background of case).

136. *See* Tristan Critchfield, *Class-Action Lawsuit Filed Against UFC by Cung Le, Jon Fitch, Nate Quarry*, SHERDOG (Dec. 14, 2015), <http://www.sherdog.com/news/ClassAction-Lawsuit-Filed-Against-UFC-by-Cung-Le-Jon-Fitch-Nate-Quarry-78853#Ac8fPqKojE18X4Ur.99> [<https://perma.cc/D9AW-7U3D>] (quoting plaintiffs' complaint). The court defined "monopsony power" as "market power on the buy side of the market. As such, a monopsony is to the buy side of the market what a monopoly is to the sell side and is sometimes colloquially called a 'buyer's monopoly.'" *Le*, 216 F. Supp. 3d at 1163 (quoting *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 320 (2007)).

137. *See Le*, 216 F. Supp. 3d at 1160 (denying Zuffa's motion to dismiss).

In denying Zuffa's motion, the court held that the plaintiffs sufficiently pled a claim for actual monopolization in violation of Section 2 of the Sherman Act.¹³⁸ Specifically, the court held the plaintiffs sufficiently defined the relevant market when they referred to "Live Elite Professional MMA bouts," and sufficiently alleged that this "elite" market is captured by the UFC.¹³⁹ The court also held that the plaintiffs sufficiently identified various potential anticompetitive clauses in the UFC's contract as well as acts that, as a whole, could potentially constitute an anticompetitive scheme, including the elimination of rivals and the restriction of "rivals' access to top quality venues, sponsors, endorsements, PPV and television broadcast outlets."¹⁴⁰

III. ANALYSIS

A direct comparison of the two combat sports demonstrates that professional boxing's areas of weakness are the UFC's areas of strength and *vice versa*.¹⁴¹ Due to the multitude of promotions, sanctioning bodies, and weight classes, professional boxing has grown far too loose and incoherent, which has made it susceptible to corruption, and contributed to its decline in popularity.¹⁴² In contrast, the UFC used boxing as the blueprint of what not to do in terms of MMA progression and became immensely popular as a result of its uniformity and brand recognition.¹⁴³

However, despite its glaring structural problems, the economic interests of fighters are better protected in professional boxing than in MMA.¹⁴⁴ This is because (1) the competition between professional boxing promoters gives top fighters many career options, unlike MMA fighters who continue to be exploited by the UFC due to its systematic monopolization of the sport, and (2) the imple-

138. *See id.* at 1166 (holding plaintiffs sufficiently pled Section 2 claim).

139. *Id.* at 1165 (quoting plaintiffs' complaint); *see id.* at 1166 (agreeing with plaintiffs that market can be sufficiently defined).

140. *Id.* at 1168 (quoting plaintiffs' complaint); *see id.* (holding just because exclusive dealing arrangements themselves are legal does not mean UFC's conduct as a whole is legal).

141. *See infra* notes 148–229 and accompanying text (comparing and contrasting boxing's weaknesses with UFC's strengths and vice versa).

142. *See infra* notes 148–176 and accompanying text (discussing corruption between promoters and sanctioning bodies and boxing's declining popularity).

143. *See infra* notes 177–182 and accompanying text (discussing UFC dominance and lack of corruption in MMA).

144. *See infra* notes 183–229 and accompanying text (discussing monopolistic practices of UFC and effects of Ali Act).

mentation of the Ali Act has provided boxers with more legal protection than their MMA counterparts.¹⁴⁵

Looking forward, the court's holding in *Golden Boy* demonstrates that professional boxing should cure its ailments by moving in the direction of a league-like structure similar to the UFC, and, as PBC has shown, this can be done without violating anti-trust law or the Ali Act.¹⁴⁶ In addition, a comparative analysis with the holding in *Golden Boy* will give insight to whether the *Le* court will hold the UFC is indeed a monopoly in need of changing its business practices and whether the court will also reinforce the argument that MMA should be regulated under the Ali Act in order to prevent fighter exploitation in the future.¹⁴⁷

A. Business in Boxing Is Stiff Competition, but in MMA, the UFC Is the Undisputed Champ

The structure of boxing is not very structured at all because “those who control the championship belts for which professional boxers compete, and those who control the boxers pursuant to promotional agreements are those who control the sport . . . [which] are [the multiple] world sanctioning organizations and promoters respectively.”¹⁴⁸ Broken down, all of the boxing industry's issues can be attributed to four things: sanctioning bodies, promoters, the judging of fights, and the number of weight classes.¹⁴⁹ With so many competing interests, it is easy to see “how simple it could be to corrupt the entire sport.”¹⁵⁰

145. See *infra* notes 183–229 and accompanying text (discussing monopolistic practices of UFC and effects of Ali Act).

146. See *infra* notes 230–248 and accompanying text (discussing *Golden Boy* and its potential effects on future of PBC).

147. See *infra* notes 249–271 and accompanying text (comparing *Le* and *Golden Boy* and discussing effects of Ali Act in MMA).

148. See McCain & Nahigian, *supra* note 39, at 24 (discussing sanctioning organizations and promoters).

149. See generally *id.*; Baglio, *supra* note 110 (discussing corruption of promoters); Groschel, *supra* note 115; Brian Campbell, *Even After a Brilliant Canelo-GGG Fight, Focus is on Boxing's Potential Corruption*, CBS Sports (Aug. 17, 2017), <https://www.cbssports.com/boxing/news/even-after-a-brilliant-canelo-ggg-fight-focus-is-on-boxings-potential-corruption/> [<https://perma.cc/8CAM-USJ7>]; Kevin McRae, *The Five Biggest Problems in Boxing*, BLEACHERREPORT (Feb. 14, 2013), <http://bleacherreport.com/articles/1526079-ranking-the-5-biggest-problems-in-boxing> [<https://perma.cc/Q36P-E936>]. For further discussion of the issues concerning the general framework of professional boxing, see *infra* notes 151–176.

150. Groschel, *supra* note 115, at 936 (describing how easily boxing can be corrupted). This problem is exactly what the Ali Act was intended to address. See Baglio, *supra* note 110, at 2280 (addressing abuses in boxing industry).

At the core of the corruption, is the relationship between sanctioning organizations and promoters.¹⁵¹ Sanctioning organizations give official approval for “championship-level boxing matches, and their primary role is to rank fighters.”¹⁵² Rankings dictate the overall value of a particular fighter to the industry, and when a boxer is ranked in the top fifteen, he is eligible to fight for a championship.¹⁵³ The most prominent sanctioning organizations are the World Boxing Council, World Boxing Association, International Boxing Federation, and World Boxing Union (“WBU”), and their funding comes from fees imposed on boxers in exchange for the opportunity to fight for their respective championship title.¹⁵⁴ Each of these organizations effectively compete against one another, and their ratings have been often criticized for ignoring highly-rated boxers from rival sanctioning bodies in favor of their own “champion.”¹⁵⁵

Promoters, on the other hand, sign exclusive agreements with boxers in order to market and essentially put on the match.¹⁵⁶ The promoter grants the boxer a purse amount for a bout, in exchange for certain rights, such as “venue selection, sponsorship, ticket sales, and broadcast rights.”¹⁵⁷ The promoter is compensated *via* the revenue from the bout, which is derived from the “live gate” (ticket sales), the sale of television rights, and the sale of advertising rights.¹⁵⁸ Major boxing promoters in the United States and Canada include “Top Rank, Golden Boy, Mayweather Promotions, Roc Nation, Kathy Duva’s Main Event, Lou DiBella, Gary Shaw, Yvon Michel, and Jean Bedard’s Interbox.”¹⁵⁹ Because a promoter is more interested in profiting than keeping boxers’ best interests in mind, it is essential for boxers to have a manager who both negoti-

151. See McCain & Nahigian, *supra* note 39, at 24 (discussing sanctioning organizations and promoters). For further discussion of this problem, see *infra* notes 152–176 and accompanying text.

152. McCain & Nahigian, *supra* note 39, at 24 (discussing sanctioning organizations and promoters).

153. See Groschel, *supra* note 115, at 938 (discussing criticism of sanctioning organizations). “In the past, The Ring Magazine dictated the ratings. When its ratings became corrupted, however, sanctioning organizations took over.” *Id.*

154. See McCain & Nahigian, *supra* note 39, at 24 (discussing sanctioning organizations and promoters).

155. See *id.* (discussing sanctioning organizations and promoters).

156. See *id.* at 25 (discussing role of promoters).

157. *Id.* (discussing relationship between promoters and boxers).

158. See Baglio, *supra* note 110, at 2261–62 (detailing how a promoter operates and gets paid).

159. Nash, *supra* note 6.

ates contracts with the promoter and approves potential opponents on behalf of the fighter.¹⁶⁰

However, even if a boxer has a good manager, the various sanctioning bodies and promotions operate with their own interests in mind, leading to a persistent problem of sanctioning organizations ranking boxers based on financial agreements with promoters rather than their skill in the ring.¹⁶¹ For example, in 1999, three top officials of the IBF were indicted for taking bribes from promoters to manipulate the ratings system for the benefit of particular boxers, a practice that boxing insiders labeled “common knowledge.”¹⁶² This practice was partially remedied by the passage of the Ali Act in 2000, however allegations of favoritism among sanctioning bodies are still widespread.¹⁶³ A more recent example was in 2003, when a court ordered the WBC pay \$30 million to boxer, German Rocchigiani, whom it stripped of his light-heavyweight title in order to give it to the more popular Roy Jones, Jr.¹⁶⁴ In addition, in 2005, the WBC stripped Javier Castillejo of his super welterweight title because he fought someone other than “Don King-promoted Ricardo Mayorga despite the fact that Mayorga had never fought at that weight.”¹⁶⁵ Evidently, it has been repeatedly proven that the relationship between corrupt sanctioning organizations and promoters willing to pay them off is terrible for the sport of boxing and a contributing factor in the sport’s demise.¹⁶⁶

160. See Baglio, *supra* note 110, at 2261 (detailing manager’s responsibilities).

161. See Groschel, *supra* note 115, at 938 (“[P]roblem[s] arise[] . . . often [when] ratings are for sale Just as often, however, promoters are buying.”).

162. See Baglio, *supra* note 110, at 2277 (describing IBF scandal of 1999).

In addition to the receipt of direct payments, sanctioning organizations also manipulate the ratings in order to increase the organizations profits. Because sanctioning organizations are compensated by receiving a certain percentage of the two fighters’ purses, an incentive exists to rank more highly popular boxers, who earn larger purses, so that the organization is paid more money.

Id.

163. See Tyler Curtis, *47 Years of Rotten Boxing Decisions and the WBC Is Still Going Strong*, BLEACHERREPORT (Feb. 17, 2010), <http://bleacherreport.com/articles/346325-47-years-of-rotten-boxing-decisions-and-the-wbc-is-still-going-strong> [<https://perma.cc/X4C4-Q2GG>] (explaining scandals involving WBC).

164. See *id.* (explaining scandals involving WBC).

165. *Id.* (explaining scandals involving WBC).

166. See Baglio, *supra* note 110, at 2264 (explaining intricate relationship between promoters, sanctioning bodies, and career success of boxers).

A boxer can achieve successful career only if all of these parties perform their obligations. Because this does not always occur, a boxer can be very successful inside the ring, but have very little to show financially if the manager has not vigorously negotiated his interests. In addition, victories can be meaningless if the promoter does not supply the boxer with frequent bouts against respected competition. Boxers are also at the mercy

It is clear that promoters are the nexus of the problem because in addition to corrupting sanctioning bodies, promoters are also responsible for paying boxing judges, which gives them undue influence despite the fact that judges are selected or approved by the state athletic commission.¹⁶⁷ Very often, fighters with the potential to make the promoters the most money tend to get preferential treatment on the judges' scorecards.¹⁶⁸ This was exemplified in the recent bout between Gennady Golovkin (known by his moniker, "Triple G") and Saul "Canelo" Alvarez on August 16, 2017, when the judges scored the fight a draw despite most believing that Golovkin was the clear winner.¹⁶⁹ After the fight, many in the boxing community blamed behind-the-scenes corruption as the reason for the controversial decision.¹⁷⁰ Bad scorecards such as this have come to be expected in boxing, "[y]et the judges who become most known for the wrong reasons seem to consistently get chosen for the biggest assignments, time and again."¹⁷¹

The questionable relationships that promoters have with sanctioning bodies and judges have undoubtedly disheartened even the most avid boxing fans, and, as a result, contributed to professional boxing's decline in popularity.¹⁷² However, the sanctioning bodies themselves are just as responsible as the promoters for boxing's fading appeal because over the years they have created far too many

of sanctioning organizations because, without their recognition of a boxer as a top contender, the boxer may never get an opportunity to fight for a championship.

Id.

167. *See id.* at 2263–64 (describing process of selecting judges).

168. *See* Campbell, *supra* note 149 (describing controversial result of Golovkin vs. Alvarez).

169. *See id.* (discussing fears that Alvarez would be treated favorably because bout was promoted by Golden Boy).

The fact that referencing Alvarez's preferential treatment was a necessary and legitimate part of the pre-fight narrative should have been more troubling than perceived. And the fact that questionable decisions—that's being kind—continue to pop up in Las Vegas far more than any other city, helping the fight capital of the world live up to its Wild West reputation, has become nothing short of a tired act.

Id.

170. *See id.* (describing controversial result of Golovkin vs. Alvarez).

171. *Id.* (explaining problems with corruption in boxing continue to persist).

172. *See generally* Andrew McGregor, *Looking Back on Boxing in 2017*, SPORT IN AMERICAN HISTORY (Dec. 29, 2017), <https://ussporthistory.com/2017/12/29/%EF%BB%BFlooking-back-on-boxing-in-2017/> [<https://perma.cc/TH7N-MGUN>] (“[S]ince the sport relies on the rare fighter that appeals to more than just the small but loyal boxing crowd, there’s an inherent conflict of interest when the entire sport’s well-being is dependent on a few athletes. No one benefits if the sport’s top, young attraction losses.”).

weight classes, which makes the sport difficult to follow.¹⁷³ In the 1950s, there were only nine weight classes, each with one champion, but today “there are [seventeen] separate divisions and the potential for over 100 different men to wear world championship belts of varying standing and worth.”¹⁷⁴ In addition, several sanctioning bodies distinguish champions and “super-champions” within the same weight class, which further diminishes the importance of the title.¹⁷⁵ The amount of weight classes and champions multiplied by the number of sanctioning bodies issuing belts has caused boxing titles to become extremely trivialized.¹⁷⁶

In MMA, the UFC is the most dominant promoter in the sport, and, in addition to that role, it is also the matchmaker and the sanctioning body, which allows it to issue its own belts.¹⁷⁷ As a result of its strong centralized power, the UFC has seen relatively few problems with corruption in the way boxing has throughout its entire history.¹⁷⁸ In addition, the UFC has an advantage over professional boxing because it crowns only one undisputed champion in each of its ten weight classes.¹⁷⁹ This makes it easy for fans to know who the best fighters are, which is good because “at the core of all

173. See generally Paul Gibson, *Boxing Loses Credibility with Every New Champion. Can the Sport be Saved?*, GUARDIAN (Feb. 2, 2015, 5:15 PM), <https://www.theguardian.com/sport/the-balls-of-wrath/2015/feb/02/transnational-boxing-rankings-board-sport-titles> [<https://perma.cc/T6DE-REX5>] (discussing boxing’s decline in credibility).

174. *Id.* (discussing confusing amount of “champions” in professional boxing).

175. See McRae, *supra* note 149 (“Super champions . . . have held the belts for a lengthy period of time. That creates a situation, such as exists in the heavyweight division and many others, where two fighters technically hold the same belt from the same sanctioning body.”).

176. See *id.* (explaining trivialization of champions in boxing).

177. See Nash, *supra* note 6 (explaining UFC plays).

178. See Aaron Kellerstrass, *5 Reasons MMA Is Better than Boxing*, BLEACHER REPORT (Oct. 19, 2011), <http://bleacherreport.com/articles/899987-5-reasons-mma-is-better-than-boxing> (explaining that compared to boxing, MMA isn’t corrupt). But see Greg Howard, *The Future of the UFC is Here*, DEADSPIN (Dec. 10, 2015), <https://deadspin.com/the-future-of-the-ufc-is-here-1746984570> [<https://perma.cc/NH6X-AZM2>].

The UFC controls the media by investing in publications outright or else denying access to those who would cover its flaws in an effort to hamper critical outlets from doing so while dissuading others from starting. The UFC has done sinister things like allowing fighters whose drug tests throw up red flags to compete, so long as they can generate lots of money for the organization. All of this does a lot to allow the promotion to control the sport, and even blur the distinction between the two.

Id. For further discussion of the history of the UFC, see *supra* notes 68–98 and accompanying text.

179. See Alapi, *supra* note 13 (contrasting weight classes in the UFC with weight classes in boxing).

sports is the desire to know who is the best, who is the champion, and, of course, there should be only one.”¹⁸⁰ With few exceptions, the “world champion” of each weight class in MMA is the UFC champion.¹⁸¹ There are of course, other promotions, such as Bellator, and World Series of Fighting, but they pale in comparison to the UFC’s industry clout, respect, and dominance.¹⁸²

B. Economic Interest of Fighters

1. *Boxers Have Options, but UFC Monopoly Makes Contract Negotiations an Unfair Fight*

Despite the corruption and the confusing way in which professional boxing operates, there are also benefits which arise from the competing interests because, as boxing promoter Gary Shaw put it, “[i]f [a promoter] do[esn’t] want you, you go to Arum, or you go to K2 or you got to Golden Boy. You go somewhere else [But] [i]f you are the only gas station in town you can charge whatever you want.”¹⁸³ The UFC’s unbridled power in the MMA world has truly made it “the only gas station in town,” which, in other words, means it has monopolized the sport of MMA, in violation of the Sherman Act.¹⁸⁴ This monopoly has provided the company with “enormous bargaining power, unmatched by any fighter regardless of success or status.”¹⁸⁵ The UFC has in fact become “so prominent that its name is almost synonymous with the wider sport of MMA.”¹⁸⁶

180. Gibson, *supra* note 173 (explaining importance of undisputed champions).

181. See Nash, *supra* note 6 (“[A]ccording to the Fight Matrix rankings, every male fighter in the top three of their division and roughly 85% of all top 10 fighters in the ten divisions that the UFC promotes are under contract with the UFC.”). In addition, there are far fewer weight classes in the UFC as opposed to boxing. See *Fighter Listing*, UFC, [http://www.ufc.com/fighter/Weight_Class?id=\[https://perma.cc/J7TM-XCBY\]](http://www.ufc.com/fighter/Weight_Class?id=[https://perma.cc/J7TM-XCBY]) (last visited Sept. 18, 2017). The UFC has eleven total weight classes, with only one champion in each, while boxing currently has seventeen separate divisions. See *id.* For further discussion of weight classes in boxing, see *supra* note 12 and accompanying text.

182. See Nash, *supra* note 6 (“While competitors like World Series of Fighting and Bellator do exist, the competition they offer seems very limited. Estimates for the WSOF and Bellator’s combined yearly revenue is roughly 1/20th that of the UFC.”).

183. *Id.* (quoting interview with boxing promoter, Gary Shaw).

184. *Id.* (quoting interview with Gary Shaw). For further discussion of the UFC’s monopoly, see *infra* notes 249–271 and accompanying text.

185. Same, *supra* note 67, at 1064–65 (describing coercive nature of contracts in UFC).

186. Bull, *supra* note 11 (explaining UFC brand strength).

A 2007 Deutsche Bank Memorandum detailed how the UFC's brand strength impacted its negotiations with fighters:

[T]he UFC brand is more recognizable than the sum of its individual fighters, as evidenced by its ability to nearly sell out venues even before the announcing the main card to the public. As such, given the power of the brand, fighters are relatively interchangeable at events without affecting the market demand. When no individual fighter can dramatically affect the economics of the event, the UFC believes that it retains the leverage to contain costs when needed.¹⁸⁷

This type of name recognition is virtually non-existent in boxing, where the fighters are much more familiar to the average fan than the promotion they fight under.¹⁸⁸ As a result of its power, the UFC drafts its contracts with an exclusivity provision that heavily favors itself.¹⁸⁹ The UFC restricts the fighter's contract to a specified number of fights, but also includes various termination and extension clauses that can be triggered at the UFC's discretion.¹⁹⁰ As a result of these coercive clauses, the UFC has the power to completely control the fighters.¹⁹¹ These clauses include the "champion's clause," which enables the UFC to extend the contract at will if the fighter becomes a champion while under the original contract.¹⁹² In addition, the "retirement clause" allows the UFC "to re-

187. Nash, *supra* note 6 (quoting Deutsche Bank Memorandum). The UFC's brand strength has only grown stronger since 2007. For further discussion of UFC brand strength, see *supra* notes 89–94 and accompanying text.

188. See Nash, *supra* note 6 (explaining power of UFC brand).

189. See Same, *supra* note 67, at 1065–67 (discussing coercive UFC contract clauses).

190. See *id.* (discussing coercive UFC contract clauses).

The exclusivity provision binds the fighter to a restricted relationship with the UFC for an agreed upon term and specified number of fights. Regardless of the term length in the agreement, the provision includes various termination and extension clauses that can be triggered at the promoter's discretion. One of the most controversial extension clauses is the 'champion's clause,' which allows the promoter to extend the contract if the fighter wins a championship belt during the original term. The 'retirement clause' is often invoked only for top fighters seeking retirement, and it gives the UFC power to 'retain the rights to retired fighters in perpetuity.' Finally, the 'ancillary rights agreement' itself is not an extension provision, but rather a lifetime agreement that requires the fighter to sign over rights to his name, sobriquet, voice, persona, signature, likeness, and/or biography.

Id.

191. See *id.* (citing key provisions from UFC exclusive fighter agreement).

192. See *id.* at 1066 (citing key provisions from UFC exclusive fighter agreement).

tain the rights to a retired fighter it perpetuity.”¹⁹³ Last, the “ancillary rights agreement” is a lifetime agreement which requires the fighters to forfeit their right of publicity.¹⁹⁴

The restrictive nature of the UFC’s contract provisions have led to disputes with some of the promotions biggest stars, such as Anderson Silva, Randy Couture, and Georges St-Pierre, among others.¹⁹⁵ During his dominant reign as middleweight champion in the UFC, Anderson Silva wanted to vacate his belt and move to a new weight class in order to escape the champion’s clause, which would have automatically extended his contract at the end of his agreed-upon term and, therefore, preventing him from competing against Roy Jones, Jr. in a highly lucrative boxing match.¹⁹⁶ In 2007, UFC Hall of Fame member Randy Couture resigned from the UFC due to a contract dispute and, after a costly legal battle, returned when the UFC restructured his deal.¹⁹⁷ Couture stated in a recent interview, “I’m an example of somebody that they’ve tried to black out, and that’s because of my stance with them almost from the very start over ancillary rights and the language in the contracts that they were trying to make me sign.”¹⁹⁸ Most recently, in 2016, former welter weight champion, Georges St-Pierre, terminated his UFC contract following repeatedly failed negotiations to reach a new deal, after which his lawyer stated “[t]hey’re basically tying him up for life. They have no rights and they own all of his licensing and all the other things. It’s unheard of in the other professional sports. And they won’t get away with it forever.”¹⁹⁹

193. *See id.* (quoting Adam Swift, *Inside the Standard Zuffa Contract*, SHERDOG (Oct. 31, 2007), <http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-Contract-9734> [<https://perma.cc/XZ2F-CR8M>]).

194. *See id.* at 1066–67 (citing key provisions from UFC exclusive fighter agreement).

195. *See id.* at 1068 (describing contractual issues which arose between UFC its fighters in past).

196. *See id.* (describing reason why Anderson Silva wanted to vacate his belt).

197. *See id.* at 1068–69 (describing UFC contract disputes). *See also* Jon Fuentes, *Randy Couture Cautions GSP Against Long Legal Battle with UFC*, LOWKICK MMA (Oct. 25, 2016), <http://www.lowkickmma.com/UFC/andy-couture-warns-gsp-about-legal-battle-with-ufc/> [<https://perma.cc/9CD5-G3YZ>] (describing Couture’s contract dispute with UFC).

198. Fuentes, *supra* note 197 (quoting interview with Randy Couture).

199. Shaun Al-Shatti, *Georges St-Pierre’s Lawyer Calls UFC Contract ‘Something Out of the 1940s,’ Cautions UFC ‘Won’t Get Away with it Forever’*, MMA FIGHTING (Oct. 19, 2016), <https://www.mmafighting.com/2016/10/19/13333778/georges-st-pierres-lawyer-calls-ufc-contract-something-out-of-the> [<https://perma.cc/9JE6-VD9U>] (quoting St-Pierre’s attorney, James Quinn, of New York firm Weil, Gotshal, and Manges).

In addition to the restrictive contract provisions remains the looming issue of inadequate fighter pay because, while the top draws, such as Silva and St-Pierre, certainly earn in the millions, entry level fighters earn as little as \$6,000.²⁰⁰ The UFC's compensation system is essentially the inverse of professional boxing's because, on average, the UFC pays its fighters 10% of the revenue from an event, while it keeps 90%.²⁰¹ In contrast, boxers make on average 70% of the total revenue from an event, and 30% goes to the promoter.²⁰²

All of these characteristics of the UFC support the conclusion that it is a monopoly in violation of Section 2 of the Sherman Act.²⁰³ The UFC has virtually destroyed its competition in the sport of MMA, and it has done so through its coercive contract provisions which constitute predatory and anticompetitive conduct.²⁰⁴ As a result, the UFC has achieved a dangerous probability of achieving "monopoly power," which has resulted in antitrust injury to the fighters in the form of low compensation and the forfeiture of other rights.²⁰⁵

200. See John Barr & Josh Gross, *UFC Fighters Say Low Pay Simply Brutal*, ESPN (Jan. 15, 2012), http://www.espn.com/espn/otl/story/_/page/UFCpay/ufc-fighters-say-low-pay-most-painful-hit-all [<https://perma.cc/HW46-KAR6>] (detailing pay discrepancies within UFC).

201. See *id.* (discussing UFC fighters' compensation).

202. See *id.* (quoting Lou DiBella's interview on boxing compensation versus MMA compensation).

On average, [it is] estimated the UFC pays fighters roughly 10 percent of the revenue generated from its live events, essentially the inverse of the boxing business model. 'I think they have a tremendous business paradigm,' said Lou DiBella, a New York-based boxing promoter who spent more than a decade as a programming executive running the boxing division of HBO Sports. The percentage of event-generated revenue that goes to a boxer could be as high as 85 percent, DiBella said. 'A 70/30 deal is completely common,' DiBella said, meaning 70 percent of the revenue generated from the fight goes to the boxer, the remaining 30 percent to the promoter.

Id. In response to this comparison, Zuffa CEO Lorenzo Fertitta noted it is "like apples and oranges" because, under the UFC business model, the UFC is everything from the promoter to the television producer, and it, therefore, costs millions of dollars to produce just one event. *Id.*

203. For further discussion of the elements needed to establish a violation of Section 2 of the Sherman Act, see *supra* note 101 and accompanying text.

204. See Same, *supra* note 67, at 1065–67. For a discussion of the UFC's coercive contract provisions, see *supra* notes 190–199 and accompanying text.

205. For further discussion of the elements needed to establish a violation of Section 2 of the Sherman Act, see *supra* note 103 and accompanying text. For further discussion of the UFC's inadequate compensation scheme, see *supra* notes 200–202 and accompanying text. For further discussion of the UFC's monopoly, see *infra* notes 249–271 and accompanying text.

2. *The Ali Act's Impact: The UFC Must "Protect Itself at All Times"*

In comparing the amount fighters are paid in the UFC to the amount they are paid in professional boxing, it is necessary to take into consideration not just competition amongst promoters (or lack thereof) but also federal legislation.²⁰⁶ Under the Ali Act, "promoters are required to disclose to boxers how much money their fights generate. No such law applies to the sport of mixed martial arts."²⁰⁷ The Ali Act was designed to "regulate boxing because boxing can't regulate itself," and in doing so its purpose was to protect boxers from (1) coercive contracts, (2) sanctioning bodies, and (3) promoters.²⁰⁸

The Ali Act imposes a one-year limit on promotional contracts that are signed by a boxer as a condition to compete in a particular bout that a promoter is putting on, and it prohibits any entity in boxing from forcing a number one ranked challenger to give up promotional rights or otherwise be denied the mandatory bout.²⁰⁹ In addition, sanctioning bodies are required to develop and follow objective rankings guidelines for fighters.²¹⁰ Promoters are required to disclose to the supervising state commission, a copy of their contracts with the boxer, all fees and charges imposed on the boxer, all payments made, and any reduction in the purse promised to the boxer.²¹¹ In addition, promoters may not have a conflict of interest with the management of a boxer.²¹² Among other things, the passage of the Ali Act cut down on vague and coercive contracts that enabled promoters to control boxers for their entire careers, reformed the ranking system of the sanctioning bodies, and reduced anti-competitive restraints of trade while simultaneously in-

206. See Barr & Gross, *supra* note 200 (addressing effect of Ali Act on pay scale in boxing).

207. *Id.* Referring to the contrast between UFC and boxing, Lou DiBella, a boxing promoter who contributed to the Ali Act legislation, stated, "[y]ou have one industry that's not disclosing and thriving, and another industry that is disclosing and dying." *Id.*

208. Groschel, *supra* note 115, at 939 (quoting *Symposium: Boxing at the Crossroads*, 11 SETON HALL J. SPORT L. 193, 214 (2001)) (statement of Lou DiBella). See Kim, *supra* note 69, at 60 (discussing three primary safeguards of Ali Act).

209. See 15 U.S.C. § 6307(b) (2012) (detailing regulations on professional boxing).

210. See *id.* (detailing Ali Act requirements).

211. See *id.* (detailing regulations on professional boxing). Promoters are also required to disclose to the boxer all revenues from the event, and judges and referees must also disclose payments received. See *id.*

212. See *id.* (detailing regulations on professional boxing).

creasing free market bidding by promoters competing for the best boxers.²¹³

The major problems that fighters experience when dealing with the UFC could clearly be remedied by the extension of the Ali Act to MMA.²¹⁴ After all, the Ali Act was passed in order to protect fighters, and, due to the power of the UFC, its fighters need protection.²¹⁵ First, the Ali Act's extension to MMA would force the UFC to alter their coercive exclusivity provision and the clauses that keep certain fighters under contract in perpetuity, subject to the promoter's discretion.²¹⁶ The extension of the Ali Act would also allow fighters to seek contracts with other promoters after their contract with the UFC expires, essentially resulting in fighters being treated like the independent contractors they are, rather than employees subject to the will of their employer.²¹⁷ As mentioned earlier, similar coercive contract clauses were prevalent in boxing before the passage of the Ali Act, such as those used by promoter Don King, who "was known for having a challenger sign an agreement for him to promote them if they won a belt from one of his fighters, even

213. See Melissa Bell, *Time to Give Boxers a Fighting Chance: The Muhammad Ali Boxing Reform Act*, 10 DEPAUL-LCA J. ART & ENT. L., 473, 491–93 (2000) (discussing benefits of Ali Act).

214. For further discussion of the Ali Act, see *supra* notes 108–117 and accompanying text.

215. See Raimondi, *supra* note 98 ("The UFC has done a phenomenal job at promoting the sport . . . [t]hey've done a horrible job at taking care of the fighters, though.") (quoting U.S. Representative, Markwayne Mullin).

216. See Geoff Varney, Comment, *Fighting for Respect: MMA's Struggle for Acceptance and How the Muhammad Ali Act Would Give it a Fighting Chance*, 112 W. VA. L. REV. 269, 295–303 (2009) (discussing the Ali Act's applicability to MMA and detailing transition process).

217. See Josh Gross, *How the Ali Act Could Upset the Power Balance Between UFC and Its Stars*, GUARDIAN (May 2, 2016), <https://www.theguardian.com/sport/blog/2016/may/02/ufc-muhammad-ali-act-mma-conor-mcgregor-dispute> [<https://perma.cc/9ZYQ-JVPU>] (discussing how UFC operates more like league than promoter).

[B]y limiting endorsement opportunities and securing fighters to long-term contracts that include extension options, they appear to be operating like a league instead of merely a fight promoter. Employment status affects many issues such as benefits, tax implications, and liability. In team sports, athletes are generally defined as employees. In individual sports, like boxing, they're paid as independent contractors. The UFC-fighter arrangement is a unique concoction of contractor and employee. Among the key distinctions: employees work regularly with one company while contractors can provide services for various entities. UFC contracts address this via exclusivity clauses that lock in fighters to the promotion. The UFC provides a form of health insurance outside of competition, a rarity for contractors, yet fighters are expected to cover their own expenses for training among other costs.

Id.

though the challenger already had his own promoters.”²¹⁸ Under the Ali Act, coercive provisions of this nature, which keep fighters under contract for unspecified or undesired periods of time, are prohibited.²¹⁹

Second, in regards to rankings, the UFC currently uses its own ranking system which only ranks fighters within the promotion, and it does not refer to the rankings to determine championship fights.²²⁰ The Ali Act requires championship belts and rankings to be controlled by a third-party sanctioning body.²²¹ Some view the UFC’s in-house system as a better alternative to the system in boxing because championships in boxing have been watered down by the number of sanctioning bodies and belts.²²² However, the UFC’s ability to award its own belts and dictate who gets a title shot may result in the most lucrative matchups, but it does so at the expense of fighters who are seen as more deserving.²²³ The Ali Act would ensure that an objective criteria exists for ranking fighters and that

218. Varney, *supra* note 216, at 290 (addressing protection from coercive contracts). When Evander Holyfield was set to fight WBA heavyweight champion Mike Tyson in 1996, he was forced to sign a contract of this nature with Don King. *Id.* Under the Ali act, the coercive provision, such as the one Holyfield signed, would be limited to one year, or if he was a mandatory challenger to the belt recognized by the WBA, he would not have had to sign a contract of this nature all. *Id.*

219. *See id.* at 289–90 (citing 15 U.S.C. § 6307(b) (2012)). *See also id.* at 295–302 (discussing Ali Act’s applicability to MMA). “Mark Cuban, owner of HDNet Fights, has stated of UFC contracts, ‘[T]heir contracts don’t adhere to the [Muhammad] Ali [Boxing] Reform Act. There will come a time in the not distant future, when they will be required to.’” *Id.* at 295.

For an example of one of these one-sided contracts, look to the contract the UFC proposed Fedor Emelianenko, an MMA fighter who many consider[ed] to be the best in the sport. Emelianenko said the contract he was offered was very limiting: “Basically I can’t leave undefeated. I can’t give interviews, appear in films or advertising. I don’t have the right to do anything without the UFC’s agreement . . . [.] There were many such clauses; the contract was [eighteen] pages on length. It was written in such a way that I had absolutely no rights while the UFC could at any moment, if something didn’t suit them, tear up the agreement. We worked with lawyers who told us that it was patently impossible to sign such a document.

Id. at 299–300 (quoting Fedor Emelianenko).

220. *See Raimondi, supra* note 98 (discussing rankings in UFC).

221. *See id.* (“If the Muhammad Ali Expansion Act is passed, that responsibility would fall first on the Association of Boxing Commissions (ABC).”).

222. *See Okamoto, supra* note 117 (discussing pros and cons of independent sanctioning bodies).

223. *Id.* (“When you’re talking about a rankings system, that ranking system should mean something’ ‘If you’re ranked No. 1 and you have another fighter ranked No. 2, the next title shot should go to No. 2. It shouldn’t go to No. 5 Rankings should be independent and they should be something title fights abide by.’”) (quoting U.S. Representative Markwayne Mullin).

the top ranked fighters are the ones who get the chance to fight for the belt rather than the fighters who are the most popular.²²⁴

Third, UFC fighters do not have access to financial information concerning their bout, and, as a result, they are prevented from negotiating on a level playing field, just as boxers were before the passage of the Ali Act.²²⁵ If the UFC was forced to disclose their finances, the fighters could negotiate a larger split of the purse, similar to boxing.²²⁶ It is no surprise that the UFC is extremely opposed to the Ali Act extending to MMA and spent approximately \$420,000 in 2016 on lobbying efforts.²²⁷ In contrast, other MMA promoters have voiced support for extending the Ali Act to their sport, including Bellator president, Scott Coker, who said, “I think it’s a pretty good idea, but like many good ideas, getting it from an idea to actuality will be a long process—it’s not going to happen overnight.”²²⁸ Without a doubt, expanding the Ali Act to MMA

224. See Raimondi, *supra* note 98 (“Just because they’re great at self-promoting and they’re great for ticket sales doesn’t mean that they can jump from ranked fifth to all of a sudden having a title fight and No. 2 and No. 3 and No. 4 gets passed over. And we see that over and over and over again.”) (quoting U.S. Representative Markwayne Mullin).

225. See Okamoto, *supra* note 117 (discussing effects of Muhammad Ali Expansion Act); see also *Ali Act Amendment Could Expand Federal Law’s Coverage to MMA*, ESPN (May 19, 2016) http://www.espn.com/mma/story/_/id/15589773/bill-aims-expand-muhammad-ali-boxing-reform-act-mma [<https://perma.cc/LT9U-X469>] (quoting Arizona attorney Rob Maysey, “[t]he main benefit of this would be promoters have to disclose revenue to the athletes made from their bouts My experience has been that very few actually have these rights and with the UFC, I’ve been told managers who have actually exercised those rights would never do it again because there have been repercussions” (internal quotation marks omitted)).

226. See Russell Ess, *Ben Askren on ‘Ali Act’ to MMA: Promoters Could Bid on Title Fights Between No. 1 UFC and No. 2 Bellator Fighter*, BJPENN (Jan. 27, 2017), <http://www.bjpenn.com/mma-news/ben-askren/ben-askren-on-ali-act-to-mma-promoters-could-bid-on-title-fights-between-no-1-ufc-and-no-2-in-bellator-fighter/> [<https://perma.cc/LR9Q-2GXS>] (citing MMA fighter Ben Askren).

It’s exactly what you saw with Mayweather and Pacquiao who made \$350m for one fight—if you accounted the total earnings for every mixed martial artist in the history of MMA, I don’t know that would equal \$350m and they did it in one fight. It makes a lot of sense for us. *Id.* (quoting Ben Askren).

227. Tim Bissell, *supra* note 117 (addressing UFC lobbying efforts).

228. See John Nash, *Coker on Expanding the Ali Act to MMA: ‘I Think It’s a Pretty Good Idea’*, BLOODY ELBOW (Aug. 11, 2015), <https://www.bloodyelbow.com/2015/8/11/9125603/ufc-mma-bellator-scott-coker-interview-ali-act> [<https://perma.cc/VCU4-LMTD>] (quoting Scott Coker). If the Ali Act were to be applied to MMA, it is possible that independent rankings could create automatic title shots, which would open up cross-promotional fights. See Ess, *supra* note 226. For example, “if there is a No. 1 in the UFC and a No. 2 in Bellator, those two could fight and that fight could be bid on by both the UFC and by Bellator and anyone else that would want to bid on it for that matter.” *Id.* (quoting MMA fighter Ben Askren). Big name athletes in professional boxing and in MMA have also advocated for the Ali

would be a good thing because, above all else, it would enable fighters to negotiate fair contracts on a level playing field with the powerful UFC.²²⁹

C. Antitrust Litigation Provides a Blueprint for the Improvement of the Sports

1. *Premier Boxing Champions Defeats Golden Boy Promotions in a Unanimous Decision*

Boxing has been in desperate need of uniformity for decades.²³⁰ The court's holding in *Golden Boy* demonstrates that PBC is capable of bringing such uniformity to boxing without running afoul of antitrust law.²³¹ PBC was created by Haymon Sports Management with hopes of turning it into a "major sports property" with a league like structure similar to the UFC that is owned by Haymon Sports.²³² PBC is not a traditional boxing promotion, but rather a television series much more akin to a media conglomerate like the UFC, which "orchestrates just about everything around a fight card, including producing the events."²³³

The fact that PBC is owned by a boxing management company does not automatically mean that antitrust laws or the Ali Act is being violated.²³⁴ The court's holding in *Golden Boy* supports this because there was no evidence of an unlawful tie out arrangement in violation of Section 1 of the Sherman Act.²³⁵ In fact, there was

Act to be expanded to MMA, such as boxer Paulie Malignaggi. See Milan Ordoñez, *Malignaggi: There's No Ali Act in MMA Because of Dana White*, BLOODY ELBOW (Aug. 17, 2017), <https://www.bloodyelbow.com/2017/8/17/16160458/floyd-mayweather-vs-conor-mcgregor-paulie-malignaggi-dana-white-ali-act-boxing-mma-news> [<https://perma.cc/H6GA-Q82X>] ("I never liked the guy. I don't think he treats the fighters fairly," Malignaggi told Ariel Helwani. "I don't think he treats the UFC fighters fairly. There's no Ali Act in MMA because of him mainly, first and foremost. He's one of the guys trying to prevent it from happening.") (quoting Malignaggi).

229. See *supra* notes 206–228 and accompanying text (discussing effect of Ali Act if extended to MMA).

230. For further discussion of boxing's history, see *supra* notes 37–66 and accompanying text.

231. See generally *Golden Boy Promotions, LLC v. Haymon*, No. CV 15-3378-JFW, 2017 WL 460736 (C.D. Cal. Jan. 26, 2017) (holding Al Haymon's PBC did not violate Sherman Act).

232. *Id.* at *3 (quoting Al Haymon).

233. Raimondi, *supra* note 98 (discussing differences between UFC and traditional boxing promoters).

234. See generally *Golden Boy Promotions*, 2017 WL 460736 (holding Al Haymon's PBC did not violate Sherman Act).

235. See *id.* at *8 (holding there was insufficient evidence of unlawful tying arrangement).

no testimony from a single boxer stating that he had been coerced into working with a “sham” promoter Haymon favored over a “legitimate” promoter such as Golden Boy.²³⁶ In addition, there was insufficient evidence that Haymon’s market share was even sufficient to commit such an arrangement.²³⁷

By creating PBC, Haymon created something new that was good for both the fighters and the sport, and it is clear from the court’s holding that Haymon’s conduct did not come close to attempted monopolization in violation of Section 2 of the Sherman Act.²³⁸ PBC represents new competition to boxing’s traditional promoters; however, the fact that PBC is a new type of competition does not equate to anticompetitive practices.²³⁹ In fact, the court’s holding showed that there was an absence of any perceivable anticompetitive conduct on behalf of Haymon.²⁴⁰ In support of this, the court held first that the exclusive television agreements signed by Haymon with various cable networks were not per se anticompetitive because the plaintiffs still clearly had access to pay-per-view outlets, such as HBO and Showtime, which were the most widely used and profitable channels for showcasing boxing.²⁴¹ Second, the court held no evidence was produced to show Haymon blocked a substantial share of venues from Golden Boy.²⁴² Third, the court concluded there was insufficient evidence that Haymon committed anticompetitive “predatory pricing” because the plaintiffs failed to

236. *See id.* (“In contrast, six boxers . . . have submitted declarations that unequivocally state, ‘neither Mr. Alan Haymon, Haymon Sports, or anyone acting on their behalf has ever pressured or coerced me to either (i) work with any particular promoter (including Golden Boy), or (ii) not work with any particular promoter (including Golden Boy).’”).

237. *See id.* at *12 (“Without a properly defined market it is impossible to accurately determine Defendant’s market share.”).

238. *See generally id.* at *14–*19 (holding insufficient evidence of monopolization); *The Big Question: Is Al Haymon Good or Bad for Boxing?*, BOXING MONTHLY (Sept. 8, 2015), <http://www.boxingmonthly.com/the-big-question/big-question-al-haymon-good-or-bad-for-boxing/> [<https://perma.cc/KL7B-A568>] (discussing positive impact PBC has on boxing).

239. *See, e.g., Aerotec Int’l, Inc. v. Honeywell Int’l, Inc.*, 836 F.3d 1171, 1175 (9th Cir. 2016) (stating Sherman Act is aimed “not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself”).

240. *See generally Golden Boy Promotions*, 2017 WL 460736, at *15 (describing lack of anticompetitive conduct by Haymon). *See also id.* at *8 (“[I]t is undisputed that Haymon Sports has, on several occasions, permitted its boxers to be promoted by Golden Boy and other so-called legitimate promoters.”).

241. *See id.* at *15 (describing alternative channels available).

242. *See id.* at *16 (“There are numerous alternative venues in most major metropolitan areas of the United States, and specifically in Los Angeles, where Plaintiffs contend that the Haymon Entities ‘locked up’ just one venue for a limited set of dates.”).

demonstrate that there was a reasonable probability the defendant would recoup his investment in PBC, and the evidence actually indicated to the contrary, that Haymon's "free tv" growth strategy had not achieved the success he had hoped for.²⁴³

In creating PBC, Haymon also acted within the bounds of the Ali Act—which forbids "a promoter to have direct or indirect financial interest in the management of a boxer"—because every PBC event has a fully-licensed promoter affiliated with it.²⁴⁴ However, the court declined to address the plaintiff's allegation that Haymon Sports is actually the true promoter for PBC because, as the court explained, the Ali Act exists to protect fighters but not "to compensate promoters for lost profits."²⁴⁵ Despite Golden Boy's fears, it has yet to be seen whether PBC will be a long-term success, because one organization is virtually incapable of controlling boxing in a similar manner to the way the UFC controls MMA.²⁴⁶ However, PBC is certainly a step in the right direction for the sport of boxing, and Haymon can continue to build his brand and utilize his vast stable of fighters to create exciting matchups in the way Dana White has with the UFC.²⁴⁷ Whether or not PBC achieves long-term success, it is still absolutely essential for professional boxing to work towards unification and the elimination of most of the sanctioning bodies that have watered down and corrupted the sport for decades.²⁴⁸

2. *Golden Boy Left Empty-Handed—But Le v. Zuffa Will Strike Gold*

It is clear that unlike PBC, the UFC is a monopoly in violation of the Sherman Act, which is what the plaintiffs in *Le* are arguing, and there are some key factors from the court's summary judgment

243. *Id.* at *17. The court further explained that "[i]n order for a plaintiff to establish 'predatory pricing' it must prove: (1) below cost pricing; and (2) 'a reasonable expectation of recovering, in the form of later monopoly profits, more than the losses suffered.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588–89 (1986)). In addition, the court noted that "[w]ithout the probability of recoupment, 'predatory pricing produces lower aggregate prices in the market, and consumer welfare is enhanced,' eliminating a predatory pricing claim." *Id.* (quoting *Brooke Grp. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224 (1993)).

244. 15 U.S.C. § 6308 (2012). For further discussion of the Ali Act, see *supra* notes 108–117 and accompanying text.

245. *Golden Boy Promotions*, 2017 WL 460736, at *18.

246. See generally BOXING MONTHLY, *supra* note 238 (discussing positive impact PBC has on boxing).

247. See *id.* (discussing future of PBC).

248. For further discussion on corruption of sanctioning bodies, see *supra* notes 148–171 and accompanying text.

decision in *Golden Boy* that may help predict how *Le* will turn out.²⁴⁹ In order to succeed on a claim of actual monopolization, the plaintiffs in *Le* must prove the defendant “(i) possessed monopoly power in the relevant markets, (ii) willfully acquired or maintained its monopoly power through exclusionary conduct, and (iii) caused anti-trust injury.”²⁵⁰

Both *Golden Boy* and *Le* required the plaintiffs at the outset to use circumstantial evidence to demonstrate the defendants’ monopoly power by doing three things: “(1) defin[ing] the relevant market, (2) show[ing] that the defendant owns a dominant share of that market, and (3) show[ing] that there are significant barriers to market entry and show[ing] that existing competitors lack the capacity to increase their output in the short run.”²⁵¹ The plaintiffs in *Golden Boy* made a critical error in failing to define the relevant market, and if anything, they “grossly overestimated” Haymon’s market share.²⁵² The plaintiffs in *Le*, on the other hand, sufficiently defined the relevant market as “Elite Professional MMA fighters,” and therefore survived the motion to dismiss.²⁵³ Looking ahead, there is a substantial amount of evidence distinguishing the market of UFC fighters from the rest of the MMA world, including media attention, widespread consensus that UFC fighters are seen as the best, and most importantly, the fact that “the UFC has created the exact championship league held to be the relevant market in other sporting contexts.”²⁵⁴ In addition, unlike Haymon, it is clear the UFC controls 90% of revenues from Elite Professional MMA bouts, which the court found to be sufficient as a matter of law to support the finding of market power.²⁵⁵ The fact that the PBC is still relatively new and unknown, while the UFC is a household name and

249. See Paul Gift, *Golden Boy Loses Antitrust Case Against Al Haymon in a Big Way*, BLOODY ELBOW (Jan. 27, 2017), <https://www.bloodyelbow.com/2017/1/27/14411870/golden-boy-loses-haymon-pbc-antitrust-monopoly-lawsuit-boxing-news> [<https://perma.cc/WYY4-SGA3>] (describing key takeaways from *Golden Boy*).

250. *Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154, 1161 (D. Nev. 2016) (quoting *Am. Prof'l Testing Serv. v. Harcourt Brace Jovanich Legal & Prof'l Publ'ns, Inc.*, 108 F.3d 1147, 1151 (9th Cir. 1997)).

251. *Golden Boy Promotions, LLC v. Haymon*, No. CV 15-3378-JFW, 2017 WL 460736, at *10 (C.D. Cal. Jan. 26, 2017). See *Le*, 216 F. Supp. 3d at 1161 (describing standard to demonstrate market power circumstantially).

252. See *Golden Boy Promotions*, 2017 WL 460736, at *11–*12 (describing insufficiency of plaintiffs’ expert’s findings).

253. *Le*, 216 F. Supp. 3d at 1166 (holding there was sufficient evidence to define relevant market).

254. *Id.* (holding there was sufficient evidence to define relevant market).

255. See *id.* at 1161 (stating market share of forty-four percent is sufficient, as matter of law, to support finding of market power).

has dominated the MMA world for years, is additional evidence to support that the plaintiffs in *Le* have a much stronger argument than the plaintiffs did in *Golden Boy*.²⁵⁶ This is most likely why the plaintiffs in *Le* alleged *actual* monopolization, in contrast to the plaintiffs in *Golden Boy* who alleged *attempted* monopolization.²⁵⁷

In regards to anticompetitive conduct, the plaintiffs in *Golden Boy* failed to establish that the exclusive television agreements Haymon signed with five networks were anticompetitive, and the court stated “the reality of the extensive media platforms available today, demonstrate that there are many alternative channels of distribution (both English-language, Spanish-language, and basic cable) available to Golden Boy and other promoters.”²⁵⁸ This is not a good sign for the plaintiffs in *Le* because the UFC currently has only one exclusive deal with FOX Sports, which is much less than the number of exclusive television deals that were signed by Haymon.²⁵⁹ In fact, Bellator, the UFC’s largest rival, is owned by media conglomerate Viacom and is aired frequently on channels owned by the company.²⁶⁰ Golden Boy’s claims regarding venues was also swiftly discarded by the court, which stated “there are numerous alternative venues in most major metropolitan areas of the United States.”²⁶¹ This, too, is a bad sign for the *Le* plaintiffs because it is clearly extremely difficult to establish a venue blocking claim given the sheer number of venues in the country.²⁶²

Despite the high standards set forth in *Golden Boy* to establish anticompetitive locking up of television channels and venues, the plaintiffs in *Le* are not without hope because they have a significantly greater amount of evidence pertaining to anticompetitive practices than the plaintiffs in *Golden Boy* had.²⁶³ Specifically, the evidence of the coercive contract provisions, as well as additional evidence and testimony regarding the UFC ostracizing fighters who speak out against it, will strongly support the *Le* plaintiffs in their

256. See *supra* note 95 and accompanying text (discussing FTC investigation of UFC).

257. See *Golden Boy Promotions*, 2017 WL 460736, at *2 (regarding attempted monopolization); *Le*, 216 F. Supp. 3d at 11159 (regarding actual monopolization).

258. *Golden Boy Promotions*, 2017 WL 460736, at *15.

259. See *id.* at *5 (discussing networks airing PBC).

260. See Byron, *supra* note 91 (discussing Bellator). For further discussion of Bellator, see *supra* note 92 and accompanying text.

261. *Golden Boy Promotions*, 2017 WL 460736, at *16 (holding there are too many alternative venues to sustain claim).

262. See *id.* (holding there are too many alternative venues to sustain claim).

263. See *Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154, 1167–68 (D. Nev. 2016) (specifying anticompetitive conduct).

attempt to prove anticompetitive conduct by the UFC.²⁶⁴ Lastly, unlike in *Golden Boy*, the plaintiffs in *Le* have clear standing to show antitrust injury because, as fighters, rather than promoters, they are not only more sympathetic, but they are the ones who were directly hurt due to the artificial price controls imposed by the UFC.²⁶⁵

Unlike *Golden Boy*, the Ali Act is not at issue in *Le*.²⁶⁶ However, the fact that the evidence shows that the UFC is a monopoly, and it is likely the court will hold as much, lends further support to the argument that the Ali Act should be expanded to MMA because fighters like Le, Quarry, and Fitch are the types of individuals the Ali Act was designed to protect.²⁶⁷ As noted previously, if applied to MMA, the Ali Act would force the UFC to alter its coercive contract provisions and disclose its finances during negotiations.²⁶⁸ These two things would both monumentally change the sport and improve the compensation and lives of the fighters.²⁶⁹ In regards to rankings, the Ali Act would guarantee fighters are ranked fairly and that top ranked fighters get title shots; however, it is unclear whether the amended act would allow the UFC to retain the ability to rank its own fighters and award its own belts, or if it would delegate that authority to a sanctioning body.²⁷⁰ As far as the overall health of the sport is concerned, an ideal alternative to the independent sanctioning bodies that corrupted boxing would be if the amended Ali Act required the UFC itself to abide by objective rankings and to consult the rankings when determining who gets to fight for the title.²⁷¹

264. *See id.* (specifying anticompetitive conduct).

265. *See id.* at 1169 (stating that “[p]laintiffs allege multiple antitrust injuries” related to UFC’s organization structure).

266. *See id.* at 1159 (“Plaintiffs bring antitrust action under Section 2 of the Sherman Act.”).

267. For further discussion of the Ali Act’s benefits for fighters, see *supra* notes 108–117 and accompanying text.

268. For further discussion of the UFC’s utilization of coercive contracts, see *supra* notes 190–199 and accompanying text. For a discussion of how applying the Ali Act to MMA would affect the UFC, see *supra* notes 206–229 and accompanying text.

269. For a discussion of how applying the Ali Act to MMA would affect the UFC, see *supra* notes 206–229 and accompanying text.

270. *See Raimondi*, *supra* note 98 (discussing rankings in UFC). For further discussion of how applying the Ali Act would affect UFC’s ranking scheme, see *supra* notes 220–224 and accompanying text.

271. For further discussion of the negative impact of sanctioning bodies in boxing, see *supra* notes 148–176 and accompanying text.

IV. CONCLUSION

In efforts to maximize popularity and fighter welfare, both professional boxing and MMA should study one another if they seek to better themselves.²⁷² Boxing should embrace a more uniform system under a strong banner similar to the UFC, with more meaningful championship belts and less risk of conflicts of interest between various promoters and sanctioning bodies, which is what Haymon's PBC is attempting to foster.²⁷³ As the court held in *Golden Boy*, an organization like PBC does not violate the Sherman Act or the Ali Act, and it is in fact exactly what boxing needs to create exciting matchups and bring the sport back to the mainstream.²⁷⁴

In contrast to *Golden Boy*, *Le* demonstrates that the UFC has been so successful that it is at serious risk of being held to be a monopoly.²⁷⁵ Whether or not the court holds the UFC to be a monopoly however, *Le* reinforces the argument that it is necessary for MMA to be subject to the Ali Act in order to protect fighters, who have nowhere else to turn, from coercive UFC contracts.²⁷⁶ Under the Ali Act, the UFC organization can still be successful, but the fighters' financial interests will also be protected.²⁷⁷ This would fundamentally change the power dynamic in MMA and enable fighters to act as true free agents who are not controlled for indefinite periods of time, which would ultimately result in higher fighter pay.²⁷⁸ In addition, a third party will control the rankings system, which will ensure that the most deserving fighters are given title shots, rather than the most popular fighters.²⁷⁹ With these

272. For further discussion of the comparison between boxing and MMA, see *supra* notes 141–229 and accompanying text.

273. For further discussion of PBC, see *supra* notes 118–131 and accompanying text.

274. For further discussion of *Golden Boy*, see *supra* notes 230–248 and accompanying text.

275. For further discussion of *Le*, see *supra* notes 249–271 and accompanying text.

276. For further discussion of the Ali Act, see *supra* notes 108–117 and accompanying text. For a discussion of how applying the Ali Act to MMA would affect the UFC, see *supra* notes 206–229 and accompanying text.

277. See Gross, *supra* note 217 (citing U.S. Representative Markwayn Mullins).

278. For further discussion of the Ali Act, see *supra* notes 108–117 and accompanying text.

279. For further discussion of the Ali Act, see *supra* notes 108–117 and accompanying text.

changes, fighters in both boxing and MMA would be able to win both inside and outside of the ring.²⁸⁰

*Daniel L. Maschi**

280. For further discussion of these changes, see *supra* notes 272–279 and accompanying text.

* J.D. Candidate, May 2019, Villanova University Charles Widger School of Law. I was inspired to write this article because of my passion for combat sports and the law, and because of the profound impact that training in boxing and Muay Thai has had on my life over the past decade. I would like to thank God, my parents Tom and Sandy, my grandparents Tom and Catherine, and my girlfriend Jordan, all of whom have supported my academic pursuits and my writing. I love you.

