UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No.: 17-24103-Civ-COOK/GOODMAN

TIKD SERVICES LLC,

Plaintiff,

vs.

THE FLORIDA BAR, MICHAEL J. HIGER, JOHN F. HARKNESS, LORI S. HOLCOMB, et al.,

Defendants
_____/

PLAINTIFF TIKD SERVICES, LLC,'s REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION AGAINST THE FLORIDA BAR DEFENDANTS

Plaintiff TIKD Services LLC respectfully files this Reply in Support of Its Motion for Preliminary Injunction (Doc. 12) ("PI Motion") Against The Florida Bar, Michael J. Higer, John F. Harkness, Lori S. Holcomb, and Jacquelyn P. Needelman ("the Bar Defendants").

I. Introduction and summary.

As predicted, *see* PI Motion at 11, the Bar Defendants mischaracterize TIKD's lawsuit as an attempt to interfere with the Bar's formal UPL investigation of TIKD. This is wrong. The injunction sought by TIKD would not interfere with the Bar's UPL investigation. TIKD's request for relief is narrowly tailored to (i) enable the Bar to move its investigation forward in accordance with its rules, but at the same time (ii) prevent further anticompetitive acts and statements made outside the internal investigation that have caused and continue to cause TIKD irreparable harm.

Once this mischaracterization is corrected, the Bar Defendants' arguments do not withstand scrutiny.

II. TIKD has shown a substantial likelihood of success on the merits.

A. The Bar Defendants' legal arguments are without merit.

Arguing TIKD has not shown a likelihood of success on the merits, the Bar Defendants rely solely on points raised in their Motion to Dismiss, particularly their claims to be immune from suit. Resp. at 3-6. The immunity arguments are addressed summarily below and at length in TIKD's response to the Motion to Dismiss. *See* TIKD Resp. at 2-13. To the extent the Bar Defendants adopt by reference other arguments made in their Motion to Dismiss, TIKD likewise adopts by reference its arguments in response.

Eleventh Amendment Immunity. The Bar Defendants rely heavily upon an outdated "arm of the state" analysis perfunctory applied in *Kaimowitz v. The Florida Bar*, 996 F.2d 1151 (11th Cir. 1993). Resp. at 3. *Kaimowitz*'s analysis was abrogated in *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (en banc). When the correct factors are used – as defined in *Manders* – it becomes clear that the Florida Bar's anticompetitive actions at issue in this case are not entitled to sovereign immunity. Further, TIKD is entitled to injunctive relief against the Florida Bar officials and employees in their official capacity under *Ex Parte Young*, 209 U.S. 123 (1908), even if the Florida Bar is immune from a damages claim.

State Action Immunity. After *Dental Examiners*, it is clear the Bar Defendants have no state action immunity unless their challenged conduct satisfies the two-part test of *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980). *Midcal* requires the Bar's conduct be "actively supervised" by a politically accountable state official and taken pursuant to a "clearly articulated and clearly expressed state policy to displace competition." The Bar Defendants' anticompetitive actions challenged here were *not* part of their internal UPL investigation. Those actions are strikingly similar to the culpable conduct found in *Dental Examiners*. The two cases the Bar Defendants cite involved the Bar's regulation of its members, not the enforcement of its monopoly on legal services; they did not apply *Midcal*; and they do not apply here.

Noerr-Pennington. The Bar Defendants' claim of *Noerr-Pennington* immunity depends on its mischaracterization of TIKD's lawsuit. This lawsuit is *not* based on any "petition" the Bar Defendants may have made to a government agency or a Court, nor does it seek to enjoin the Bar from conducting its investigation or bringing suit, should it do so. *Noerr-Pennington* therefore does not apply.

Anti-SLAPP. Florida's anti-SLAPP statute provides no substantive ground for denying TIKD's PI Motion; it is a state procedural statute that does not apply in federal court. Even if it did, none of the Bar's anticompetitive statements challenged here fall within the categories of speech covered by the statute.

Younger Abstention. *Younger* abstention does not apply because there is no ongoing state judicial proceeding and, even if there were, TIKD does not seek to enjoin any such proceeding. *Younger* also does not apply because TIKD cannot bring federal antitrust claims in state court – this Court has exclusive jurisdiction.

B. The Bar Defendants' factual arguments mischaracterize the nature of TIKD's lawsuit and the need for injunctive relief.

With virtually no citation to legal authority (and *no* citation to antitrust cases), the Bar Defendants consume seven pages attempting to attack TIKD's evidence in support of its PI Motion. Resp. at 6-13. This is an effort distract from the key question presented here: Is TIKD *likely* (but not *certain*) to show that the Bar Defendants' challenged actions – made in apparent coordination with TIKD's competitor – violated the Sherman Act?

1. TIKD does *not* ask to enjoin the Bar's UPL investigation.

The Bar Defendants mischaracterize TIKD's PI Motion as a "protest" and "criticism" of the Bar's UPL investigation. The Bar argues that TIKD's "real intent" "is simply to have this Court usurp the [Florida Supreme Court's] exclusive authority to determine UPL." Resp. at 6. This is false. TIKD's Complaint and PI Motion were carefully structured *not* to interfere with the Bar's investigation. TIKD has cooperated fully with that investigation, throughout its 12-month-and-counting duration. Nothing in TIKD's request seeks to "usurp" the Florida Supreme Court's authority to construe state law. Rather, TIKD seeks injunctive relief because the Bar Defendants, going beyond their limited role of investigating UPL, *themselves* have usurped that authority, violated federal law, and caused TIKD irreparable harm.

2. TIKD is likely to show the Bar violated the Sherman Act.

The Bar Defendants also mischaracterize the basis of TIKD's antitrust claims. TIKD has provided a concise recitation of the specific acts that gave rise to Sherman Act liability: (i) telling individual attorneys, including competing attorneys at The Ticket Clinic knowing those statements would be repeated, that the Bar had determined TIKD is engaged in UPL,

when it lacks authority to do so; and (ii) issuing a Bar Staff Opinion conveying the same message, which is also unauthorized. PI Motion at 15. The Bar Defendants wholly fail to address TIKD's claim that these anticompetitive activities violate the Sherman Act.

a. Bar statements made directly and indirectly to attorneys.

The Bar Defendants try to dismiss these statements, arguing "one person's inferential 'impression' cannot support entry of an injunction." Resp. at 10. But the Bar statements at issue are not "impressions," nor was there only one. Jeremy Simon specifically recounts that Defendant Needelman "told [him] that a Bar Circuit Committee had 'determined' that TIKD was engaged in the unlicensed practice of law." PI Motion Ex. 3, Simon Decl. ¶ 11. This is not Simon's "impression." It is what Needelman *said to him*. Another attorney confirmed that "if you speak with the Bar U[P]L attorney, she relates bad things" about TIKD. *Id.* ¶ 7. That same attorney was so "deeply concerned after speaking with [Needelman]," he stopped representing TIKD customers. *Id.*

The evidence shows Needelman has repeatedly conveyed the false claim that the Bar has affirmatively found TIKD is engaged in UPL and that the Bar has power to make such a finding, when it admits it does not. PI Motion Ex. 3, Simon Decl. ¶ 7, 11; *id.* Ex. 4, McKee Decl. ¶ 7; id. Ex. 5, White Decl. ¶ 6. The fact that Needelman sometimes may have conveyed her message implicitly does not immunize her or the Bar. *See Dental Examiners*, 135 S. Ct. at 1108 ("implied" warnings that teeth whitening constitutes "the practice of dentistry" as basis for antitrust liability). Tellingly, the Bar does not dispute, through declaration or otherwise, that Needleman did *not* intend to leave lawyers with any impression *other than* TIKD was engaged in UPL. The Ticket Clinic certainly understood her that way, and aggressively used those statements against TIKD.

In a startling concession that TIKD's evidence shows the Bar violated its own rules, the Bar Defendants argue that any lawyers who thought the Bar had "found" TIKD was engaged in UPL should know better, because the Bar Rules explain such a finding is "contrary to the process delineated in Chapter 10." Resp. at 10. A false statement is a false statement, even if the truth can be found through independent research. The Bar's false statements, just as in *Dental Examiners*, pushed competitors out of the market. *See Dental Examiners*, 135 S. Ct. at 1108 ("These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.").

The Bar Defendants make no effort to distinguish their anticompetitive statements from the anticompetitive statements in *Dental Examiners*; there is no material difference. Nor do they cite *a single* antitrust case supporting their right to make prejudicial statements calculated to drive competitors out of a market. Nor could they. Long before *Dental Examiners*, federal courts have held similar anticompetitive communications unlawful under the Sherman Act. *See, e.g., Wilk v. Am. Med. Ass'n*, 671 F. Supp. 1465, 1471 (N.D. Ill. 1987), *aff'd*, 895 F.2d 352 (7th Cir. 1990) (affirming antitrust judgment based on American Medical Association's illegal institution of "a boycott of chiropractors . . . by informing AMA members that chiropractors were unscientific practitioners and that it was unethical for a medical physician to associate with chiropractors"); *see also Am. Soc. of Mech. Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 571 (1982).

b. The Bar Staff Opinion.

The Bar Defendants dispute they *intended* the Staff Opinion to mean the Bar had found TIKD's business to be illegal. This is doubtful. The Ticket Clinic certainly understood and used it that way. PI Motion Ex. 2, Riley Decl. ¶ 13; *id.* Ex. 3, Simon Decl. ¶ 10; *id.* Ex. 4, McKee Decl. ¶ 5; *id.* Ex. 5, White Decl. ¶ 7. Attorneys previously representing TIKD customers understood it that way. *Id*. Ex. 3 ¶ 13. The only company remotely fitting the facts in the "hypothetical" opinion is TIKD. What purpose could there have been for this opinion *other* than to scare Florida lawyers away from TIKD by fear of an ethics complaint?

Whether the Staff Opinion was intended as an informal opinion or formal finding does not matter; what matters is whether it warned attorneys against representing TIKD clients under threat of legal sanction. *See Dental Examiners*, 135 S. Ct. at 1108 (describing antitrust violations premised on Dental Board's written warnings that teeth whitening constitutes "the practice of dentistry"). The Opinion does exactly that: it concludes that participating in the thinly-veiled description of TIKD "raises ethical concerns" on a host of issues including UPL – more than enough to make any lawyer reconsider representing TIKD clients. In a coordinated one-two punch, the Florida Bar issued a "staff opinion" and The Ticket Clinic filed complaints with the Bar. Tellingly, the Bar does *not* deny that a Ticket Clinic lawyer requested the opinion, or that the Bar provided it to the Ticket Clinic, but not to its full membership or TIKD.

The Bar tries to claim its Staff Opinion was issued "consistent with [the Bar's] rules and procedures." Resp. at 8. Whether the opinion was procedurally proper under Bar Rules does not matter; what matters (given the Bar's lack of active supervision) is whether it had the effect of discouraging competition. *See Dental Examiners*, 135. S. Ct. at 1108.

Moreover, there is substantial evidence the mysterious, unsigned staff opinion was improper in at least three ways. First, the Bar's own rules prohibit the issuance of ethics opinions on matters that are the subject of active UPL or ethics investigations.[1] The Bar had opened UPL and ethics investigations with respect to TIKD and attorneys working with TIKD *months* before the Staff Opinion was issued. *See* PI Motion Ex. 2, Riley Decl. ¶¶ 6-7, 10. Second, the Bar is authorized to issue ethics opinions, but the Bar is *not* permitted to issue UPL opinions without following strict procedural rules, including public notice and a public hearing, none of which the Bar followed before issuing the Staff Opinion. *Compare* Bar Rule 2-9.4(d) *with* Bar Rule 10-9. Third, despite the opportunity, the Bar Defendants do not explain *who* requested the opinion, who drafted and approved the opinion, or who was given the opinion other than The Ticket Clinic, if anyone. The Bar Rules require that ethics opinions be given to the requesting attorney concerning his or her "own contemplated conduct," not, as here, the *competing* attorney's conduct. Bar Rule 2-9.4(d). This alone shows TIKD has a strong likelihood of prevailing on its Sherman Act claims. *See Am. Soc. of Mech. Engineers, Inc.*, 456 U.S. at 571 (professional organization subject to antitrust liability for providing "unofficial" letter suggesting plaintiff company's product may not meet organization's safety code; letter was requested by, given to, and then circulated by competitor of plaintiff).

The collaboration between the Bar and The Ticket Clinic continues, despite this lawsuit, increasing the need for injunctive relief. Just this week, the Bar released non-public information to The Ticket Clinic (but not to TIKD) about its UPL investigation, which The Ticket Clinic promptly used to issue a press release attacking TIKD. Ex. 1, attached.[2]

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[1] *See* Florida Bar Procedures for Ruling on Questions of Ethics § 2(a)(1)(F), available at https://www.floridabar.org/ethics/ethotline/ethotline001/.

[2] TIKD has other evidence of a Florida Bar-Ticket Clinic conspiracy. Discovery will surely reveal more. For example, in October 2017, it appears Defendant Needelman was improperly sharing with The Ticket Clinic the substance of confidential calls she had with lawyers representing TIKD clients. *See* Ex. 2, attached, at 1, 7-8. According to Defendant Hollander, he told a lawyer representing

III. TIKD will suffer irreparable harm without injunctive relief.

A. Risk of future violations and ongoing injury supports injunctive relief.

The Bar Defendants argue that because their antitrust violations have already occurred, TIKD cannot obtain injunctive relief. Resp. at 13. This is absurd; TIKD is entitled to an injunction both to prevent future violations and stem the continuing harm from past violations. *See Nat'l Soc. of Prof'l Engineers v. U. S.*, 435 U.S. 679, 697 (1978) ("Having found the Society guilty of a violation of the Sherman Act, the District Court was empowered to fashion appropriate restraints on the Society's future activities both *to avoid a recurrence of the violation* and *to eliminate its consequences*." (emphasis added)).[3] A request for injunctive relief is not mooted unless "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Reich v. Occupational Safety & Health Review Com'n*, 102 F.3d 1200, 1201 (11th Cir. 1997) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625 (1979)). Neither is the case here.

The Bar Defendants make no assurance they will stop telling lawyers or issuing opinions stating it has "found" TIKD is violating the law and that representing TIKD customers is an ethical violation. Indeed, the Bar Defendants stubbornly defend all of their actions, claiming (incorrectly and irrelevantly) they acted within the Bar Rules and arguing (incorrectly) they are absolutely immune from antitrust liability, anyway. *See Wilk v. Am. Med. Ass'n*, 895 F.2d 352, 368 (7th Cir. 1990) ("Another factor supporting the injunction is that the AMA still vigorously maintains that its boycott activity was lawful, and has never acknowledged its past conduct's lawlessness.").

TIKD clients to call Needelman at the Bar. *Id.* Later, Needelman confirmed to Hollander she had received a call from a lawyer asking about representing TIKD clients. *Id.* Hollander then used the information Hollander gave him in an ethics complaint he filed *with the Bar* against the targeted attorney. *Id.* This is strong inferential evidence that Needelman and Hollander were coordinating their efforts, that both understood The Florida Bar had (improperly) concluded TIKD was engaged in UPL, and that the Bar was encouraging the dissemination of that information.

[3] The case cited by the Bar, *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117 (11th Cir. 2005), does not support its argument. In that case, the plaintiffs sought an injunction where the only harm alleged was based on execution of a settlement agreement without their notice. *Id.* at 1133. Because the only harm was the lack of notice and the settlement agreement itself protected the plaintiffs' interests, the court concluded that these future effects did not support a preliminary injunction. *Id.* at 1133–34.

Even if the Bar offered assurances it will stop its anticompetitive acts, it would not be enough. *See Wilk*, 671 F. Supp. at 1484 ("Voluntary cessation of allegedly illegal conduct is looked upon with extreme skepticism by courts . . . .") (citing *United States v. Realty Multi–List, Inc.*, 629 F.2d 1351, 1388 (5th Cir. 1980)); *see also Eastman Chem. Co. v. PlastiPure, Inc.*, 969 F. Supp. 2d 756, 768 (W.D. Tex. 2013) (enjoining false statements because "although Defendants represent they have removed the press release and brochure from their website and do not plan to redistribute them, there is undoubtedly a possibility Defendants will make similar statements in the future").

Finally, injunctive relief is needed to halt the continuing harm from the Bar's past violations. *See* PI Motion Ex. 2, Riley Decl. ¶ 25-26, 32-33. The Bar Defendants do not dispute TIKD's business and reputation continue to be dramatically harmed by the false impression among lawyers that the Bar has determined TIKD is engaged in UPL. Standing alone, this continuing harm entitles TIKD to injunctive relief. *See Wilk*, 895 F.2d at 369 ("[A]nother factor supporting an injunction is what the district court termed the boycott's 'lingering effects.' The court found not only that plaintiffs had been personally harmed by the boycott, but that they continued to be personally harmed and threatened by a lack of association with members of the AMA as a result of the boycott and its lingering effects.").

B. The fact that *some* damages are quantifiable does nor bar injunctive relief.

The Bar Defendants argue that because *some* of TIKD's damages are quantifiable, TIKD is not entitled to injunctive relief. Resp. at 13-14. This is not the law. "Even when a later money judgment might undo an alleged injury, the alleged injury is irreparable if damages would be 'difficult or impossible to calculate.'" *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (quoting *Fla. Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 958 n. 2 (5th Cir. Unit B June 1981)). Thus, even where a plaintiff "is able to quantify damages as to some of its claims," injunctive relief is appropriate if "some of the alleged harm ... is not calculable and compensable with monetary damages." *Johnson Controls, Inc. v. Rumore*, 8:07CV1808T17TBM, 2008 WL 203575, at *13 (M.D. Fla. Jan. 23, 2008); *see also Nat'l Auto Lenders, Inc. v. SysLOCATE, Inc.*, 753 F. Supp. 2d 1233, 1236–37 (S.D. Fla. 2010) (Cooke, J.) ("A plaintiff may establish irreparable injury where the *total* damages associated with plaintiff's losses would be difficult to calculate." (emphasis added)).

TIKD's *past* financial data cannot calculate how TIKD will be harmed in the *future* absent injunctive relief. It is difficult to project how TIKD will grow as a new business in a rapidly changing market. PI Motion Ex. 2, Riley Decl. ¶ 28. It is also difficult, if not impossible, to quantify the reputational harm TIKD is suffering among attorneys, customers, and investors, and whether TIKD will be able to recover the market share it has lost. *Id.* ¶¶ 31-33. *See Osmose, Inc. v. Viance, LLC*, 612 F.3d 1298, 1320 (11th Cir. 2010) ("inference" that false statements about company "would irreparably harm [the company's] goodwill and market position is certainly reasonable"); *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) ("[T]he loss of customers and goodwill is an irreparable injury."); *Saint-Gobain Tech. Fabrics Am., Inc. v. Checkmate Geosynthetics, Inc.*, 609CV557ORL35KRS, 2010 WL 11507575, at *7 (M.D. Fla. Oct. 26, 2010) ("Price erosion, loss of market share, and loss of profits are factors that support a finding of irreparable harm."). The Bar Defendants also ignore the difficulty of quantifying the injuries TIKD will face if it must restructure its business, as it anticipates it will need to do if the ongoing harms are not reduced. PI Motion Ex. 2, Riley Decl. ¶ 30.

The Bar Defendants also wrongly suggest that Eleventh Circuit courts do not recognize that the infancy of a business makes it difficult to calculate damages. Resp. at 14. The opposite is true. *See*, *e.g.*, *Rosenthal Collins Group, LLC v. Moneytec LLC*, 08-60992-CIV, 2010 WL 11505839, at *6 (S.D. Fla. Nov. 30, 2010) ("Florida courts have recognized that future profits of a new business are often speculative and uncertain."). The one case the Bar cites, *Cunningham v. Adams*, 808 F.2d 815 (11th Cir. 1987), did not reject this long-standing principle. The court merely held, under the unique circumstances of that case, that a plaintiff who had lost a bid for an airport concession could calculate his lost profits by simply looking at the profits earned by other airport concessions during the relevant time period. *Id.* at 822.

Chris Riley's testimony describing the risk that TIKD will lose funding if it is excluded from the Florida market is not speculative. PI Motion Ex. 2 ¶ 31. As TIKD's Founder and CEO, with an MBA from Harvard Business School and a background in investment, Riley has both personal and professional knowledge about the availability of investment funds. The one case relied on by the Bar in an effort to undermine Riley's testimony involves completely different facts having nothing to do with business financing.

Med. & Chiropractic Clinic v. Oppenheimm, No. 8:16-CV-1477-T-36-TBM, 2016 WL 6093223 (M.D. Fla. Oct. 19, 2016) concerned competing class counsel seeking damages for future monetary harm in the form of lost fee and court awards. Given the underlying case was ongoing and fees were not guaranteed, the court concluded the loss was unproven. *Id*. at *5.

IV. The requested injunctive relief will not harm the Bar Defendants.

The Bar Defendants do not argue that the *actual* injunctive relief TIKD requests would cause them harm. They admit they have no authority tell lawyers TIKD is engaged in UPL or issue opinions to that effect. Instead, they falsely claim TIKD is asking this Court to "override" a UPL investigation. To the contrary: TIKD's request seeks to *ensure* that the process under which the Florida Supreme Court determines UPL is *followed* and is not overridden by the Bar's presumption of TIKD's guilt.

TIKD's PI Motion does not seek to "drastically transform" the Bar's process of issuing ethics opinions. TIKD seeks relief from the harm caused by a single, informal staff opinion the Florida Bar had no reason to issue in the first place, beyond giving The Ticket Clinic a weapon to use against a competitor. Halting further circulation of this one dubious opinion will not impact the Bar's right to issue legitimate ethics opinions.

TIKD also does not ask the Bar to monitor "public statements of 20 million Floridians," as the Bar Defendants ridiculously contend. Resp. at 16. TIKD seeks relief requiring *the Bar* to correct the false statements *it has made* and facilitated The Ticket Clinic in making, such as predicting an "injunction … coming down from the Bar," TI Motion Ex. 2-K, at 2, when it has no such authority. It is proper and equitable to require the Bar to correct its false statements as well as false statements its conduct enabled The Ticket Clinic to make.

Rather than harm the Bar Defendants, TIKD's injunctive relief, if granted, would help them *avoid* further anticompetitive activity during its interminable UPL investigation.

V. Enforcement of antitrust laws advances the public interest.

The Bar Defendants baselessly assert TIKD's request for injunctive relief "seeks only to serve its private interest." Resp. at 16. This ignores the central purpose of private antitrust lawsuits: the "public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action." *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 329 (1955). *See also Chrysler Corp. v. Gen. Motors Corp.*, 596 F. Supp. 416, 419

(D.D.C. 1984) ("Private parties filing suit under the antitrust laws function as 'private attorneys general' representing the public interest."); *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 91 F.R.D. 574, 577 (S.D.N.Y. 1981) ("Every private antitrust action is imbued with a public interest in enforcement of the antitrust laws.").

The Bar Defendants' assertion that this is a "SLAPP suit" is likewise baseless. TIKD's claim is carefully modeled on *Dental Examiners* because the Bar's actions are shockingly similar to the defendant's actions there. Tellingly, the Bar Defendants cite *no* antitrust cases in defense of their actions. Their only citation to antitrust law is in an effort to claim *immunity* from those laws. *See* Resp. at 3-6.

The narrow injunctive relief sought by TIKD will not result in the "parade of horribles" the Bar claims. *See* Resp. at 17. The Bar can still investigate UPL complaints, it can still issue legitimate ethics opinions, and attorneys will still seeking guidance. Only now, the Bar will (hopefully) be aware of the constraints on anticompetitive conduct imposed by federal law.

Finally, the Bar's claim that TIKD's entire business is "against public policy" seems to be a request that this Court hold that TIKD is engaged in UPL, something TIKD itself has carefully *not* requested. While this argument confirms the Bar Defendants have pre-judged TIKD's business model and exceeded their authority, it provides them no shield from antitrust liability. *See F.T.C. v. Indiana Fed'n of Dentists*, 476 U.S. 447, 465 (1986) ("That a particular practice may be unlawful is not, in itself, a sufficient justification for collusion among competitors to prevent it."); *In the Matter of the N. Carolina Bd. of Dental Examiners*, 152 F.T.C. 640 (2011) ("Courts have rejected social welfare and public safety concerns as cognizable justifications for restraints on competition.").

VI. Conclusion.

For the following reasons, and those set out in its Application for Temporary Injunction, Plaintiff TIKD Services, LLC, requests the Court enter the injunctive relief requested, and any further or other relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on the counsel of record identified below in a manner authorized by the Federal Rules of Civil Procedure on the 15th day of December, 2017:

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