NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SPECTRUM SPORTS, INC., ET AL. *v.* MCQUILLAN ET VIR, DBA SORBOTURF ENTERPRISES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91–10. Argued November 10, 1992—Decided January 25, 1993

Shortly after the manufacturer of sorbothane—a patented elastic polymer with shock-absorbing characteristics—informed respondents, distributors of medical, athletic, and equestrian products made with sorbothane, that it would no longer sell them the polymer, petitioner Spectrum Sports, Inc., became the national distributor of sorbothane athletic products. Respondents' business failed, and they filed suit in the District Court against petitioners and others, seeking damages for alleged violations of, *inter alia,* §2 of the Sherman Act, which makes it an offense for any person to ``monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize any part of the trade or commerce among the several States.'' A jury found that the defendants violated §2 by, in the words of the verdict sheet, ``monopolizing, attempting to monopolize, and/or conspiring to monopolize.'' The Court of Appeals affirmed, noting that, although the jury had not specified which of the three possible §2 violations had occurred, the verdict stood because the evidence established a case of attempted monopolization. Relying on its earlier rulings in *Lessig* v. *Tidewater Oil Co.,* 327 F. 2d 459, and its progeny, the court held that the jury could have inferred two of the elements of that offense—a specific intent to achieve monopoly power and a dangerous probability of monopolization of a relevant market—from evidence showing the defendants' unfair or predatory conduct, without any proof of relevant market or the defendants' market power, and that the jury was properly instructed that it could make such inferences.

Held: Petitioners may not be liable for attempted monopolization under §2 absent proof of a dangerous probability that they

would monopolize a relevant market and specific intent to monopolize. The conduct of a single firm, governed by §2, is unlawful ``only when it threatens actual monopolization.'' *Copperweld Corp.* v. *Independence Tube Corp.,* 467 U. S. 752, 767. Consistent with this approach, Courts of Appeals other than the court below have generally required a plaintiff in an attempted monopolization case to prove that (1) the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power. Unfair or predatory conduct may be sufficient to prove the necessary intent to monopolize. However, intent alone is insufficient to establish the dangerous probability of success, *Swift & Co.* v. *United States,* 196 U. S. 375, 402, which requires inquiry into the relevant product and geographic market and the defendant's economic power in that market. There is little if any support in the statute or case law for *Lessig*'s contrary interpretation of §2. Moreover, *Lessig* and its progeny are inconsistent with the Sherman Act's purpose of protecting the public from the failure of the market. The law directs itself only against conduct that unfairly tends to destroy competition, and, thus, courts have been careful to avoid constructions of §2 which might chill competition rather than foster it. The concern that §2 might be applied so as to further anticompetitive ends is plainly not met by inquiring only whether the defendant has engaged in ``unfair'' or ``predatory'' tactics. Since the jury's instructions and the Court of Appeals' affirmance both misconstrued §2, and since the jury's verdict did not negate the possibility that it rested on the attempt to monopolize ground alone, the case is remanded for further proceedings. Pp. 7–12.

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SPECTRUM SPORTS, INC. *v.* MCQUILLAN

Syllabus

907 F. 2d 154, reversed and remanded.

WHITE, J., delivered the opinion for a unanimous Court.