
**RACIALLY COLLUSIVE BOYCOTTS:
AFRICAN-AMERICAN PURCHASING POWER IN THE
WIGS AND HAIR EXTENSIONS MARKET**

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ABSTRACT

This Essay analyzes expressive boycotts in the market for wigs and hair extensions, where consumers are primarily African Americans and producers are almost uniformly Korean Americans. This type of ethnically segmented and misaligned (“ESM”) market raises unique doctrinal and theoretical questions. Under antitrust case law, the treatment of a campaign to divert business from Korean American–owned to African American–owned hair stores is uncertain because of the campaign’s mixed social and economic motives. Delving into the theoretical implications of this ESM market can help steer the doctrine appropriately. Along the way, such an exercise illuminates the nuances of racial solidarity and market power among consumers, as well as the inequality between consumers and producers.

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INTRODUCTION

Boycotts, especially those in furtherance of racial justice, are becoming better organized and more visible. Since the killings of Michael Brown and Freddie Gray, boycotts have hit the National Football League,¹ Goya Foods,² and Georgia-based companies.³ These expressive boycotts implicate both antitrust and First Amendment questions because they are “political yet also economically self-interested.”⁴ However, most expressive boycotts have limited effects on competition—boycotting consumers typically present no serious alternatives to incumbent producers—so antitrust concerns should yield easily to speech protections.⁵

These truisms are upended in markets where producers hail from one ethnic group while consumers hail from another. In such ethnically segmented and misaligned (“ESM”) markets,⁶ intragroup solidarity allows otherwise discrete

¹ See John Breech, *Kaepernick Petition Calling for NFL Boycott Is Gaining Steam, Has 130k Supporters*, CBS SPORTS (Aug. 9, 2017, 11:28 AM), <https://www.cbssports.com/nfl/news/kaepernick-petition-calling-for-nfl-boycott-is-gaining-steam-has-130k-supporters/> [<https://perma.cc/8SC9-6X4R>] (describing popular petition on Change.org to boycott NFL if Colin Kaepernick did not play 2017 season). There have also been counterboycotts against the NFL for giving into social justice demands. See Jesse Washington, *The NFL Is Being Squeezed by Boycotts from Both Sides over Anthem Protests*, ANDSCAPE (Sept. 13, 2017), <https://andscape.com/features/nfl-boycotts-from-both-sides-over-anthem-protests/> [<https://perma.cc/8LZX-KG47>].

² Allyson Chiu, *Goya’s CEO Said the U.S. Is ‘Truly Blessed’ with President Trump. Latinos Are Now Boycotting.*, WASH. POST (July 10, 2020), <https://www.washingtonpost.com/nation/2020/07/10/goya-boycott-trump/> (discussing movement to boycott Goya Foods after CEO’s commendation of President Trump).

³ Chris Isidore, *Georgia-Based Companies Face Boycott Calls over Voting Bill*, CNN (Apr. 1, 2021, 9:01 AM), <https://www.cnn.com/2021/03/31/business/georgia-voting-law-prompts-calls-for-business-boycotts/index.html> [<https://perma.cc/9F3Y-YWJN>] (discussing boycotts of Georgia-based companies including Coca-Cola and Delta that “didn’t do enough to defeat” new Georgia law suppressing minority voting).

⁴ Hillary Greene, *Antitrust Censorship of Economic Protest*, 59 DUKE L.J. 1037, 1039 (2010). Expressive boycotts are “a form of social campaign wherein purchasers express their dissatisfaction by collectively refusing to buy.” *Id.*

⁵ See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 912 (1982). However, the balance between antitrust and First Amendment is hardly settled. See, e.g., *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990) (rejecting social considerations for boycott’s restraints on trade); see also *infra* Section II.A.

⁶ Felix B. Chang, *Ethnically Segmented Markets: Korean-Owned Black Hair Stores*, 97 IND. L.J. 479, 485 (2022).

producers or consumers to band together and fend off competition.⁷ Cultural and linguistic affinities facilitate coordination while enhancing market power.⁸

This Essay examines expressive boycotts in one of the most distinctive ESM markets in the country: the \$6 billion market for wigs and hair extensions for African Americans.⁹ Here, manufacturing, wholesale, and retail are controlled by Korean- and Korean American–owned firms, which rose to prominence during the 1960s when South Korea emerged as major exporter of wigs.¹⁰ Through the decades, these firms maintained their dominance by collusive and exclusionary schemes. For example, they formed trade groups that restricted the import and distribution of South Korean wigs.¹¹ Their wholesalers refused to sell products to African American–owned retailers,¹² while their retailers refused to carry products created by African Americans.¹³

The wigs and extensions market creates a peculiar strain of interracial inequality, an inequality separating two racialized peoples of color: African Americans and Asian Americans (or, more precisely, Koreans and Korean Americans). To be sure, racial cartels recur throughout U.S. history.¹⁴ White

⁷ The notion that a persecuted ethnic group withdraws into itself is well established in sociology and ethnic studies. See, e.g., Jonathan H. Turner & Edna Bonacich, *Toward a Composite Theory of Middleman Minorities*, 7 *ETHNICITY* 144, 154 (1980) (theorizing that “middleman minorities” concentrate in middle rank entrepreneurial economic roles and this increases intraethnic organization, hostility from nonimmigrant groups, and economic concentration).

⁸ *Id.* at 153.

⁹ Susan Adams, *Long on Hair: The World’s First Venture-Backed Human-Hair-Extension Company Wants to Be the Airbnb of Salons*, *FORBES* (Sept. 27, 2019, 6:54 AM), <https://www.forbes.com/sites/susanadams/2019/09/27/long-on-hair-the-worlds-first-venture-backed-human-hair-extension-company-wants-to-be-the-airbnb-of-salons/>.

¹⁰ See Jason Petruilis, “*A Country of Hair*”: *A Global Story of South Korean Wigs, Korean American Entrepreneurs, African American Hairstyles, and Cold War Industrialization*, 22 *ENTER. & SOC’Y* 368, 372 (2020).

¹¹ See *United States v. Korean Hair Goods Ass’n of Am.*, No. 75-cv-03069, 1976 WL 1219, at *1 (S.D.N.Y. Feb. 24, 1976).

¹² See, e.g., Emma Sapong, *Roots of Tension: Race, Hair, Competition and Black Beauty Stores*, *MINN. PUB. RADIO NEWS* (Apr. 25, 2017, 5:00 PM), <https://www.mprnews.org/story/2017/04/25/black-beauty-shops-korean-suppliers-roots-of-tension-mn> [<https://perma.cc/EG7Y-DU7X>] (describing Black hair salon owner’s experience being denied Black hair products by Korean wholesalers); *Why Do Koreans Own the Black Beauty Supply Business?*, *MADAME NOIRE* (Sept. 27, 2010), <https://madamenoire.com/104753/why-do-koreans-own-the-black-beauty-supply-business/> [<https://perma.cc/AKY3-VF56>] (noting Black entrepreneurs are often disenfranchised by Korean hair product distributors who handpick to whom they will distribute products).

¹³ See Aron Ranen, *Black Hair*, *YOUTUBE* (May 19, 2006), <https://www.youtube.com/watch?v=p96aaTSdrAE> [<https://perma.cc/2J82-VLRB>] (explaining Korean control of Black beauty supply industry, including refusal to carry hair products manufactured by African Americans); see also *GOOD HAIR* (HBO Films 2009) (exploring Black hair industry and relationship Black women have with their hair).

¹⁴ Daria Roithmayr, *Racial Cartels*, 16 *MICH. J. RACE & L.* 45, 48 (2010).

labor unions have stonewalled the employment of Black and Chinese workers,¹⁵ and White homeowners' associations have adopted racially restrictive covenants.¹⁶ Similarly, and perhaps more innocuously, ethnic entrepreneurs and merchant groups have utilized private systems of contract enforcement, dispute resolution, and wholesale and distribution to exert control over parts of various industries around the world.¹⁷ Yet even against these backdrops, the wigs and extensions market stands out. Here, one ethnic group dominates the production and sale of goods utilized almost entirely by another race. Given the absence of recourse against hair discrimination,¹⁸ wigs and extensions are often an indispensable good.¹⁹ Demand is therefore inelastic, conferring market power to producers.²⁰

Understandably, this dominance by Korean American-owned firms stokes consumer ire. Korean American-owned wig stores were destroyed during protests in Ferguson, Missouri, in 2014 after prosecutors failed to charge Michael Brown's killer, and in Baltimore in 2015 after the funeral of Freddie Gray.²¹ For African-American consumers, who often charge that Korean

¹⁵ See *id.* at 46-47; BETH LEW-WILLIAMS, *THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA* 40-43 (2018).

¹⁶ Roithmayr, *supra* note 14, at 52-53; see *Shelley v. Kraemer*, 334 U.S. 1, 6, 23 (1948); Stephen L. Ross, *Understanding Racial Segregation: What Is Known About the Effect of Housing Discrimination?*, in *NEIGHBORHOOD AND LIFE CHANCES: HOW PLACE MATTERS IN MODERN AMERICA* 288, 289 (Harriet B. Newburger et al. eds., 2011). See generally Jacob S. Rugh & Douglas S. Massey, *Segregation in Post-Civil Rights America: Stalled Integration or End of the Segregated Century?*, 11 *DU BOIS REV.* 205 (2014) (analyzing empirically racial segregation and integration).

¹⁷ See, e.g., Lisa Bernstein, *Contract Governance in Small-World Networks: The Case of the Maghribi Traders*, 113 *NW. U. L. REV.* 1009, 1015 (2019) (discussing Maghribi Jewish merchants in Islamic Mediterranean in eleventh century); Barak D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 *LAW & SOC. INQUIRY* 383, 384 (2006) (analyzing Jewish diamond merchants in New York); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 *J. LEGAL STUD.* 115, 115 (1992). See generally CHINESE MIGRANTS IN RUSSIA, CENTRAL ASIA AND EASTERN EUROPE (Felix B. Chang & Sunnie T. Rucker-Chang eds., 2012) (discussing Chinese merchants throughout history, especially post-Communism, in Russia, Central Asia, and Eastern Europe).

¹⁸ See Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 *GEO. L.J.* 1079, 1093-94 (2010); D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 *U. COLO. L. REV.* 1355, 1370-75 (2008).

¹⁹ To avoid generalization, it is important to note that the preference for wigs and extensions is not universal. Many African-American women wear natural hair, or alternate between natural hair and extensions. Sughnen Yongo-Okochi, *More Black Women Are Choosing Natural Hair*, *PAVEMENT PIECES* (Feb. 23, 2021), <https://pavementpieces.com/more-black-women-are-choosing-natural-hair/> [<https://perma.cc/3ZXQ-WWPW>].

²⁰ See HERBERT HOVENKAMP, *FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE* 105-06 (6th ed. 2020) (analyzing relationship between market power and elasticity of demand).

²¹ Petruslis, *supra* note 10, at 397.

Americans have monopolized the ethnic beauty products market, boycotts are a common tactic.²² African Americans have organized boycotts of Korean-American businesses for decades, including most prominently after a Korean-American convenience store owner killed Latasha Harlins in Los Angeles in 1991.²³

Today, however, boycotts in the wigs and extensions market pose unique antitrust challenges for doctrinal and economic reasons. African-American insurgents are now gaining market share by relying on nontraditional sources and distribution channels. Mayvenn, a Black-owned retailer that started in 2012 and has funding from venture capital powerhouse Andreessen Horowitz, sources hair from Asia and sells either directly to consumers or through salons.²⁴ Indique, co-founded in 2007 by African-American and Indian-American partners, sources from India and sells products through its proprietary salons.²⁵ These upstarts are providing consumers with viable coracial alternatives for the first time in decades. Unlike the boycotts against the NFL or Georgia-based businesses such as Delta, Coca-Cola and Home Depot, African Americans *can* pivot to Black-owned alternatives that compete directly with the incumbents.²⁶ Intraracial solidarity can steer consumer preferences toward Black-owned firms.²⁷ Couched in doctrinal terms, economic self-interest predominates, elevating the antitrust considerations. Arguably, for boycotts premised on “buying Black,” expressive and economic functions are indistinguishable.²⁸

²² See Alyssa Otis, *Korean Dominance of the Black Hair Industry: Why Do Korean-American Owned Beauty Supply Stores Succeed in a Business That Doesn't Revolve Around Their Culture?*, RAMPAGES (Dec. 7, 2017), <https://rampages.us/univmultimodal/> [https://perma.cc/Q663-VPU4] (“Korean-American owned beauty supply store owners have dominated the Black hair industry for as long as Black consumers have been boycotting it, since the mid-1960s.”).

²³ See Seth Mydans, *Korean Grocer Convicted in Shooting*, N.Y. TIMES, Oct. 12, 1991 (§ 1), at 6L.

²⁴ Adams, *supra* note 9; *About Us*, MAYVENN, <https://shop.mayvenn.com/about-us> (last visited Apr. 6, 2022).

²⁵ See *Our Company*, INDIQUE VIRGIN HAIR EXTENSIONS, <https://www.indiquehair.com/pages/our-company> [https://perma.cc/36SR-CTLL] (last visited Apr. 6, 2022).

²⁶ See Isidore, *supra* note 3.

²⁷ See Mandy, *53 Black-Owned Hair Care Brands You Can Support*, OFF. BLACK WALL ST. (Apr. 25, 2017), <https://blog.obws.com/black-owned-haircare-beauty-products/> [https://perma.cc/E7DT-5E6N].

²⁸ Nonetheless, we must not lose sight of the long history of expropriation of African-American innovations and property by other racialized groups, particularly White people. After desegregation, when the artificial barriers between White and African-American businesses were lifted, many Black-owned businesses crumbled. Reginald Stuart, *Businesses Owned by Blacks Still Fighting an Uphill Battle*, N.Y. TIMES, July 26, 1981, at 1. In their place stood large White-owned companies that sold to African Americans at a substantial markup. *Id.* Manufacturers of ethnic beauty supplies have followed the same trajectory. Brian S. Feldman, *The Decline of Black Business*, WASH. MONTHLY (Mar. 19, 2017), <https://washingtonmonthly.com/2017/03/19/the-decline-of-black-business/> [https://perma.cc/J68W-G7EJ].

Expressive boycotts by consumers in ESM markets challenge doctrinal convention in several ways. While antitrust treatment of group boycotts has evolved from *per se* illegality²⁹ to rule of reason,³⁰ current precedent on expressive boycotts reflects more of a schism than a spectrum regarding the degree of First Amendment protection from antitrust scrutiny.³¹ Antitrust deference seems to turn on whether the classification of the speech at hand is either “purely economically motivated or purely political.”³² In the wigs and extensions market, however, economic self-interest motivates boycotts at least as much as political or social expression.³³ Further, intraracial solidarity renders market power among African-American buyers more likely. While lack of market power is no defense to conspiracy,³⁴ courts have requested clarity on market power in expressive boycott cases.³⁵ A determination of market power, then, invites sociological debates on the durability of intraracial bonds.

This Essay examines a set of theoretical questions in the wigs and extensions market, with a view toward reconciling the doctrinal split and extrapolating broader lessons for racial boycotts. The theoretical inquiries will focus on the market power of African-American consumers, compared against the market power of Korean American–owned retailers. Part I of the Essay introduces the wigs and extensions market as the setting for racial boycotts. Part II briefly surveys the doctrinal landscape on expressive boycotts. Part III dives into the unique theoretical challenges posed by boycotts in this market.

I. BOYCOTTS IN THE WIGS AND EXTENSIONS MARKET

ESM markets are a peculiar type of ethnically segmented market where consumers are drawn from one ethnic or racial group while producers are drawn from another.³⁶ In most markets segmented by race or ethnicity, the market has divided in response to the preferences or patterns of consumers or producers. For instance, White homeowners (producers) might utilize homeowners’ associations or restrictive covenants to divide a neighborhood’s housing stock along racial lines.³⁷ In a diverse city, the market for groceries and food products

²⁹ See, e.g., *E. States Retail Lumber Dealers’ Ass’n v. United States*, 234 U.S. 600, 607 (1914); *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212 (1959).

³⁰ See, e.g., *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 134 (1998). For analysis on this doctrine’s application to an ethnically segmented market similar to the one at hand, see Barak D. Richman, *The Antitrust of Reputation Mechanisms: Institutional Economics and Concerted Refusals to Deal*, 95 VA. L. REV. 325, 336-46 (2009).

³¹ See Richman, *supra* note 30, at 373-76 (describing antitrust standards toward concerted refusals to deal).

³² Greene, *supra* note 4, at 1057.

³³ See *id.*

³⁴ *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224 n.59 (1940).

³⁵ See *Superior Ct. Trial Laws. Ass’n v. FTC*, 856 F.2d 226, 252 (D.C. Cir. 1988), *rev’d*, 493 U.S. 411 (1990).

³⁶ Chang, *supra* note 6, at 482.

³⁷ See Roithmayr, *supra* note 14, at 52.

might be segmented along the tastes of its ethnic communities (consumers).³⁸ Finally, a nation's labor market (producers) might segment along racial lines, with each segment attaining different incomes.³⁹ Typically, if one side of a market is ethnically segmented, the other side will either be ethnically heterogeneous or share the same ethnicities as the first side (i.e., coethnic).⁴⁰ In the homeowners and labor market examples, the consumers (homebuyers and employers) are a racially mixed bunch.⁴¹ In the ethnic foods example, producers are often coethnic with their consumers.⁴²

In ESM markets, however, producers belong to one ethnic or racial group, while consumers belong to another. Producers and consumers are both ethnically homogenous and ethnically misaligned.⁴³

One of the most notable ESM markets in the United States is the market for wigs and hair extensions, where most consumers are African American and most producers are Korean American.⁴⁴ This roughly \$6 billion market has been dominated since the 1970s by Korean- and Korean American-owned firms.⁴⁵ To an extent, Korean dominance can be explained by a confluence of historical and structural factors, including Cold War priorities that elevated South Korea as a supplier of wigs.⁴⁶ Since the 1960s, de-industrialization has also hollowed out urban centers, depressing rents and lowering the entry barrier for brick-and-mortar ethnic beauty supply stores.⁴⁷ Simultaneously, however, African-American entrepreneurs are often unable to secure the seed financing to start

³⁸ See Ferzana Havewala, *The Dynamics Between the Food Environment and Residential Segregation: An Analysis of Metropolitan Areas*, FOOD POL'Y, Aug. 2021, at 1, 7.

³⁹ See Scott Cummings, *White Ethnics, Racial Prejudice, and Labor Market Segmentation*, 85 AM. J. SOCIO. 938, 939 (1980).

⁴⁰ For an example of coethnic alignment between buyers and sellers, see generally Amanda Lea Robinson, *Internal Borders: Ethnic-Based Market Segmentation in Malawi*, 87 WORLD DEV. 371 (2016), discussing a preference for coethnic sales and purchases in ethnically diverse Malawi, due in part to interethnic mistrust. As for ethnically segmented producers paired with ethnically heterogeneous consumers, examples abound in ethnic restaurants.

⁴¹ Roithmayr, *supra* note 14, at 52.

⁴² See Chang, *supra* note 6, at 2; Russell Redman & Michael Browne, *Multicultural Consumers Changing Grocery Shopping*, SUPERMARKET NEWS (Sept. 8, 2020), <https://www.supermarketnews.com/center-store/multicultural-consumers-changing-grocery-shopping> [<https://perma.cc/9DU3-GTWF>] (noting that "49% of Hispanic, 46% of Asian-American and 41% of African-American consumers say they buy grocery brands that are authentic to their ethnic heritage, compared with 26% of Caucasian/Non-Hispanic shoppers").

⁴³ Chang, *supra* note 6, at 482.

⁴⁴ *Black Impact: Consumer Categories Where African Americans Move Markets*, NIELSEN (Feb. 15, 2018), <https://www.nielsen.com/us/en/insights/article/2018/black-impact-consumer-categories-where-african-americans-move-markets/> [<https://perma.cc/YA6D-ZQYL>]; Sapong, *supra* note 12.

⁴⁵ See Adams, *supra* note 9; Petrusis, *supra* note 10, at 369.

⁴⁶ See Petrusis, *supra* note 10, at 373.

⁴⁷ See IVAN LIGHT & EDNA BONACICH, *IMMIGRANT ENTREPRENEURS: KOREANS IN LOS ANGELES 1965-1982*, at 17 (1988).

businesses in their communities—compared with their Korean-American counterparts, African Americans enjoy far less support from banking and small business finance agencies.⁴⁸

Yet Korean American-owned firms have actively worked to secure and maintain market dominance. In 1975, the Department of Justice sued the Korean Hair Goods Association of America, Inc., an import association in New York, for setting prices on wigs and for excluding importers and distributors.⁴⁹ Since that time, African-American consumers and competitors have insisted that Korean Americans monopolize the market, shut out Black retailers, and refuse to distribute products made by African Americans.⁵⁰

Apart from alleging antitrust violations, how can African-American consumers retain wealth in Black communities?⁵¹ As consumers in an ESM market, African Americans themselves wield market power. They can organize boycotts against Korean-American wholesalers and retailers to direct patronage to African-American competitors. More so than in past decades, African-American consumers now have viable coethnic alternatives to Korean-owned hair stores due to advances in social media, distribution networks, and supply chains. Mayvenn, for example, is a well-capitalized upstart funded by powerhouse venture capitalists and Black celebrities.⁵² The company has thrived by sourcing hair from China and distributing products via Black stylists.⁵³ Indique sources hair from India and has grown a network of salons across the country.⁵⁴ On a smaller scale, numerous Black-owned alternatives have emerged as well, and they have experimented with both online and traditional brick-and-mortar distribution channels.⁵⁵

Today, with the explosion of Black alternatives, consumer boycotts are hardly far-fetched. African Americans have certainly called for boycotts of Korean American-owned businesses in Black communities in the past, beyond just hair

⁴⁸ See Tamara K. Nopper, *Revisiting “Black-Korean Conflict” and the “Myth of Special Assistance”*: Korean Banks, US Government Agencies, and the Capitalization of Korean Immigrant Small Business in the United States, 1 KALFOU 59, 81 (2014).

⁴⁹ See *United States v. Korean Hair Goods Ass’n of Am.*, 40 Fed. Reg. 57,696 (Dep’t of Just. Dec. 3, 1975) (notice).

⁵⁰ See, e.g., GOOD HAIR, *supra* note 13; Ranen, *supra* note 13; Edward Tony Llonau, *How and Why Korean Owned Beauty Supply Stores Dominate in the Afro Community*, LIQUID GOLD BLOG (Sept. 8, 2013), <http://www.liquidgoldbonding.com/blog/?p=126> [<https://perma.cc/VL2T-46Y8>].

⁵¹ For an example of a groundbreaking study of how ethnic communities managed to “vertically integrate” to keep wealth with coethnic businesses, see Kenneth L. Wilson & W. Allen Martin, *Ethnic Enclaves: A Comparison of the Cuban and Black Economies in Miami*, 88 AM. J. SOCIO. 135, 137 (1982).

⁵² See Adams, *supra* note 9.

⁵³ See *id.*

⁵⁴ See *Our Company*, *supra* note 25.

⁵⁵ See Sapong, *supra* note 12.

stores.⁵⁶ In communities where businesses have often been owned by immigrant entrepreneurs, interracial tensions augment the natural frictions between buyers and sellers.⁵⁷ Yet the wigs and extensions market is almost *sui generis*. Here, the racial and ethnic uniformity of both producers and consumers brings their racial misalignment into sharper relief, exacerbating tensions.⁵⁸ In recent instances where community frustrations have erupted into action, particularly after episodes of police violence, African Americans have targeted ethnic beauty supply stores.⁵⁹

The emergence of viable alternatives like Mayvenn, Indique, and smaller upstarts provides alternatives for individual consumers who may be frustrated that products utilized almost exclusively by African Americans are sold almost exclusively by Korean Americans. Social media can facilitate connections with like-minded, coethnic consumers. If African-American consumers band together to act in concert, they transform their individual preferences into group boycotts. Calls for boycotts of Korean American–owned Black hair stores recur regularly enough to seriously challenge Korean-American incumbents.⁶⁰

In the wigs and extensions market, however, a consumer boycott is not merely expressive—it can enrich the very community from which the boycott emanates. Economic benefit is central to a boycott; here, the essence of any “buy Black”

⁵⁶ CLAIRE JEAN KIM, BITTER FRUIT: THE POLITICS OF BLACK-KOREAN CONFLICT IN NEW YORK CITY 109-55 (2000); M.A. Farber, *Black-Korean Who-Pushed-Whom Festers*, N.Y. TIMES, May 7, 1990, at B1.

⁵⁷ Farber, *supra* note 56 (describing cycle of tension between Korean business owners and Black patrons in the 1980s and early 1990s).

⁵⁸ Other businesses in Black and Brown communities, such as convenience stores and liquor stores, might be owned by a variety of different immigrant groups. Sari Pekkala Kerr & William Kerr, *Immigrant Entrepreneurship in America: Evidence from the Survey of Business Owners 2007 & 2012*, RSCH. POL’Y, Feb. 2020, at 1, 2. Yet Black hair stores have been cornered by Korean Americans.

⁵⁹ See Petrusis, *supra* note 10, at 397; Michael Corkery, *Black Products. Black Shoppers. Black Workers. But Who Owns the Store?*, N.Y. TIMES, Oct. 18, 2020, at BU1.

⁶⁰ For instance, search for the terms “boycott,” “Korean,” “Black,” and “hair” together on Twitter. TWITTER, https://twitter.com/search?q=boycott%20Korean%20black%20hair&src=typed_query [https://perma.cc/785N-QVMD]. For an older example, see *Activist Devin Robinson Calls for Boycott of Non-Black Owned Beauty Supply Stores*, HIPHOPWIRED (Nov. 18, 2009), <https://hiphopwired.com/16106/16106/> [https://perma.cc/UV8N-6TBV]. In response to an episode at a Charlotte, North Carolina, hair store, some African-American consumers in Chicago rallied together to boycott local Asian-owned businesses within one week. See Spitting Knowledge for Mind Elevation, *Blacks in Chicago Boycott Asian Owned Businesses*, YOUTUBE (Mar. 20, 2017), <https://www.youtube.com/watch?v=4UTjMA0EvKg> [https://perma.cc/8RX8-UWJE]; Nigel Roberts, *Asian-Owned Beauty Supply Store Faces Boycott After Owner Attacks Black Customer*, NEWSONE (Mar. 13, 2017), <https://newsone.com/3693379/charlotte-north-carolina-store-owner-chokes-black-customer-in-viral-video/> [https://perma.cc/BCF2-4G5S].

campaign is to redirect money from incumbents to coethnic insurgents.⁶¹ As the next Part illustrates, these boycotts confound antitrust doctrine because the economic goals are at least as strong as the expressive functions.

II. ANTITRUST TREATMENT OF RACIALLY COLLUSIVE BOYCOTTS

This Part summarizes the antitrust considerations of racially collusive boycotts and the novel ways in which boycotts in the hair and extensions market challenge existing doctrine. The Part canvasses the doctrinal splits on group boycotts. For ease of theoretical explorations, the Part positions boycotts in hypotheticals where their legitimacy is most clearly challenged.

A. *Expressive Boycotts*

Antitrust deference toward First Amendment considerations in expressive boycotts falls along a continuum that depends on the centrality of economic motivations for a boycott. The more economic considerations drive a boycott, the likelier the boycott will be condemned under antitrust case law.⁶² However, courts have had a difficult time articulating a sliding scale for the predominance of economic motivations. Instead, courts appear to characterize boycotts as either purely economic or purely political.⁶³

The two classic cases on expressive boycotts reflect this schism. In *NAACP v. Claiborne Hardware Co.*,⁶⁴ political considerations prevailed, and the boycotters enjoyed First Amendment protections.⁶⁵ There, the NAACP and African-American residents of Claiborne County, Mississippi, organized a boycott of White merchants in 1966 after their demands for racial equity went unanswered by the local government.⁶⁶ Seventeen White merchants brought claims against two corporations and over 100 individuals to recover losses from the boycott and enjoin future boycotting activity.⁶⁷

The Supreme Court found that the boycotts were protected by the First Amendment right to political expression.⁶⁸ Claiborne residents had been pushing the Mississippi government to desegregate schools, pursue public residential improvements in Black areas, and end verbal abuse perpetrated by police officers.⁶⁹ In upholding the legitimacy of the residents' actions, the Court

⁶¹ See Mandy, *supra* note 27; Lara Adekola, *6 Black-Owned Wig and Extension Brands You Need to Know*, BYRDIE (Jan. 4, 2022), <https://www.byrdie.com/black-owned-wig-and-extension-brands-5082848> [<https://perma.cc/U52W-3ZA7>].

⁶² See Greene, *supra* note 4, at 1048-54.

⁶³ *Id.* at 1057.

⁶⁴ 458 U.S. 886 (1982).

⁶⁵ *Id.* at 934.

⁶⁶ *Id.* at 889.

⁶⁷ *Id.*

⁶⁸ *Id.* at 912.

⁶⁹ *Id.* at 899.

characterized the boycotters' motivations as political and noneconomic,⁷⁰ despite some evidence that at least one prominent organizer stood to benefit financially when business was diverted from Claiborne County.⁷¹

At the other end of the spectrum, *FTC v. Superior Court Trial Lawyers Ass'n*⁷² rejected the social justifications advanced by a group of lawyers defending a boycott against the District of Columbia.⁷³ In 1983, that group of attorneys, the Superior Court Trial Lawyers Association ("SCTLA"), staged a strike to protest the low fees paid to private attorneys appointed under the Criminal Justice Act ("CJA") to represent indigent clients.⁷⁴ In response, the FTC filed a complaint alleging "a conspiracy to fix prices and to conduct a boycott" as well as "unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act."⁷⁵

With the SCTLA invoking *Claiborne Hardware*, the Supreme Court took great pains to characterize the boycott as price fixing.⁷⁶ In fact, the Court distinguished the boycotters in *Claiborne Hardware* as seeking "no special advantage for themselves," "only the equal respect and equal treatment to which they were constitutionally entitled" rather than "destroy[ing] legitimate competition."⁷⁷ In this case, the CJA boycott was the means by which attorneys sought to obtain favorable legislation and had anticompetitive effects whether or not legislation was enacted.⁷⁸ The Court concluded that a boycott is not expressive and does not warrant protection under the First Amendment when the conspiracy explicitly is for economic gain.⁷⁹ Further, the Court affirmed that boycotters need not achieve a monopoly or high degree of market power to warrant condemnation under antitrust laws.⁸⁰

The remaining case law on expressive boycotts, while sparse, has fallen into either the *Claiborne Hardware* or the *Superior Court Trial Lawyers Ass'n* camp. More aptly put, these two cases are proxies for whether a court finds that economic or noneconomic goals predominate. In one of the more prominent cases, *Missouri v. National Organization for Women, Inc.*,⁸¹ the National Organization for Women ("NOW") organized a convention boycott of states that had not ratified the Equal Rights Amendment.⁸² The boycott, which the Eighth

⁷⁰ See *id.* at 913.

⁷¹ For a concise summary, see Greene, *supra* note 4, at 1061-63.

⁷² 493 U.S. 411 (1990).

⁷³ *Id.* at 432.

⁷⁴ *Id.* at 416.

⁷⁵ *Id.* at 418-19.

⁷⁶ See *id.* at 424, 428.

⁷⁷ *Id.* at 426-27 (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 914 (1982)).

⁷⁸ *Id.* at 424.

⁷⁹ *Id.* at 431-32.

⁸⁰ *Id.* at 433-35.

⁸¹ 620 F.2d 1301 (8th Cir. 1980).

⁸² *Id.* at 1302-03.

Circuit characterized as “politically motivated but economically tooled,” was challenged by the State of Missouri on antitrust grounds.⁸³ The court held that the Sherman Act did not cover NOW’s boycott and, moreover, that the boycott was “privileged on the basis of the First Amendment right to petition.”⁸⁴ This privilege refers to the *Noerr-Pennington* line of cases conferring antitrust immunity on government petitioning activity that might affect competition.⁸⁵ In elevating First Amendment concerns over antitrust policy, *Noerr-Pennington* set the foundation for prioritizing speech considerations in boycotts for social and political purposes.

Boycotts in the wigs and extensions market challenge this doctrinal split. Clearly, any “buying Black” campaign would be spurred by noneconomic goals such as social cohesion and racial pride. In our time, the national reckoning over racial justice has helped unify Black communities while highlighting the need for representation across society and the economy.⁸⁶ Yet economic considerations would be at least as integral as social considerations to boycotts in this market. The very point of such boycotts would be to divert proceeds to coethnic communities who stand to benefit from the demise of Korean American–owned hair stores.

Based on antitrust precedent, it seems indeterminate how a boycott in this market would fare if challenged by Korean-American businesses. So far, courts have determined the outcome of antitrust challenges by classifying a boycott as either political or economic; even if that distinction seems arbitrary, it has been defensible at least because boycotters under the facts did not present viable alternatives.⁸⁷ Here, however, a number of African American–owned

⁸³ *Id.*

⁸⁴ *Id.* at 1319. Notably, a vigorous dissent challenged the majority’s characterization of the boycott as noneconomic and countered that whatever its technical characterization, the anticompetitive effects were severe. *Id.* at 1322-23 (Gibson, J., dissenting).

⁸⁵ See *E.R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 670 (1965); see also Marina Lao, *Reforming the Noerr-Pennington Antitrust Immunity Doctrine*, 55 RUTGERS L. REV. 965, 1002 (2003) (discussing constitutional foundation for *Noerr* doctrine privileges that protect collective action to influence government action). The dissent in *National Organization for Women* argued that the actions at hand were different than what *Noerr* would insulate, stating that NOW orchestrated a boycott of “a specific, identifiable segment of a highly competitive industry.” 620 F.2d at 1323-24 (Gibson, J., dissenting).

⁸⁶ See Jenna Wortham, *A ‘Glorious Poetic Rage,’* N.Y. TIMES, June 7, 2020, at SR3; see also Alan S. Gutterman, *Taking a Stand on Racial Justice and Equality*, A.B.A. (Oct. 29, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/11/racial-justice/ (emphasizing goals for business leaders to adopt practices that better represent diversity within their company to address systemic racism in economy).

⁸⁷ See *Nat’l Org. for Women*, 620 F.2d at 1315 n.16 (characterizing NOW boycott as “non-commercial and non-economic” but further grounding ruling in “the right to use political activities to petition the government” under *Noerr*); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 915 (1982) (emphasizing “nonviolent elements” of boycotters’ actions); *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (“[S]ocial justifications proffered for

alternatives now exist, spanning from small Internet retailers to rapidly growing and established businesses like Mayvonn and Indique.⁸⁸

B. *Collusive Versus Exclusionary Group Boycotts*

Another split in antitrust case law separates collusive from exclusionary group boycotts. Sometimes known as “concerted refusals to deal,” group boycotts can garner collusive effects (e.g., fixing output or prices) or exclusionary effects (e.g., denying rivals access to a facility, supplier, or market).⁸⁹ Collusive group boycotts are much more likely to violate antitrust laws than exclusionary group boycotts.⁹⁰ This reflects the greater scrutiny that antitrust places on horizontal schemes, such as price fixing, than on vertical schemes, such as refusals to deal.⁹¹

As “a type of antitrust harm rather than a substantive violation,”⁹² boycotts are often secondary to an analysis of competitive effects. Historically, if a boycott flowed from—or facilitated—price or output fixing, the conduct would more likely be condemned as per se illegal.⁹³ *Superior Court Trial Lawyers Ass’n* is but the latest example.⁹⁴ In a much older case, *Eastern States Retail Lumber Dealers’ Ass’n v. United States*,⁹⁵ retail lumber detailers collectively refused to buy from wholesalers who also dabbled in the retail market.⁹⁶ The Supreme Court affirmed the finding that this blacklist violated the Sherman Act. Subsequently, in *Klor’s v. Broadway-Hale Stores, Inc.*,⁹⁷ the Court placed group

respondents’ restraint of trade thus do not make it any less unlawful.”); *see also* *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 507 n.10 (1988) (“It is admittedly difficult to draw the precise lines separating anticompetitive political activity that is immunized despite its commercial impact from anticompetitive commercial activity that is unprotected despite its political impact . . .”).

⁸⁸ *See supra* notes 24-25.

⁸⁹ *See* ANDREW I. GAVIL, WILLIAM E. KOVACIC, JONATHAN B. BAKER & JOSHUA D. WRIGHT, *ANTITRUST LAW IN PERSPECTIVE: CASES, CONCEPTS AND PROBLEMS IN COMPETITION POLICY* 166, 600-10 (3d ed. 2017).

⁹⁰ *Id.* at 166, 601.

⁹¹ *But see* Jonathan B. Baker, *Exclusion as a Core Competition Concern*, 78 *ANTITRUST L.J.* 527, 555, 589 (2013).

⁹² HOVENKAMP, *supra* note 20, at 280. As Professor Hovenkamp elaborates, “[i]n most antitrust litigation involving refusals to deal the refusal itself is not the violation. Many antitrust complaints brought by the victims of refusals to deal allege that the defendants were involved in illegal monopolization, tying, price fixing, resale price maintenance or vertical nonprice restraints, or an illegal merger.” *Id.*

⁹³ *Id.* at 239.

⁹⁴ *See* *FTC v. Superior Ct. Trial Lawyers Ass’n*, 493 U.S. 411, 430-32 (1990) (suggesting that even if boycott were “uniquely expressive,” per se treatment would still be warranted).

⁹⁵ 234 U.S. 600 (1914).

⁹⁶ *Id.* at 606.

⁹⁷ 359 U.S. 207 (1959).

boycotts into the per se illegal category of actions violating antitrust law.⁹⁸ In *Klor's*, an electronics retailer was alleged to have conspired with manufacturers and distributors to boycott a competitor of the retailer.⁹⁹ The Court deemed this scheme anticompetitive (“interfer[ing] with the natural flow of interstate commerce”) and monopolistic (“[having] a monopolistic tendency”).¹⁰⁰

Exclusionary group boycotts, on the other hand, require more nuanced analysis—for instance, whether the defendants collectively wielded market power and whether their actions enhanced efficiency.¹⁰¹ These were among the inquiries in *Northwest Wholesale Stationers v. Pacific Stationery & Printing Co.*,¹⁰² where a purchasing cooperative of office supply retailers expelled Pacific Stationery & Printing, a member that had functioned as both a wholesaler and a retailer.¹⁰³ Pacific sued the cooperative for enacting a group boycott in violation of section 1 of the Sherman Act,¹⁰⁴ but the Court declined to extend the per se line of cases to this setting.¹⁰⁵ The evaluation of this breadth of factors anticipates the tortuous analysis of more recent exclusion cases.¹⁰⁶ It also emphatically marks the shift in antitrust law’s treatment of concerted refusals to deal from per se illegality to rule of reason.¹⁰⁷

In truth, the facts in several foundational group boycott cases might be more appropriately classified as exclusionary than collusive.¹⁰⁸ Hence, the evolution from per se illegality to rule of reason in these cases reflects two possibilities: either courts adopted the nuanced rule of reason analysis over time for all group boycotts, or they did so only for exclusionary group boycotts. We believe that precedent suggests the latter possibility. Given the forceful defense of the per se approach in *Superior Court Trial Lawyers Ass’n*,¹⁰⁹ as well as the scrutiny over

⁹⁸ See *id.* at 212 (“Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category.”).

⁹⁹ *Id.* at 209.

¹⁰⁰ *Id.* at 213.

¹⁰¹ See, e.g., *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 294 (1985).

¹⁰² *Nw. Wholesale Stationers, Inc.*, 472 U.S. 284.

¹⁰³ *Id.* at 287.

¹⁰⁴ *Id.* at 288.

¹⁰⁵ See *id.* at 296.

¹⁰⁶ See, e.g., *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2277 (2018) (outlining three-step burden-shifting framework of rule of reason test and finding plaintiffs unsuccessful in showing first step of whether defendant’s actions resulted in anticompetitive effects that harm relevant market).

¹⁰⁷ See, e.g., *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 136-37 (1998).

¹⁰⁸ See GAVIL ET AL., *supra* note 89, at 603, 605-07 (summarizing alternate views of *Eastern States Retail Lumber Dealers’ Ass’n* and *Klor’s*).

¹⁰⁹ 493 U.S. 411, 430-35 (1990) (“A rule that requires courts to apply the antitrust laws ‘prudently and with sensitivity’ whenever an economic boycott has an ‘expressive component’ would create a gaping hole in the fabric of those laws.” (quoting *Superior Ct. Trial Laws. Ass’n v. FTC*, 856 F.2d 226, 234, 249 (D.C. Cir. 1988), *rev’d*, 493 U.S. 411)).

concerted action among competitors,¹¹⁰ collusive group boycotts likely merit per se treatment.¹¹¹ Secondly, courts need not delve into market power analysis if collusion or conspiracy is established.¹¹²

To be sure, the sample size of expressive boycott cases remains small, so it is difficult to extrapolate firm rules.¹¹³ How the distinctions between purely economic and purely political boycotts intersect with the distinctions between collusive and exclusionary group boycotts remains uncertain. For ease of analysis, however, let us assume that a concerted refusal of African-American consumers to purchase wigs and extensions from Korean American-owned firms qualifies as collusive, horizontal behavior. Such a boycott would certainly implicate exclusionary behavior—for instance, walling off Korean-American incumbents from Black purchasing power. But we can set that aside to focus on the conceptually clearer instances of African-American buyers collectively deciding to forego convenience and perhaps lower prices in a boycott of Korean-American retailers. Such a boycott would certainly fix the output of wigs and hair extensions; it would ultimately drive down sales by Korean American-owned incumbents and drive up sales by African-American competitors.

III. THEORETICAL CONSIDERATIONS

The treatment of a collusive group boycott by African-American consumers of Korean American-owned retailers would be uncertain under antitrust precedent. This Part explores several theoretical implications of such a boycott. One goal of this discussion is to elucidate where the law should go. Another goal is to highlight the questions of inequality and interracial relations raised by this peculiar ESM market.

A. *Would Racial Solidarity Stave Off Boycott Cheating?*

The viability of a boycott depends closely on the ability of consumers to maintain cohesion. Once a boycott is called, consumers must not deviate; otherwise, the boycott falls apart.¹¹⁴ Consumer boycotts are difficult to maintain.

¹¹⁰ See HOVENKAMP, *supra* note 20, 250-51 (discussing antitrust law's particular scrutiny towards joint and concerted activity as opposed to unilateral conduct).

¹¹¹ See also Greene, *supra* note 4, at 1065-67, 1094 (suggesting expressive boycotts are sometimes analyzed under per se approach); Richman, *supra* note 30, at 341-46 (distinguishing when group boycotts might be analyzed under per se versus rule of reason).

¹¹² See *Superior Ct. Trial Laws. Ass'n*, 493 U.S. at 436 ("Conspirators need not achieve the dimensions of a monopoly, or even a degree of market power any greater than that already disclosed by this record, to warrant condemnation under the antitrust laws."). One of the Court's holdings in *Superior Court Trial Lawyers Ass'n* was to overturn the appeals court's requirement that the FTC prove the boycotters held market power. See *id.* at 429-30.

¹¹³ See Greene, *supra* note 4, at 1068 (bemoaning lack of cases explicitly addressing intersection of First Amendment and antitrust law).

¹¹⁴ See Peter C. Carstensen, *Buyer Cartels Versus Buying Groups: Legal Distinctions, Competitive Realities, and Antitrust Policy*, 1 WM. & MARY BUS. L. REV. 1, 26-27 (2010) (noting that boycotts can be "easily disrupted" by buyer defections).

Despite public organization, they hinge on private discipline.¹¹⁵ Consumers predisposed to not participate in a given boycott are prone to rationalizing their choices by second-guessing the campaign's efficacy.¹¹⁶

Thus, as with cartels and other horizontal conspiracies, boycotts must contend with the incentive to cheat. Every member of a cartel faces the temptation to defy cartel rules by secretly selling products.¹¹⁷ A classic challenge in a cartel, then, is to enforce the rules of an illegal scheme.¹¹⁸ In boycotts, defection takes the form of consumers surreptitiously buying from boycotted sellers.¹¹⁹

For an African-American group boycott of Korean American-owned hair stores, the temptation to cheat may be strong: incumbent hair stores may be cheaper or closer, or they may offer a greater variety of products (whose quality can be assessed by touch) than insurgents. Additionally, African American-owned challengers currently utilize distribution chains (e.g., online, through stylists, and in limited physical locations) that are less immediate and less accessible than brick-and-mortar hair stores.¹²⁰ Given the large and unwieldy class of hypothetical boycotters in the wigs and extensions market, some individual defections are inevitable and could quickly snowball to threaten an entire campaign.

Still, a boycott in furtherance of racial solidarity might be different. Fueled by perceptions of racial justice rather than (or as much as) desires for economic gain, these boycotts could draw strength from the very factor that renders them protean under antitrust: social and political (i.e., noneconomic) goals. According to the scholarly literature on consumer boycotts and social protests, African Americans are more likely than other races to stage boycotts.¹²¹ This may be due to the high degree of marginalization of African Americans by society.¹²²

¹¹⁵ See Monroe Friedman, *Consumer Boycotts in the United States, 1970-1980: Contemporary Events in Historical Perspective*, 19 J. CONSUMER AFFS. 96, 116 (1985) (noting that “[t]oo many demands on shoppers to change their buying habits, especially if these demands are conflicting and controversial, might well lead to a lessening of consumer cooperation and involvement”).

¹¹⁶ Stefan Hoffmann, *Are Boycott Motives Rationalizations?*, 12 J. CONSUMER BEHAV. 214, 219 (2013).

¹¹⁷ HOVENKAMP, *supra* note 20, at 185-92; see also George J. Stigler, *A Theory of Oligopoly*, 72 J. POL. ECON. 44, 46 (1964) (“The literature of collusive agreements, ranging from the pools of the 1880’s to the electrical conspiracies of recent times, is replete with instances of the collapse of conspiracies because of ‘secret’ price-cutting.”).

¹¹⁸ For cartel pitfalls and strategies, see Margaret C. Levenstein & Valerie Y. Suslow, *What Determines Cartel Success?*, 44 J. ECON. LITERATURE 43, 67-75 (2006).

¹¹⁹ See Carstensen, *supra* note 114, at 35-36.

¹²⁰ See *supra* text accompanying notes 52-55.

¹²¹ See MONROE FRIEDMAN, CONSUMER BOYCOTTS: EFFECTING CHANGE THROUGH THE MARKETPLACE AND THE MEDIA 90 (1999); Darren E. Sherkat & T. Jean Blocker, *The Political Development of Sixties’ Activists: Identifying the Influence of Class, Gender, and Socialization on Protest Participation*, 72 SOC. FORCES 821, 836 (1994).

¹²² See Naomi A. Gardberg & William Newbury, *Who Boycotts Whom? Marginalization, Company Knowledge, and Strategic Issues*, 52 BUS. & SOC’Y 318, 326, 343 (2009).

Under theories of sociology, Black solidarity in the wigs and extensions market may also be more likely because an ethnic community withdraws into itself when under assault.¹²³ In this era, we are grappling with racial justice. As a social movement, Black Lives Matter underscores the need for, but also the complexity of, “contestation and solidarity” to advance racial justice.¹²⁴ This awareness catalyzes Black solidarity generally and likely also in the wigs and extensions market specifically, where interracial antagonism is heightened because consumers and producers are racially homogenous but misaligned.¹²⁵ In African-American communities, daily transactions with small business owners, often immigrants, have been fraught with tension. This is true in hair stores and other businesses,¹²⁶ and it has been true for decades.¹²⁷ At times, producer-consumer frictions in these markets have fomented a more generalized Asian-Black antagonism.¹²⁸ Even if the media has played up these antagonisms,¹²⁹ they remain etched in the historical memories of both Korean-American and African-American communities.¹³⁰

While historical and contemporary factors might have forged racial solidarity among African-American consumers, their unity is also undermined by the

¹²³ See Turner & Bonacich, *supra* note 7, at 154.

¹²⁴ Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 414 (2018).

¹²⁵ See *supra* notes 44-48.

¹²⁶ See, e.g., Roberts, *supra* note 60 (recounting Black protest and boycott of minority-owned beauty store after owner choked Black customer); *Activist Devin Robinson Calls for Boycott of Non-Black Owned Beauty Supply Stores*, *supra* note 60 (highlighting Professor Devin Robinson’s call for boycott after he was thrown out of beauty supply store by Korean owner).

¹²⁷ See Kyeyoung Park, *Use and Abuse of Race and Culture: Black-Korean Tension in America*, in *KOREANS IN THE HOOD: CONFLICT WITH AFRICAN AMERICANS* 60, 62 (Kwang Chung Kim ed., 1999) (focusing on conflicts between African-American and Korean-American residents in South Central Los Angeles and discussing racial, cultural, and economic factors).

¹²⁸ See *Black Americans to Boycott Asian American Businesses Beginning August 1, 2021*, THYBLACKMAN.COM (July 18, 2021), <https://thyblackman.com/2021/07/18/black-americans-to-boycott-asian-american-businesses-beginning-august-1-2021/> [<https://perma.cc/U247-P29Q>] (calling for boycott of Asian-owned businesses in part because of African Americans being blamed for anti-Asian violence). One of the most unfortunate incidents in recent years was the trial, protests, and counterprotests after Peter Liang, a Chinese-American police officer, killed an unarmed Black man, Akai Gurley. Erin Trahan, *Documentary ‘Down a Dark Stairwell’ Examines Divergent Responses to Racism in Policing*, WBUR (Feb. 4, 2021), <https://www.wbur.org/news/2021/02/04/documentary-down-a-dark-stairwell> [<https://perma.cc/5Z6U-QBED>] (reviewing documentary by Ursula Liang (no relation) recounting violence, protests, and negotiations of minority myths and white supremacy).

¹²⁹ NADIA Y. KIM, *IMPERIAL CITIZENS: KOREANS AND RACE FROM SEOUL TO LA 73* (2008) (accusing mainstream American media of stoking Black-Korean conflict during 1992 Los Angeles riots by “continuously airing footage of the Korean merchant, Soon Ja Du, shooting Black teenager LaTasha Harlins, and of airing scenes of Black animosity towards Koreans”).

¹³⁰ See *id.* at 128-34.

dynamism of racial formation. So many factors influence racial and ethnic formation that race should not be presumed to be static or homogenous.¹³¹ This heterogeneity of consumers bears out in studies of boycotts. For example, some scholars have found that members of marginalized groups are more likely to boycott, especially those who are economically upwardly mobile.¹³² By contrast, less affluent and upwardly mobile consumers may be less willing to forego convenience, price, and choice to sustain a boycott.¹³³ The value of intraracial solidarity is certainly ripe for future study. An empirical project might quantify this value, for instance, by measuring the price points and other conditions at which African-American consumers switch to and from coracial retailers. Even outside the boycott hypothetical, African Americans vary greatly in their beauty preferences. Natural has been the style of choice for Black consumers for decades.¹³⁴ Despite society's premium on straight hair,¹³⁵ African-American consumers should not be presumed to always favor the same. Accordingly, the intraracial solidarity in this market becomes vastly more complicated, as does demand elasticity.

B. *What Does Consumer Market Power Look Like?*

Closely related to intraracial solidarity is the issue of market power. Although market power analysis might not be necessary in the easy cases of collusive group boycotts, it clarifies the propensity for anticompetitive effects. In the wigs and extensions market, market power implicates unique questions. Market power is usually measured at the firm level, and the monopsony context generally features one large buyer (usually a reseller or an employer) dealing with numerous small sellers (usually a wholesaler, manufacturer, or labor force).¹³⁶ Here, however, we are evaluating the collective market power of

¹³¹ See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 10-13 (3d ed. 2015) (summarizing book's exploration of racial formation through paradigms of ethnicity, class, and nation).

¹³² See Gardberg & Newbury, *supra* note 122, at 327-28, 350 (hypothesizing and concluding that "a likely boycotter may be someone who has socially marginal roots but is economically upwardly mobile").

¹³³ See *id.* Slightly further afield, these findings turn on its head the notion from immigration theory that migration is driven by relative deprivation, the sense that one is less well off than one's immediate neighbors. Here, the variation is that upward mobility may heighten the sensitivity of some boycotters to their marginalization at the hands of boycotted businesses.

¹³⁴ See *Natural Hair Movement Drives Sales of Styling Products in US Black Haircare Market*, MINTEL (Dec. 17, 2015), <https://www.mintel.com/press-centre/beauty-and-personal-care/natural-hair-movement-drives-sales-of-styling-products-in-us-black-haircare-market> [<https://perma.cc/AA77-U9WW>]; AYANA D. BYRD & LORI L. THARPS, *HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA* 54-59, 67-68, 169-70 (2001).

¹³⁵ See Onwuachi-Willig, *supra* note 18, at 1093; Greene, *supra* note 18, at 1387.

¹³⁶ See Roger D. Blair & Jeffrey L. Harrison, *Antitrust Policy and Monopsony*, 76 CORNELL L. REV. 297, 297-98 (1991); Hiba Hafiz, *Labor Antitrust's Paradox*, 86 U. CHI. L. REV. 381, 383 (2019).

millions of individual, atomistic consumers, all with distinct preferences.¹³⁷ What binds these consumers is race. Can it be said that race constitutes market power? Is race cohesive enough as a force to overcome the impulse to defect from a consumer boycott?

Even if the answers to the above questions are yes, measuring market power is hardly straightforward. In a boycott setting, buyer power would be the ability “to depress the price [the buyer] pays a supplier or obtain more favorable nonprice terms.”¹³⁸ While a racial boycott in the wigs and extensions market is not geared to lowering the prices of Korean-American incumbents, this definition is broad enough to encompass nonprice terms. Of course, given antitrust’s disregard of noneconomic concerns, “nonprice concessions”¹³⁹ might refer to economic advantages, rather a preference to steer business to coracial producers.

Either way, from the standpoint of anticompetitive effects, African-American consumers certainly have the propensity to alter output and altogether exclude Korean American-owned retailers. These anticompetitive effects would constitute direct evidence of market power.¹⁴⁰ As for indirect evidence, wading through product and geographic market definitions and then calculating market shares will generate still more questions about demand elasticity as well as interchangeability with substitute products.¹⁴¹ These, in turn, illuminate social concepts such as intraracial solidarity and the pressures to conform to straight hair.¹⁴²

This discussion has unfolded over the market power of consumers—or, more accurately, consumer buying power. It is a discussion that the boycotts case law

¹³⁷ Further inverting conventional notions of monopsony, these millions of buyers are transacting with a smaller number of hair stores, probably in the tens of thousands. See *Why Do Koreans Own the Black Beauty Supply Business?*, *supra* note 12 (estimating number of Korean-owned beauty supply stores at 9,000).

¹³⁸ John B. Kirkwood, *Powerful Buyers and Merger Enforcement*, 92 B.U. L. REV. 1485, 1493 (2012) (emphasis omitted). Professor Kirkwood distinguishes buyer power from monopsony power, “the power of a purchaser to profitably reduce the price of an input below the competitive level.” *Id.*

¹³⁹ *Id.* at 1493-94.

¹⁴⁰ See *United States v. Microsoft Corp.*, 253 F.3d 34, 51 (D.C. Cir. 2001); see also Daniel A. Crane, *Market Power Without Market Definition*, 90 NOTRE DAME L. REV. 31, 45 (2014) (“The most commonly repeated maxim—that proof of restricted output and supracompetitive prices establishes market power—is not an analytical criterion at all but merely repeats the definition of market power.”).

¹⁴¹ On the unreliability of market definition, see Louis Kaplow, *Why (Ever) Define Markets?*, 124 HARV. L. REV. 437 (2010); and Sean P. Sullivan, *Modular Market Definition*, 55 U.C. DAVIS L. REV. 1091, 1097-98 (2021). On the classic expositions into cross-elasticities, see *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 394, 400, 404 (1956); and *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962).

¹⁴² For a fuller discussion of market power in the retail of wigs and extensions, see Chang, *supra* note 6, at 503-15.

invites.¹⁴³ Yet the literature on buyer power tends to assess the power of monopsonies, such as resellers and employers.¹⁴⁴ Monopsonies, of course, are not consumers, which is why monopsonies might nevertheless be reviled even if in theory they depress prices.¹⁴⁵ Nonetheless, the market power inquiry forces us to confront whether we should incorporate the insights of buyer power.

C. *What Do Offsetting Efficiencies Look Like?*

If rule of reason were the proper standard for evaluating expressive boycotts,¹⁴⁶ additional questions would ensue. For one, what might efficiencies look like? Offsetting efficiencies can insulate certain anticompetitive schemes from antitrust liability.¹⁴⁷ In the wigs and extensions market, efficiencies would include the ease of communication between coracial consumers and retailers, the ability of coracial manufacturers and retailers to anticipate beauty trends, and the speed of distributing innovations in hair products to consumers.

Models do exist for efficient buyer-seller transactions through coethnic vertical integration. Ethnic entrepreneurs have been able to squeeze efficiencies out of transacting with only in-group counterparties.¹⁴⁸ Of course, this is premised on assumptions that intraracial business transactions proceed smoothly because of shared cultural and social language, custom, and values—as well as the possibility that informal enforcement mechanisms rooted in the community will hold counterparties to their deals.¹⁴⁹

As a corollary, another consequence of coethnic vertical integration is exclusion of out-group competitors. This exclusion is where antitrust claims germinate.

¹⁴³ See *Superior Ct. Trial Laws. Ass'n v. FTC*, 856 F.2d 226, 252 (D.C. Cir. 1988), *rev'd*, 493 U.S. 411 (1990); see also Greene, *supra* note 4, at 1102-03 (advocating for speech protections if boycotters lack market power and cause no antitrust harm).

¹⁴⁴ See, e.g., *supra* note 136.

¹⁴⁵ For a summary, see HOVENKAMP, *supra* note 20, at 17-20.

¹⁴⁶ Greene, *supra* note 4, at 1094 (arguing for rule of reason approach).

¹⁴⁷ For a discussion of efficiencies in the ethnically segmented diamond industry, see Richman, *supra* note 30, at 355-58. For efficiencies on the seller side of the wigs and extensions market, see Chang, *supra* note 6, at 517-18.

¹⁴⁸ See Wilson & Martin, *supra* note 51, at 137; Jennifer Lee, *Retail Niche Domination Among African American, Jewish, and Korean Entrepreneurs: Competition, Coethnic Advantage and Disadvantage*, 42 AM. BEHAV. SCIENTIST 1398, 1410 (1999); NANCY ABELMANN & JOHN LIE, BLUE DREAMS: KOREAN AMERICANS AND THE LOS ANGELES RIOTS 136 (1997); IN-JIN YOON, ON MY OWN: KOREAN BUSINESSES AND RACE RELATIONS IN AMERICA 331 (1997).

¹⁴⁹ Barak Richman has delved into these mechanisms among Jewish diamond dealers in New York. Richman, *supra* note 17, at 331-33; see also Bernstein, *Opting Out of the Legal System*, *supra* note 17, at 119-21.

Ostensibly, efficiencies should enhance consumer welfare.¹⁵⁰ In monopsonized markets, harms to consumer welfare through long-term reduction in output make monopsonies and buyer cartels unpalatable even if they decrease price in the short term.¹⁵¹ But consumers are not monopsonies, and buying from Black-owned hair stores may well accord with consumer preferences—even if prices are comparable to, or perhaps higher than, Korean American-owned stores. This preference, in turn, hearkens to the debate over whether antitrust accounts for noneconomic goals.

D. *Should the Producer and Consumer Sides Be Assessed with Parity?*

ESM markets raise questions of parity between the producer and consumer sides of the market. Because each side is ethnically homogenous but misaligned, it would seem that the antitrust analysis that unfolds for consumers should mirror the process for producers. Thus, if a large number of small, Korean American-owned firms collectively exert market power as sellers,¹⁵² a large number of individual African-American consumers might do the same as buyers.¹⁵³ However, must a court strike a consumer boycott in this market under group boycott law as easily as it finds a violation at the producer end if Korean American-owned hair stores resort to collusion, exclusion, and information exchanges to maintain dominance?

As a matter of doctrine, disparity in treatment of producers versus consumers might be justified. Expressive boycotts, after all, enjoy First Amendment protections.¹⁵⁴ As a theoretical matter, this balance between consumers and producers is entangled with the inequality between African Americans and Korean Americans, an ethnicity in the racialized category of Asian Americans. Whether through the lens of collusion and exclusion at the producer end or the lens of expressive boycotts at the consumer end, a court may be called at some point to settle a controversy in this market. The essence of such a controversy is that two peoples of color are pitted against one another, each with their unique histories of marginalization and subjugation.

¹⁵⁰ On the centrality of consumer welfare in antitrust as well as discontents, see, for example, ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 91 (1978); Sandeep Vaheesan, *The Twilight of the Technocrats' Monopoly on Antitrust?*, 127 *YALE L.J.F.* 980, 980-82 (2018).

¹⁵¹ HOVENKAMP, *supra* note 20, at 18-20, 200.

¹⁵² For a discussion of market power among Korean-American retailers, including proxies such as supplier diversity, see Chang, *supra* note 6, at 503-12.

¹⁵³ This resembles the approach to monopsonies. See HOVENKAMP, *supra* note 20, at 17 (“The mirror image of monopoly is ‘monopsony.’”).

¹⁵⁴ Then again, exclusive dealings between South Korean wig suppliers and Korean-American retailers may foster efficiencies.

CONCLUSION

The market for wigs and hair extensions upends several conventions in antitrust doctrine while provoking theoretical quandaries. A hypothetical boycott in this ESM market would force the antitrust case law on expressive boycotts, currently splintered into two lines, to settle how to dispose of boycotts motivated by social *and* economic goals. Meanwhile, such a boycott would push the boundaries of market power and cartel theory, if power can be attributed to millions of African-American consumers.

A finding of buyer power in this market rests on intraracial solidarity, but racial formation is a dynamic process. Solidarity among consumers cannot be presumed—nor can demand inelasticity for wigs and extensions. These complications undercut buyer power, but they also suggest that consumers and producers are not locked forever in antagonism reinforced by intraracial and intraethnic cohesion.

Given the ambivalence from the theoretical explorations of the wigs and extensions market, it is perhaps premature to push the doctrine on expressive boycotts in any direction. Ultimately, though, antitrust reduces relationships to competition; in this view, either consumers or producers must prevail. Theory and doctrine on racially collusive boycotts might remain unsettled for now, but research must continue to strive for a resolution. This market is changing too quickly for the law not to keep up.