

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

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U.S. DISTRICT COURT
WESTN DIST. KENTUCKY

_____)
CONWOOD COMPANY, L.P.,)
CONWOOD SALES COMPANY, L.P.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES TOBACCO COMPANY,)
UNITED STATES TOBACCO SALES AND)
MARKETING COMPANY INC., UNITED)
STATES TOBACCO MANUFACTURING)
COMPANY INC. and UST INC.,)
)
)
Defendants.)
_____)

Civil Action No. 5:98CV-108-R

JURY TRIAL DEMANDED

Complaint

Nature of the Action

1. Conwood Company, L.P., and Conwood Sales Company, L.P. (collectively, "Conwood") seek treble damages and injunctive relief to redress injuries to competition in the national market for moist snuff caused by United States Tobacco Company, United States Tobacco Sales and Marketing Company Inc., United States Tobacco Manufacturing Company Inc., and UST Inc. (collectively, "UST"). UST, the world's largest manufacturer of smokeless tobacco, has maintained a monopoly share in excess of 82% of this approximately \$1.5 billion market through illegal and exclusionary conduct that

has suppressed competition, raised prices, stifled innovation, and reaped hundreds of millions in profits each year for UST.

2. In 1979 Conwood introduced Hawken™, which competed with UST's moist snuff. Hawken was offered in a plastic can, which preserves freshness far longer than the cardboard containers then used by UST. UST had used the brief "shelf life" of cardboard containers to keep rivals out of the market. In addition, UST had instituted a policy -- which became the industry standard -- of permitting retailers to return all dated products. By combining this policy with packaging that had a short shelf life, UST imposed huge costs on rivals seeking to introduce new products to the market. No other firm could afford to enter the market on these terms. But Conwood's long-lived plastic cans reduced returns of stale product, allowed Conwood to elude the previously insurmountable barrier, and for the first time offered moist snuff consumers a choice.

3. UST "tolerated" Conwood's entry into the market while Hawken's sales were negligible. But as Hawken's plastic can, "rough cut," and other innovations started to win consumers, and as Conwood introduced other new products directly competitive with UST's brands, UST abused its monopoly power to prevent distribution of competing products. It regularly removed or hid Conwood's moist

snuff, eliminated or vandalized Conwood's advertising and product display racks, induced retailers and distributors to stop carrying Conwood's competitive products in the areas where they were most popular, and spread lies to consumers about Conwood's competitive products (for example, that Conwood's moist snuff was tainted with "stems" and even fiberglass). UST also schemed to ban advertising and other forms of promotion by which the smaller firms compete, and through false information to promote legislation that would put Conwood and other small moist snuff manufacturers (but not UST) out of business.

4. Through its exclusionary conduct, UST succeeded in halting the substantial sales growth that Conwood had achieved through competition on the merits. Having suppressed competition, UST was able to raise prices on its premium products year after year without interruption. But for UST's suppression of competition, Conwood would have continued to win customers through product innovation and lower prices, and would thereby have increased its market share and its profits. Conwood estimates that its actual damages, before trebling, exceed \$400 million.

Parties, Jurisdiction, and Venue

5. Plaintiffs Conwood Company, L.P., and Conwood Sales Company, L.P., are Delaware limited partnerships with their

principal places of business in Memphis, Tennessee. Plaintiffs manufacture and distribute moist snuff, including Kodiak™, Cougar™, and other brands. Conwood transacts business throughout the United States, including this district, and has a manufacturing facility located within this district at Bowling Green, Kentucky. Conwood also buys substantial amounts of tobacco for use in smokeless products from farmers located in this district.

6. Defendants United States Tobacco Company, United States Tobacco Sales and Marketing Company Inc., United States Tobacco Manufacturing Company Inc., and UST Inc. are Delaware corporations with their principal places of business in Greenwich, Connecticut.

United States Tobacco Sales and Marketing Company Inc. is one of two wholly owned subsidiaries of defendant United States Tobacco Company, and is engaged in the marketing and sales of smokeless tobacco products, in this district and throughout the United States.

United States Tobacco Manufacturing Company Inc. is the other wholly owned subsidiary of defendant United States Tobacco Company, and is engaged in the manufacture of smokeless tobacco products including moist snuff in this district (at a 900,000 square foot complex of offices, plants, and warehouses in Hopkinsville,

Kentucky) and elsewhere in the United States.

United States Tobacco Company operates exclusively through its two wholly owned subsidiaries to manufacture, market and sell smokeless tobacco products including moist snuff in this district and throughout the United States. On information and belief, *United States Tobacco Company* controls the acts and decisions of both of its wholly owned subsidiaries, which function as agents of *United States Tobacco Company* in this district and elsewhere.

UST Inc. operates exclusively through its wholly-owned subsidiary, *United States Tobacco Company* to manufacture, market and sell smokeless tobacco products including moist snuff in this district and throughout the United States. On information and belief, *UST Inc.* controls the acts and decisions of its wholly owned subsidiary *United States Tobacco Company* and, through that subsidiary, controls the acts and decisions of the two wholly owned subsidiaries of *United States Tobacco Company*, which function as agents of *UST Inc.* in this district and elsewhere.

UST transacts business throughout the United States, including this district, directly and through agency. *UST* also has hundreds of millions of dollars worth of assets in this district and buys substantial amounts of tobacco for use in smokeless products from

farmers located in this district.

7. This Court has subject matter jurisdiction over the action, personal jurisdiction over each of the defendants, and venue is proper in this district.

a. *Subject Matter Jurisdiction* exists because the action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, to redress and prevent injuries caused by UST's violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, and the Lanham Act. 28 U.S.C. §§ 1331 and 1337. This action also states claims under state law arising from the same and related conduct, for which the Court has jurisdiction under 28 U.S.C. § 1367.

b. *Personal Jurisdiction*. The Court has personal jurisdiction over each of the defendants under Section 12 of the Clayton Act, 15 U.S.C. § 22, and Kentucky Revised Statutes § 454.210.

1. Defendant United States Tobacco Manufacturing Company Inc. has registered to do business and therefore has consented to personal jurisdiction in this Commonwealth.

2. Defendant United States Tobacco Sales and Marketing Company Inc. may be found and transacts business in this district, 15 U.S.C. § 22, the claims stated herein arise from its transacting business, contracting to supply goods and services, and causing

tortious injury by acts or omissions in this Commonwealth, and the company regularly does and solicits business, engages in other persistent course of conduct, and derives substantial revenue from goods used or consumed or services rendered in this Commonwealth. The secretary of state of the Commonwealth is therefore the designated agent for service of process on this defendant. Kentucky Revised Statutes § 454.210(2)(a)(1)-(4).

3. Defendants United States Tobacco Company and UST Inc., directly or by their agents, may be found and transact business in this district, 15 U.S.C. § 22, the claims stated herein arise from their transacting business, contracting to supply goods and services, and causing tortious injury by acts or omissions in this Commonwealth, and the companies regularly do and solicit business, engage in other persistent course of conduct, and derive substantial revenue from goods used or consumed or services rendered in this Commonwealth. The secretary of state of the Commonwealth is therefore the designated agent for service of process on these defendants. Kentucky Revised Statutes § 454.210(2)(a)(1)-(4).

c. Venue is proper in this district under 15 U.S.C. § 22, 28 U.S.C. § 1391, Local Rule 4, and Kentucky Revised Statutes § 452.460, because defendants maintain offices, have agents,

transact business, and are found in this district. Certain of the unlawful acts alleged herein were performed and had effects within this district.

Trade and Commerce

8. Moist snuff is the dominant smokeless tobacco product in the United States. In 1996, moist snuff accounted for 76% by value (or approximately \$1.5 billion in sales) of the smokeless tobacco sold in the United States. Moist snuff is the only smokeless tobacco market that has grown in recent years. The moist snuff market has tripled in size in the last ten years alone.

9. According to surveys, consumers who use moist snuff typically enjoy it in a "pinch" placed between the cheek and gum. Moist snuff consumers do not consider other forms of smokeless tobacco -- dry snuff and chewing tobacco -- to be substitutes for moist snuff, and typically will not switch to such products irrespective of price differentials.

10. Smokeless manufacturers cannot readily convert production facilities devoted to other tobacco products to production of moist snuff. Nor can these or other firms effectively enter the moist snuff market. There are virtually insuperable barriers to entry, raised in substantial part by UST's dominant and established brands, its huge cash resources and history of anticompetitive

tactics, its longstanding and often exclusive contracts with farmers, distributors, and retailers, and the increasingly narrow channels for distribution of tobacco products.

11. The market for moist snuff is a national market in which only four firms are considered competitors: UST, Conwood, Swisher International, Inc. ("Swisher"), and Swedish Match North America, Inc. ("Swedish Match").

12. For decades UST had almost 100% of the moist snuff market, which enabled it to charge supra-competitive prices and thereby collect billions of dollars from consumers. UST controls the oldest and best known moist snuff trade brands -- Copenhagen (introduced in 1822) and Skoal (1934). UST enjoys "prodigious free cash generation" (Goldman, Sachs & Co.) from high mark-ups on its low cost moist snuff products and domination of the chain of distribution -- with operating net profits in 1997 of over \$712 million. UST continues to maintain a market share in excess of 82% of the moist snuff market.

13. Conwood's share of the moist snuff market is approximately 13.5%. In recent years Conwood's share growth has effectively ceased. Conwood's market share is expected to remain flat or decline in the future if UST's anticompetitive conduct is not enjoined. The other two firms (Swisher and Swedish Match)

total approximately 4.3% of the market. According to industry analysts, their shares are also expected to remain flat or decline.

History of UST and Conwood

14. Until just after the turn of the century, all moist snuff sales were controlled by a cartel known as the American Tobacco Trust. This cartel was broken up in a seminal Sherman Act prosecution. Three smokeless firms (now known as UST, Swisher, and Conwood) were created. UST grew dramatically and soon became dominant. Its growth was fueled by its monopoly of the lucrative moist snuff market. UST Inc. now ranks among the 200 largest publicly held U.S. companies. In 1997, UST Inc. reported sales from smokeless tobacco of \$1.18 billion.

15. Conwood and Swisher remained relatively small in the decades following dissolution of the cartel. Both marketed dry snuff or chewing tobacco, products that appealed to older, typically rural and less affluent consumers. In recent years, sales of these products have stagnated or declined.

Conwood Enters the Moist Snuff Market

16. Facing the decline of its traditional markets, Conwood recognized that to survive it had to venture into the growing moist snuff market. In 1979, after unsuccessful attempts to crack the UST monopoly with products sold under the brands Stag™ and

Wintermint™, Conwood introduced Hawken™, its first nationally distributed product that competed with UST's moist snuff brands. Hawken offered customers a new product with innovative packaging, at a competitive price.

17. Hawken's plastic can was an innovation of critical importance to Conwood's attempt to gain a foothold in a market wholly monopolized by UST. UST had used the short shelf life of its moist snuff products (which were packaged in cardboard containers, and thus susceptible to becoming stale within weeks of delivery to stores) to entrench its monopoly. By telling retailers and distributors that they could return stale product, UST effectively required any new entrant to bear the huge cost of paying for return of dated products even before the new entrant gained any share of the market. This prohibitive cost chilled competition. But Hawken's plastic can gave this product a far longer shelf life. This reduced significantly retailers' returns and allowed Conwood to enter the market with a new product as a robust competitor unintimidated by the huge return-cost barrier erected by UST.

18. UST initially took little notice of Conwood's entry into a market competitive with UST. UST representatives even told Conwood representatives that UST would "tolerate" Conwood's

marginal presence.

19. But Conwood sought to compete for -- and win -- substantial market share. And it quickly began to do just that. In 1981 it introduced a premium brand (Kodiak™) of moist snuff aimed directly at UST's premier Copenhagen™ and Skoal™ brands. With competitive pricing, innovative packaging and a different taste popular with consumers, Kodiak propelled Conwood's moist snuff sales to over \$30 million in 1985, and took its market share to nearly 9% in the same year.

20. Conwood continued to innovate and provide new products at competitive prices. In 1986 it introduced "J-racks." Designed for use in stores as a holder for round cans of moist snuff, these racks allow customers to see Conwood's advertising logo on the top of the moist snuff can. UST had long used "S-racks," which show only the can's side. The introduction of J-racks enhanced display of Conwood's products and thereby consumer awareness. This helped Conwood win sales and market share.

21. UST sought to sell only "premium" brands (Skoal and Copenhagen) at premium, supra-competitive prices. In 1995 Conwood challenged this monopoly price structure with the introduction of Cougar™, a discount-priced (or "value") brand of moist snuff. Cougar soon won sales from the premium brands. Conwood's popular

"value brand" benefitted consumers and threatened the huge profit margins that UST had long enjoyed.

UST's Campaign to Exclude Conwood

22. Conwood continued to innovate in the market and offer benefits to consumers with its J-racks, improved packaging, value brand pricing, popular new tastes, and other innovations. UST recognized that Conwood was likely to continue to grow significantly if UST did not arrest that growth. UST responded with systematic and illegal steps to restrain competition, and thus reduce the choices to consumers from Conwood and other small moist snuff manufacturers.

23. Using its monopoly power, UST developed a multi-faceted strategy of exclusionary acts for execution by its large nationwide sales force and others. On information and belief, these UST representatives acted at either the express direction, or with the tacit approval of, UST. Through these means UST sought to damage competition by eliminating or suppressing consumers' opportunity to be aware of and to choose Conwood products. This impaired competition permitted UST to impose annual price increases on consumers, for its premium moist snuff brands, without interruption. UST's exclusionary campaign included, but was not limited to:

24. *Suppression of Competition Through Theft of Conwood Moist Snuff, Distribution Racks, and Point of Sale Advertising.*

Conwood products are typically displayed in stores on special plastic racks that Conwood provides to the stores. Consumers are directed to these racks by placard (often called "point of sale") advertising. UST has routinely and systematically, in stores across the United States, taken Conwood moist snuff from the racks (to make it inaccessible to consumers), discarded or defaced Conwood distribution racks, and discarded or defaced Conwood point of sale advertising. In a recent one year period, for example, more than 10,000 Conwood racks were taken out of stores in California alone. This suppression of Conwood's distribution impeded competition and deprived consumers of choice. UST representatives have admitted to Conwood representatives that UST district managers tell sales representatives that the "way to get ahead" in UST is to remove Conwood's racks, that they must "turn up the heat on Conwood," and that if they do not "control the moist racks," they will be "writ[ten] up." When Conwood sales personnel have complained about removal of products, racks, or advertisements by UST, UST district managers have responded that "anything goes" and, in one particularly egregious instance, to "hold on to your pants . . . it's only going to get worse." (Photographs

documenting a few examples of this misconduct are attached hereto as Exhibit "A".)

25. *Suppression of Competition Through Exclusion of Competing Products Based on Misrepresented "Plan-o-Grams."* "Plan-o-grams" are schematic diagrams commonly used by large chain retail stores to set the exact location, type of display, and amount of space to be allotted to the various competing tobacco brands and companies. UST has employed plan-o-grams that exclude Conwood products from stores, contrary to the actual wishes of store management. UST has used these documents to persuade low-level store employees to permit UST to stock stores free of Conwood products. In early 1997, for example, UST took a sample plan-o-gram for Clark Oil stores -- a chain of some 200 stores primarily in Michigan -- and then misrepresented to individual stores that they were required to stock UST products and exclude Conwood products. This was untrue. UST's dominant market share made this scheme possible. Through such repeated fraudulent acts, UST denied consumers the benefits of choice.

26. *Suppression of Competition Based on False Representations that UST is the "Category Manager" With Authority To Control Store Shelves.* UST routinely removes Conwood racks, advertising and

products through deception of store personnel. An example of this deception is the "category manager" ruse. UST has falsely represented to low-level store employees that its representatives are the store's authorized "category manager" for smokeless tobacco products, with the right to set the shelves for all brands. Under color of this supposed authority, which in fact UST does not have, UST routinely arranges the smokeless tobacco products in a way that makes competitors' products unavailable or inaccessible. UST's dominant position in the market helped to make UST's claim of authority plausible. UST has successfully employed this tactic in Florida Winn-Dixie stores, Minnesota Food-N-Fuel outlets, and elsewhere.

27. *Suppression of Competition Through Frequent Rack Style Changes to Force Conwood from Stores.* UST, as the monopoly provider of moist snuff, dominates stores' moist snuff sections with its display racks. Conwood and other competitors attempt similarly to display their products on their own racks. Stores typically prefer to have all such racks be consistent in appearance. But UST sabotages such consistency by routinely replacing its racks with racks of a different style and shape. UST then discards Conwood's racks, with or without permission from the

store, because they do not conform in style and shape to the new UST racks. In the last few years -- and for no apparent purpose other than to remove Conwood racks and impose costs on Conwood -- UST has introduced short racks, tall racks, wall racks and others, across the United States.

28. *Exclusive Dealing Agreements.* UST has used its power as a monopolist to induce retail chains and stores across the United States to enter into written and oral agreements barring or restricting Conwood products, racks and point of sale advertising. These agreements, which cover thousands of stores, take many forms. For example:

a. UST has an agreement with some or all Wal-Mart Stores, Inc. outlets (a national chain of over 1900 stores) that gives UST control over the entire moist snuff section of the store. UST is permitted to install its own distribution racks; remove Conwood's distribution racks; force Conwood's products into UST racks; and restrict the space and placement of Conwood products in its racks. This agreement also prohibits Conwood in-store promotions and point of sale advertisements, which further and artificially suppresses demand for Conwood's products. UST reportedly has similar agreements with the 642-store Dairy Mart chain located in seven states; the 498-store WaWa chain; the 245-

store HEB Store chain; the 35-store Orton Convenience store chain; the Minute Man convenience chain; Uncle Willie's chain in Delaware; Quick Sav stores in Michigan; the Mountaineer Marts chain in West Virginia; and countless other retail outlets across the country.

b. Under the "Copenhagen Incentive Program," UST pays participating retailers across the country to help it restrict both the supply and demand for Conwood products. UST obtains control over all point of sale advertising ("[w]e will have primary positioning of all smokeless tobacco POS [point of sale]"). Participating retailers must also refuse to honor any Conwood promotional discounts ("[n]o competitive round can buy downs") and sample give-away programs (allowing UST "exclusive adult sampling rights").

c. Under its "Free Standing Display #2908 Placement Agreement" scheme, UST provides a moist snuff display stand and other inducements (including cash) to retailers; in return, UST products alone are permanently entitled to positioning on the stand's top shelf, and competitors are relegated to lower, less visible racks. Competitors' point of sale advertisements are restricted to small "product labels" immediately above their distribution slots, while UST is guaranteed advertising on a large overhead sign and on dominating "header cards" placed above all

distribution slots -- including Conwood's slots.

d. Pursuant to its "Customer Alliance Program," UST exchanges discounts on its prices for guarantees from chains and individual retailers that they will provide information about Conwood's sales to UST and give UST control of at least 80 percent of all moist snuff shelf space within the store.

(A few examples of these exclusive dealing contracts are attached hereto as Exhibit "B".)

29. *Disparagement of Conwood Products.* UST has regularly and systematically spread disparaging falsehoods about Conwood's products. It has, for instance, used the false pretext that Conwood products are "stale," "out-of-date," or have been "discontinued" in order to remove them from retailers' shelves; misrepresented that Conwood racks no longer "comply" with federal regulations and must be removed; perpetuated a myth that Conwood products contain fiberglass and are full of tobacco stems; and scrawled disparaging comments on Conwood ads, including "low quality." These disparagements are not isolated instances, but form part of the overall UST campaign to drive Conwood moist snuff products from store shelves and thereby perpetuate UST's monopoly. This is yet another respect in which UST has used its size and

monopoly power to destroy competition. (A videotape documenting a few examples of this misconduct is attached hereto as Exhibit "C".)

30. *Predatory pricing.* When retailers and distributors have persisted in carrying Conwood products, UST has offered its own products below cost for no economic purpose other than to drive Conwood from those distribution outlets.

31. Recognizing the threat from Conwood's discount brands, UST has also begun introducing its own discount product, Red Seal. It has largely limited distribution of this product, however, to regions where Conwood's discount products have threatened UST market share. In these areas, UST has systematically campaigned, in the words of one of its representatives, to "give away" its product. In Louisiana and Mississippi, for instance, customers purchasing a single can of moist snuff have recently been given 10 or more free cans of Red Seal in return for the surrender of their chosen brand to the UST representative, while store owners are paid the full retail price for all these "lost sales." Customers are also offered 4 rolls (40 cans) of Red Seal for approximately \$14, or roughly 35 cents a can, less than one third Red Seal's normal retail price and, on information and belief, less than UST's costs. Store owners are again compensated fully for these "lost sales."

This "give away" plan is, on information and belief, part of a scripted UST scheme to undercut and eliminate Cougar from the marketplace, so that UST can return to premium pricing for all its products. If this scheme is successful, UST will more than recoup any losses it sustains from "give aways."

Misuse of Tobacco Settlement for Anticompetitive Purposes

32. UST's campaign of exclusionary conduct damaged competition and consumers by reducing the availability of Conwood's competing products. But it did not eliminate Conwood entirely as a competitor. For that, UST has sought to erect even higher barriers to competition in the national market for moist snuff.

33. For example, UST sought to involve itself in the "Global Settlement" of litigation between cigarette companies and various state attorneys general and private plaintiffs' lawyers. UST, was the sole smokeless tobacco company permitted to participate in this initiative (United States Tobacco Company, alone among the smokeless firms, signed the "Global Settlement"). On information and belief, UST sought to embed the Global Settlement with provisions that would cause disproportionate harm to its moist snuff rivals and, ultimately, drive them from the market.

34. UST promoted a variety of anticompetitive measures, such as a payment structure for the purported settlement amounts that

was designed to impose substantial and punitive costs on non-participating firms, requiring such firms to pay as much as 150% of the amount to be assessed against similarly-situated participants in the private agreement.

35. Congress asked the Federal Trade Commission ("FTC") to analyze the Global Settlement. The FTC readily recognized its anticompetitive impact. It expressly concluded that the proposed settlement would prevent "new entrants or maverick firms with new products, lower priced products, or new brands [from] gain[ing] market share from the other firms in the market [R]estrictions on advertising could reduce competition and lead to higher prices." See, e.g., FTC, Competition and the Financial Impact of the Proposed Tobacco Industry Settlement Appendix (Sept. 1997).

36. Recognizing the antitrust violations patent in their joint and individual acts, UST and the big cigarette companies proposed an unprecedented blanket antitrust immunity for their private efforts to implement and enforce competitive restrictions. They were required to acknowledge that, without such immunity, their acts "could well be treated as a per se violation of the antitrust laws." See Testimony of Meyer G. Koplow before the Senate Judiciary Subcommittee on Antitrust, Business Rights and

Competition (Oct. 29, 1997).

37. UST used the confusion engendered by the Global Settlement and related legislative and regulatory initiatives to encourage distributors and retailers to boycott Conwood and other small rivals. UST representatives warn that stores must "get into compliance." "Compliance," their sales agents insist, means removing tobacco from the open shelves and placing it behind the counter; removing or replacing "unauthorized" Conwood distribution racks with "approved" UST racks; and restricting or eliminating Conwood point of sale advertising materials.

38. UST also misled and threatened distributors, for the purpose of inducing such distributors to refuse to deal with Conwood and the other small firms. It did so by referencing provisions in the Global Settlement that would, if enacted by Congress, protect participating manufacturers and their distributors from civil lawsuits, leaving nonparticipating companies (and those who do business with them) open to such suits. UST has led distributors to believe that these immunity provisions are effective now -- or that they soon will become effective and distributors must act now -- and that to gain the benefits of immunity distributors must refuse to do business with non-participating firms like Conwood.

39. Most recently, UST sought to lobby in Congress for passage of a proposed federal law that would cost UST hundreds of millions of dollars per year, but would put its three competitors in moist snuff out of business. UST was asked why it preferred this bill to an alternative bill that would cost UST hundreds of millions less. When challenged with the assertion that only a plan to drive smaller rivals from the market could explain its position, UST had no response.

Injury, Damages, and Anticompetitive Effects

40. As a direct and proximate result of UST's exclusionary conduct, Conwood has been injured in its business and property in an amount that cannot now be quantified, but which, upon information and belief, exceeds \$400 million. UST's conduct has affected and, unless enjoined, will continue to affect interstate commerce. These effects include, without limitation: (a) reduction or elimination of consumer choice among competing moist snuff products; (b) foreclosure of access to retail and distribution facilities necessary for smaller and/or new tobacco manufacturers to compete; (c) increased barriers to entry in the moist snuff market; (c) chilling innovation within the moist snuff industry; (d) loss of competition among manufacturers for retail and distribution outlets; (e) loss of outlets for sale of tobacco

by growers.

CLAIMS FOR RELIEF

Count I

Sherman Act § 2: Unlawful Monopolization

41. Plaintiffs incorporate paragraphs 1 through 40 by reference.

42. UST's conduct constitutes the intentional and unlawful maintenance of monopoly power in the relevant market for moist snuff, in violation of section 2 of the Sherman Act, 15 U.S.C. section 2.

43. In the alternative, UST's conduct is an attempt to monopolize this market in violation of section 2. UST has acted with the specific intent to attempt to monopolize this market, and has sufficient market power to create a dangerous probability of success of monopolizing the market.

44. UST has excluded, or attempted to exclude, competition in this market by preventing or impeding the distribution of competing products.

45. UST's conduct has injured competition and the consumer in the relevant market for moist snuff, suppressed sales of Conwood's products, increased Conwood's development and marketing costs, diminished Conwood's future sales opportunities, increased

Conwood's operating costs, and prevented Conwood from offering new products to consumers.

Count II

Violation of Section 43(A) of the Lanham Act

46. Plaintiffs incorporate paragraphs 1 through 45 by reference.

47. UST has made false and misleading representations of fact in interstate commerce and in connection with goods or services in commercial advertising or promotion. UST has misrepresented the nature, qualities, and/or origin of plaintiffs' goods, services, or commercial activities. Plaintiffs have been or are likely to be damaged by these acts.

48. UST's false representations actually have confused and deceived, and have the tendency to confuse and deceive, a substantial number of consumers, retailers, and wholesalers concerning the characteristics of products and services sold by the plaintiffs in interstate commerce.

49. Plaintiffs have lost sales, profits, and goodwill, and have suffered injury to their business reputation. Plaintiffs have been and will continue to be injured in their efforts to sell their products and services. Plaintiffs have sustained and will continue to sustain damages, the nature and extent of which cannot presently

be determined.

Count III

Tortious Interference with Contract

50. Plaintiffs incorporate paragraphs 1 through 49 by reference.

51. UST intentionally, maliciously, improperly and without right or justification engaged in acts calculated to cause damage to plaintiffs in their contractual and economic rights, including but not limited to their rights under contracts with distributors and retailers, with knowledge of those rights.

52. UST acted with ill will, improperly, and in wanton disregard of plaintiffs' contractual and economic rights.

53. As a direct and proximate result of UST's tortious interference with plaintiffs' contractual and economic rights, plaintiffs have suffered damages.

Count IV

Tortious Interference with
Prospective Advantage

54. Plaintiffs incorporate paragraphs 1 through 53 by reference.

55. Plaintiffs had economic relationships with retailers and distributors which contained the probability of future economic

benefit in the form of sales of plaintiffs' products.

56. UST was aware of these relationships and intentionally interfered with them by the acts specified herein. UST acted, with improper motive, purposefully and maliciously and with intent to injure plaintiffs by inducing retailers and distributors not to continue or to enter into a business relationship with plaintiffs.

57. As a direct and proximate result of UST's tortious interference with plaintiffs' prospective business relations, plaintiffs have suffered damages.

Count V

Violation of Kentucky Revised Statute Section 365.050

58. Plaintiffs incorporate paragraphs 1 through 57 by reference.

59. UST has engaged in the secret payment or allowance of rebates, refunds, commissions or unearned discounts, in the form of money or otherwise, and secretly extended to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of plaintiffs and to competition, in violation of Kentucky Revised Statutes § 365.050.

60. As a direct and proximate result, plaintiffs have suffered damages.

Count VI

Product Defamation

61. Plaintiffs incorporate paragraphs 1 through 60 by reference.

62. UST has published to customers, retailers and distributors statements disparaging the quality of plaintiffs' products.

63. These disparaging statements were harmful to plaintiffs' pecuniary interests.

64. UST intended that the publication of the disparaging statements cause harm to plaintiffs' pecuniary interests, or either recognized or should have recognized that they were likely to do so.

65. UST knew that the statements were false or acted in reckless disregard of their truth or falsity.

66. UST's statements have caused plaintiffs' pecuniary injury.

Count VII

Unjust Enrichment

67. Plaintiffs incorporate paragraphs 1 through 66 by reference.

68. As a direct result of its unlawful conduct, UST has unjustly received and will receive substantial profits and other economic advantages, all to the detriment of plaintiffs.

69. UST should be required to disgorge the amounts by which it has been unjustly enriched.

Count VIII

Conversion/Trover

70. Plaintiffs incorporate paragraphs 1 through 69 by reference.

71. UST intentionally, wrongfully, and without permission, converted, took, detained, used, or disposed of plaintiffs' property, including without limitation its racks, point of sale advertisements, and moist snuff products.

72. Plaintiffs have been injured as a direct result of UST's unlawful conduct.

73. UST acted willfully and maliciously and with a conscious indifference to the consequences to plaintiffs.

Prayer for Relief

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment on their behalf and against defendants and award as follows:

(a) An Order directing the termination of the alleged anticompetitive conduct and injunctive relief which restores plaintiffs to the same position they occupied prior to UST's unlawful exclusionary conduct;

(b) Treble damages (including, without limitation, lost profits), in an amount to be determined at trial but believed by plaintiffs to be substantially in excess of a billion dollars;

(d) Plaintiffs' costs of suit herein, including without limitation their attorneys' fees actually incurred;

(e) Punitive damages;

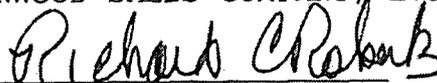
(f) Such other relief as may be just and proper.

Request for Trial by Jury

Plaintiffs respectfully request trial by jury in this action.

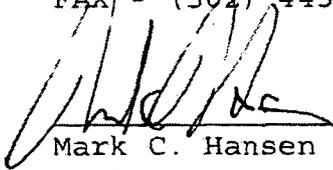
Respectfully submitted,

CONWOOD COMPANY, L.P.
CONWOOD SALES COMPANY, L.P.



Richard C. Roberts
WHITLOW, ROBERTS, HOUSTON
& STRAUB

Old National Bank Building
300 Broadway
P.O. Box 995
Paducah, Kentucky 42002-0995
(502) 443-4516
FAX - (502) 443-4571


Mark C. Hansen
Neil M. Gorsuch
Steven F. Benz
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900
FAX - (202) 326-7999

Counsel for Plaintiffs

Dated April 22, 1998.