

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

79 AUG 1 AID: 51

Civil Action No. _____

JAMES P. BALDWIN, JR.
CLERK
BY CB DEP. CLK.

ASPEN HIGHLANDS SKIING)
CORPORATION, a Delaware)
corporation,)

Plaintiff,)

v.)

COMPLAINT

ASPEN SKIING CORPORATION, a)
Delaware corporation,)
BUTTERMILK MOUNTAIN SKIING)
CORPORATION, a Colorado)
corporation, SNOWMASS SKIING)
CORPORATION, a Colorado)
corporation, and J.R.S.)
INVESTMENTS, INC.,)
a Colorado corporation,)

Defendants.)

79

1012

Plaintiff, by and through its attorneys Ireland,
Stapleton & Pryor, P.C., for its complaint, alleges as
follows:

JURISDICTION AND VENUE

1. This action is commenced under Section 4 of
the Clayton Act (15 U.S.C. §15) for violations of Sections 1
and 2 of the Sherman Act (15 U.S.C. §§1,2) for damages
resulting from such violations and for injunctive relief to
prevent the continuation of such violations.

2. Jurisdiction of this court is founded upon 15
U.S.C. §§4 and 15 and 28 U.S.C. §1337.

3. Each Defendant maintains an office, transacts
business and is found in Colorado; most of the unlawful acts
in connection with and pursuant to the combinations,
agreements, conspiracies, or monopoly hereinafter described
took place within Colorado; the illegal activities alleged
herein had, and continue to have effects within Colorado,

and the interstate trade and commerce described herein is partially carried on within Colorado.

PARTIES

4. Plaintiff Aspen Highlands Skiing Corporation ("Plaintiff" or "Aspen Highlands") is a corporation organized and existing under the laws of Delaware, with its principal place of business in Aspen, Colorado. It operates the Aspen Highlands Ski Area in Aspen, Colorado.

5. Defendant Aspen Skiing Corporation is a corporation organized and existing under the laws of Delaware, with its principal place of business in Aspen, Colorado. It operates the Aspen Mountain Ski Area in Aspen, Colorado. Since March of 1978, Defendant Aspen Skiing Corporation has been a wholly-owned subsidiary of Twentieth Century-Fox Film Corporation, a Delaware corporation.

6. Defendant Buttermilk Mountain Skiing Corporation is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business in Aspen, Colorado. It is a wholly-owned subsidiary of Defendant Aspen Skiing Corporation, and operates the Buttermilk Mountain Ski Area at Aspen, Colorado.

7. Defendant Snowmass Skiing Corporation is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business in Aspen, Colorado. It is a wholly-owned subsidiary of Defendant Aspen Skiing Corporation, and operates the Snowmass Ski Area near Aspen, Colorado. Defendants Aspen Skiing Corporation, Buttermilk Mountain Skiing Corporation and Snowmass Skiing Corporation will hereinafter be referred to collectively as "Ski Corp."

8. Defendant J.R.S. Investments, Inc. is a corporation organized and existing under the laws of Colorado, with its principal place of business in Aspen,

Colorado. Defendant J.R.S. Investments, Inc. was formerly known as Aspen Reservations, Inc. and will hereinafter be referred to as "ARI."

NATURE OF TRADE AND COMMERCE INVOLVED

9. Aspen Highlands and Ski Corp are engaged in the business of providing downhill skiing services including, but not limited to, the sale of ski lift tickets and the provision of downhill skiing lessons.

10. ARI, during all time relevant herein, was engaged in the business of operating a central reservation service and promoting ski vacation package plans in Aspen, Colorado.

11. In conducting these businesses Aspen Highlands, Ski Corp and ARI substantially affect interstate commerce in the following ways:

(a) Each purchases materials and supplies necessary to conduct their business from outside the State of Colorado;

(b) each conducts advertising campaigns on a national basis to attract tourists from outside of the State of Colorado;

(c) a substantial number of the tourists purchasing such downhill skiing services travel from outside of the State of Colorado;

(d) a substantial portion of those tourists travel on commercial buslines, airlines, or other means of interstate transportation;

(e) each utilizes the United States mail as well as interstate telecommunications for the purpose of conducting its business; and

(f) Aspen Highlands and Ski Corp enter into commission agreements with tour operators located outside of the State of Colorado for the sale of their ski lift tickets and other downhill skiing services;

(g) Aspen Highlands and Ski Corp lease property from the United States Forest Service upon which portions of their downhill skiing facilities operate.

FACTUAL ALLEGATIONS

12. Downhill skiing in Aspen, Colorado is recognized by consumers of downhill skiing services as unique when compared to similar areas throughout the United States and even the world. The provision of downhill skiing services in Aspen, Colorado is a multi-million dollar business.

13. In providing downhill skiing services at Aspen Mountain, Buttermilk Mountain, and Snowmass Mountain, Ski Corp controls 80-85% of the downhill skier days in the Aspen, Colorado area.

14. In providing downhill skiing services at Aspen Highlands, Plaintiff has only approximately 15% of the downhill skier days in the Aspen, Colorado area.

15. Commencing in the early 1960's, Aspen Highlands and Ski Corp cooperated in the provision of a joint reciprocal ticket plan ("joint four-area ticket") whereby the customer could buy tickets which would be honored by Ski Corp and Aspen Highlands at all of their Aspen-area downhill skiing facilities. Said joint four-area ticket was offered by Ski Corp and Aspen Highlands during the 1960's. In approximately 1972, Ski Corp and Aspen Highlands again provided a joint four area ticket which continued until 1974.

16. In February, 1974, Aspen Highlands and Ski Corp entered into a joint venture agreement for the purposes, inter alia, of organizing ARI, a central reservation service for the Aspen, Colorado area, and for the marketing of a joint four-area ticket. Through the vehicle of ARI, Aspen Highlands and Ski Corp continued to

offer the joint four area ticket in the Aspen, Colorado area from 1974 through April of 1977.

17. On March 24, 1977, Aspen Highlands and Ski Corp sold their interest in ARI to Aspen In Advance, Inc. which continued operating the central reservation service in the Aspen, Colorado area.

18. Aspen Highlands and Ski Corp continued to provide a joint four-area ticket in the Aspen, Colorado area for the 1977-78 ski season. Ski Corp also offered a three-area, six-day ticket but the sales of this ticket were minimal compared with the sales of the joint four-area ticket.

19. Upon information and belief, in early 1978, Ski Corp and ARI entered into secret negotiations and agreements which resulted in ARI's promotion of Ski Corp's three-area, six-day ticket to the exclusion of Aspen Highlands lift tickets and/or the joint four-area tickets in exchange for a payment of \$75,000 and agreement by Ski Corp to pay a 15% commission on all sales of said Ski Corp three-area six-day tickets if sales exceeded \$1,000,000. In the 1977-78 season, Ski Corp's three-area pass was valid for six out of seven days. In the 1978-79 season, Ski Corp's three-area pass was valid for six out of six days.

20. In May of 1978, Ski Corp communicated to Aspen Highlands that it would not participate with Aspen Highlands in a joint four-area ticket unless the net revenues would be allocated on the basis of 12.5% to Aspen Highlands and 87.5% to Ski Corp. During the 1977-78 season, the revenues had been allocated on a basis of 15% to Aspen Highlands and 85% to Ski Corp. In all previous years in which the joint four-area ticket was offered by Ski Corp and Aspen Highlands, the parties had agreed to divide revenues on the basis of actual usage at each area. For the 1974-75, 1975-76 and 1976-77 seasons, Aspen Highlands' share of those revenues ranged between 18.5% and 13.4%.

21. Upon information and belief, Ski Corp's proposal to limit Aspen Highland's share of the revenues on the proposed four-area six-day ticket to 12.5% without regard to the actual usage at each area would artificially increase the market share of Ski Corp for skier days and prevent Aspen Highlands from reasonably competing in the market.

22. As a result of Ski Corp's refusal to deal with Aspen Highlands on a reasonable basis, there was no joint four-area ticket offered by Ski Corp and Aspen Highlands for the 1978-79 ski season.

23. Upon this refusal to deal with Aspen Highlands by Ski Corp, Aspen Highlands developed and offered its own four-area, six-day package known as Four Mountain Adventure Pack ("Highlands' Adventure Pack") which provided the purchaser with three days downhill skiing at Aspen Highlands and with three coupons each with a value of \$15.00. Said coupons were designed in such a way that they could either be redeemed for cash or exchanged for ski tickets for use at any of the four ski areas in the Aspen, Colorado area, including those controlled by Ski Corp.

24. Despite the fact that the Highlands' Adventure Pack would bring additional revenue to Ski Corp, Ski Corp refused to cooperate in promoting said ticket and in fact refused to accept the coupons provided with that ticket when they were presented by skiers at Ski Corp mountains. Such a skier desiring to ski at Ski Corp mountains would first have to redeem the coupons for cash and then buy Ski Corp tickets with that cash.

25. In the summer of 1978, Aspen Highlands met with ARI and offered to provide it with a 15% commission on its sales of all Highlands' Adventure Packs.

26. During the course of the 1978-79 ski season, ARI sold over \$1,000,000 of Ski Corp three-area, six-day

lift tickets and only \$33,000 of Highlands' Adventure Pack tickets.

27. Upon information and belief, representatives of ARI, when asked whether there were multi-area tickets available in the Aspen, Colorado area, informed prospective tourists only of the availability of the Ski Corp three-area, six-day tickets and/or disparaged the Highlands' Adventure Pack.

28. In May of 1979, Aspen Highlands again requested that Ski Corp participate with it in a joint four-area, six-day ticket with revenues to be allocated to reflect actual use at each area. Ski Corp again refused to participate in the offering of such a joint four-area ticket.

29. Upon information and belief, Ski Corp will offer a three-area, six-day lift ticket for the 1979-80 ski season.

30. Aspen Highlands will again offer its Adventure Pack ticket for the 1979-80 ski season so as to promote maximum opportunities for the tourist to ski at all four downhill ski facilities in the Aspen, Colorado area.

31. Upon information and belief, Ski Corp will again refuse to cooperate in the operation of Highlands' Adventure Pack tickets.

32. Upon information and belief, Ski Corp has the contractual rights to develop a new downhill skiing facility located on or near Burnt Mountain in the Aspen, Colorado area.

33. Upon information and belief, despite disapproval of said development by the Board of County Commissioners of Pitkin County, Colorado, Ski Corp is continuing its efforts to develop and seek approval for the development of said Burnt Mountain downhill skiing facility.

34. Upon information and belief, development of the proposed Burnt Mountain skiing facility by Ski Corp would substantially increase the monopoly control by Ski Corp of downhill skiing services in the Aspen, Colorado area.

FIRST CLAIM FOR RELIEF
(Sherman Act, §2 -- Monopolization)

35. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 34 above as if set forth fully herein.

36. At all times relevant herein, Ski Corp has willfully acquired and/or maintained a monopoly in the sale of downhill skiing services in the Aspen, Colorado area generally and in the sale of multi-area ski lift tickets in the Aspen, Colorado area specifically.

37. Ski Corp has improperly and illegally misused that monopoly power in violation of Section 2 of the Sherman Act by:

(a) Refusing to deal with Aspen Highlands in offering a joint four-area lift ticket whereby revenues are allocated on the basis of actual use by each area for the 1978-79 and 1979-80 ski seasons;

(b) refusing to deal with Aspen Highlands in regard to the promotion and operation of the Highlands Adventure Pack tickets;

(c) marketing its three-area, six-day ticket, which must be used in six out of six days;

(d) dealing in a reciprocal arrangement with ARI whereby Ski Corp enters into agreements for the payment of money to ARI in exchange for the promotion of Ski Corp's three-area, six-day tickets to the exclusion of Aspen Highlands' lift tickets and/or joint four area tickets;

(e) attempting to increase its market share of downhill skiing services in the Aspen, Colorado area by developing a new downhill skiing facility near Burnt Mountain.

38. Upon information and belief, said conduct by Ski Corp, outlined in paragraph 37 above, was carried out with the purpose and intent of foreclosing and eliminating Aspen Highlands from a substantial portion of the downhill-skiing-services market and the multi-area lift ticket market in the Aspen, Colorado area.

39. As a consequence of the foregoing, Aspen Highlands has been damaged, through loss of revenue and profits in its downhill skiing services business and through its added expenses in marketing and promoting its own four-area, six-day ticket without the cooperation of Ski Corp and ARI, in the approximate amount of \$650,000 for the 1978-79 ski season.

40. Upon information and belief, said injury and damage will be recurring and ongoing for the 1979-80, as well as subsequent, ski seasons, leaving Aspen Highlands no adequate remedy of law and thereby making injunctive relief appropriate.

SECOND CLAIM FOR RELIEF
(Sherman Act, §2 -- Attempt to Monopolize)

41. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 40 as if set forth fully herein.

42. Ski Corp has attempted to monopolize the market for downhill skiing services and multi-area lift tickets in the Aspen, Colorado area creating a dangerous probability of success in achieving that monopoly in violation of Section 2 of the Sherman Act through the means set forth in paragraph 37 above.

43. The foregoing has injured Aspen Highlands as set forth in paragraph 39 above.

44. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 40 above.

THIRD CLAIM FOR RELIEF
(Sherman Act, §2 --
Combination and/or Conspiracy to Monopolize)

45. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 37, and 39 and 40 as if set forth fully herein.

46. Ski Corp, ARI and other unknown persons have combined and/or conspired to monopolize the sale of multi-area ski lift tickets in the Aspen, Colorado area in violation of Section 2 of the Sherman Act through their concerted actions of

(a) Their reciprocal dealing whereby Ski Corp enters into agreements with ARI for the payment of money in exchange for the promotion of Ski Corp's three-area, six-day tickets to the exclusion of Aspen Highlands lift tickets and/or joint four-area tickets;

(b) their refusal to deal with, and boycott of, Aspen Highlands in the promotion and marketing of the Highlands' Adventure Pack and/or joint four-area tickets; and

(c) their foreclosure and elimination of Aspen Highlands from a substantial portion of the downhill skiing services market and the multi-area lift ticket market in the Aspen, Colorado area.

47. Upon information and belief, said combination and/or conspiracy to monopolize the sale of downhill skiing services and multi-area ski lift tickets in the Aspen, Colorado area was carried out with the purpose and intent of foreclosing and eliminating Aspen Highlands from a substantial portion of the downhill-skiing-services market

and the multi-area lift ticket market in the Aspen, Colorado area.

48. The foregoing has injured Aspen Highlands as set forth in paragraph 39 above.

49. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 40 above.

FOURTH CLAIM FOR RELIEF
(Sherman Act, §1 -- Restraints of Trade)

50. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 37, 39 through 40 and 46, as if set forth fully herein.

51. Ski Corp has entered into contracts, combinations, and/or conspiracies with ARI and with other unknown persons resulting in restraints of trade in violation of Section 1 of the Sherman Act as more specifically alleged in paragraph 46 above.

52. The foregoing has injured Aspen Highlands as set forth in paragraph 39 above.

53. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 40 above.

WHEREFORE, Plaintiff requests the following relief:

1. That this court enter judgment against Ski Corp and ARI, jointly and severally, and in favor of Aspen Highlands for damages in the amount of \$650,000 resulting from Defendants' violations of the Sherman Act. Insofar as damages incurred as a result of Defendants violations may continue during the time of this litigation, Plaintiff requests that it also be awarded the amount of those damages.

2. That the court award interest on all damages from the date of accrual thereof and treble the amount of all damages and award Plaintiff its litigation costs and

fees and reasonable attorney's fees, pursuant to Section 4 of the Clayton Act.

3. That this court grant injunctive relief against Ski Corp for its violations of the Sherman Act as follows:

(a) Require Ski Corp to divest two out of its current three downhill skiing facilities in Aspen, Colorado area;

(b) permanently enjoin Ski Corp and its affiliates, and their officers, agents, servants, employees, and attorneys and all other persons or entities in active concert or participation with them:

(i) from developing or participating in development of any new downhill skiing facilities in the Aspen, Colorado area;

(ii) from refusing to participate with Plaintiff in the provision of a joint four-area ski lift ticket whereby revenues are allocated based upon actual usage at each area;

(iii) from making payments to ARI or any other central reservation service, travel agent, or tour operator, beyond the usual, customary and reasonable commissions to such entities, for the purpose of inducing those entities to sell Ski Corp multi-area ski lift tickets to the exclusion of Aspen Highlands' lift tickets and/or joint four-area tickets.

4. That the court grant such other and further relief as it deems just and proper.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

Dated: August 1, 1979.

IRELAND, STAPLETON & PRYOR, P.C.

D. Monte Pascoe

Tucker K. Trautman

Ralston H. Deffenbaugh, Jr.

By

D Monte Pascoe

Attorneys for Plaintiff

Aspen Highlands Skiing Corporation

1700 Broadway, Suite 2000

Denver, Colorado 80290

Telephone: (303) 861-4600

Plaintiff Address:

*P.O. Box T
Aspen, Colo. 81611*

Records in the National Archives & Records
Administration, Rocky Mountain Region
Archival Operations

RG No. 11 Records of the
U.S. District Court
District of Colorado
Civil Case Files, 1970-92
RMDU.021-12-026
Case # 79-1012