

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

81 JAN 26 P 4: 53

JAMES H. HANCOCK,
CLERK
BY AK DEP. CLK.

ASPEN HIGHLANDS SKIING
CORPORATION, a Delaware
corporation,

Plaintiff,

v.

ASPEN SKIING CORPORATION, a
Delaware corporation,
BUTTERMILK MOUNTAIN SKIING
CORPORATION, a Colorado
corporation and SNOWMASS
SKIING CORPORATION, a
Colorado corporation,

Defendants.

AMENDED COMPLAINT

Plaintiff, by and through its attorneys Ireland,
Stapleton & Pryor, P.C., for its amended 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, agree-
ments, 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 ("Ski Corp.") 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 ("Buttermilk") 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 ("Snowmass") 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.

NATURE OF TRADE AND COMMERCE INVOLVED

8. Aspen Highlands, Ski Corp, Buttermilk and Snowmass 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, and related services.

9. In conducting these businesses Aspen Highlands, Ski Corp, Buttermilk and Snowmass 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;

(f) Aspen Highlands, Ski Corp, Buttermilk and Snowmass 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; and

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

FACTUAL ALLEGATIONS

10. 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. Consumers of downhill skiing services who are temporarily or permanently located or residing in the area of Aspen, Colorado, do not generally purchase such services outside of said area.

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

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

13. Commencing in the early 1960's, Aspen Highlands, Ski Corp, Buttermilk and Snowmass 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, Buttermilk, Snowmass and Aspen Highlands at all of their Aspen-area downhill skiing facilities. Said joint four-area ticket was offered by Ski Corp, Aspen Highlands, Buttermilk and Snowmass during the 1960's. In approximately 1972, Ski Corp, Aspen Highlands, Buttermilk and Snowmass again provided a joint four-area ticket which continued until 1974.

14. In February, 1974, Aspen Highlands, Ski Corp, Buttermilk and Snowmass entered into a joint venture agreement for the purposes, inter alia, of organizing Aspen Reservations, Inc. ("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, Ski Corp, Buttermilk and Snowmass continued to offer the joint four area ticket in the Aspen, Colorado area from 1974 through April of 1977.

15. 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.

16. Aspen Highlands, Ski Corp, Buttermilk and Snowmass continued to provide a joint four-area ticket in the Aspen, Colorado area for the 1977-78 ski season. Ski Corp, Buttermilk and Snowmass also offered, for the first time, a three-area, six-day ticket which competed with the joint four-area ticket.

17. In May of 1978, Ski Corp, Buttermilk and Snowmass agreed and communicated to Aspen Highlands that they 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 and its subsidiaries. During the 1977-78 season, the revenues had been allocated on a basis of 15% to Aspen Highlands and 85% to Ski Corp and its subsidiaries. In all previous years in which the joint four-area ticket was offered by Ski Corp, Buttermilk, Snowmass 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%.

18. Upon information and belief, the agreement between and proposal by Ski Corp, Buttermilk and Snowmass 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, Buttermilk and Snowmass for skier days and prevent Aspen Highlands from reasonably competing in the market.

19. As a result of the concerted refusal to deal with Aspen Highlands on a reasonable basis by Ski Corp, Buttermilk and Snowmass, there was no joint four-area ticket

offered for the 1978-79 ski season. However, Ski Corp, Buttermilk and Snowmass again offered a three-area, six-day ticket for the 1978-79 ski season.

20. Upon this refusal to deal with Aspen Highlands by Ski Corp, Buttermilk and Snowmass, 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. Highlands has offered a similar ticket for the 1979-80 and 1980-81 ski seasons.

21. Despite the fact that the Highlands' Adventure Pack would bring additional revenue to Ski Corp and its subsidiaries, Ski Corp, Buttermilk and Snowmass, in concert, refused to cooperate in promoting said ticket and in fact, during the 1978-80 ski season, 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.

22. In May of 1979, Aspen Highlands again requested that Ski Corp, Buttermilk and Snowmass 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, Buttermilk, and Snowmass, in concert, again refused to participate in the offering of such a joint four-area ticket and continued to offer a three-area, six-day lift ticket for the 1979-80 ski season.

23. For every ski season from 1978-79 until the present, the marketing strategy, and particularly the promotion of the three-area ticket, used by Ski Corp, Buttermilk and Snowmass has been designed to preclude, and, in fact, has precluded Aspen Highlands from a substantial portion of the market it enjoyed in the 1977-78 and prior ski seasons.

24. As a consequence of the conduct of Ski Corp, Buttermilk, and Snowmass as alleged herein, Aspen Highlands has been substantially foreclosed from effective competition in a significant portion of the skiing market, consumer choices have been curtailed, and competition has been lessened.

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

25. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24 above as if set forth fully herein.

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

27. Ski Corp and its subsidiaries have 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 subsequent ski seasons;

(b) refusing to deal with Aspen Highlands in regard to the promotion and operation of the Highlands Adventure Pack tickets for the 1978-79 and subsequent ski seasons;

(c) marketing its multi-day, multi-area tickets so as to induce ski customers in the Aspen area to deal exclusively with Ski Corp and its subsidiaries and thereby preclude Aspen Highlands from a substantial portion of the market it had previously enjoyed.

28. Upon information and belief, said conduct by Ski Corp, and its subsidiaries, outlined in paragraph 27 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.

29. 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 in an amount not yet determined.

30. Upon information and belief, said injury and damage will be recurring and ongoing for each ski season that a joint four-area ticket is not offered, leaving Aspen Highlands no adequate remedy of law and thereby making injunctive relief appropriate.

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

31. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, 27, 28, 29 and 30, as if set forth fully herein.

32. Ski Corp and its subsidiaries have 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 27 above.

33. Said conduct was carried out with the purpose and intent set forth in paragraph 28 above.

34. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

35. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

THIRD CLAIM FOR RELIEF

(Sherman Act, §2 --

Combination and/or Conspiracy to Monopolize)

36. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, and 29 and 30 as if set forth fully herein.

37. Ski Corp, Buttermilk and Snowmass "have held themselves out" to the skiing public as independent competitors.

38. Ski Corp, Buttermilk and Snowmass 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) 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 subsequent ski seasons;

(b) refusing to deal with Aspen Highlands in regard to the promotion and operation of the Highlands Adventure Pack tickets for the 1978-79 and subsequent ski seasons;

(c) marketing its multi-day multi-area tickets so as to induce ski customers in the Aspen area to deal exclusively with Ski Corp. and its subsidiaries and thereby preclude Aspen Highlands from a substantial portion of the market it previously enjoyed.

39. 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, and of monopolizing said market.

40. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

41. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

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

42. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, 27, 29 and 30, as if set forth fully herein.

41. Ski Corp, Buttermilk and Snowmass have entered into contracts, combinations, and/or conspiracies with each other 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 27 above.

42. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

43. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

WHEREFORE, Plaintiff requests the following relief:

1. That this court enter judgment against Ski Corp, Buttermilk and Snowmass jointly and severally, and in favor of Aspen Highlands for damages in an amount not yet determined 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, Buttermilk and Snowmass and their affiliates, and their officers, agents, servants, employees, and attorneys and all other persons or entities in active concert or participation with them 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.

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

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

Dated: January 26, 1981.

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

RG No. 21 Records of the
U.S. District Courts
District of Colorado
Civil Case Files, 1970-92
RMDU-021-12-026
Case # 79-1012