

UNITED STATES DISTRICT COURT  
DISTRICT OF THE VIRGIN ISLANDS  
ST. THOMAS DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOPA EQUITIES (V.I.), LTD., )  
 )  
 Defendant. )

Civil No. 1994-179

12/7/94

COMPLAINT

The United States of America, through its attorneys of the Antitrust Division, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 3 of the Sherman Act, 15 U.S.C. § 3. This Court has jurisdiction over the subject matter and the person of the defendant pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

2. The defendant is a Virgin Islands corporation and maintains offices, transacts business and is found in the District of the Virgin Islands. Venue is proper in the District

of the Virgin Islands under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFENDANT

3. Topa Equities (V.I.), Ltd. is made a defendant herein. Topa Equities (V.I.), Ltd. is a holding company that wholly owns the Virgin Islands wholesale distilled spirits companies West Indies Corporation and Bellows International, Ltd. (Hereinafter in this Complaint, Topa Equities (V.I.), Ltd. and its subsidiaries will be referred to collectively as "Topa.") In 1991, Topa had total sales of distilled spirits in the Virgin Islands of approximately \$24.7 million.

4. The activities of Topa are within the flow of, and substantially affect, commerce within the Virgin Islands and between the Virgin Islands and the several states and foreign nations.

III.

DEFINITIONS

5. "Distilled spirits" means liquor products of all types intended for human consumption, including, but not limited to, whiskey, gin, vodka, rum, tequila, brandy, liqueurs and cordials, but excluding wine and malt beverages and non-alcoholic beverages.

6. "Virgin Islands" means the Territory of the Virgin Islands of the United States.

7. "Retailer" means any person engaged in the business of

purchasing distilled spirits from wholesalers, as defined herein, and reselling them to consumers in establishments located in the Virgin Islands, including such Virgin Islands-located establishments as retail liquor stores, grocery stores, convenience stores, restaurants and hotels.

8. "Supplier" means any licensed manufacturer, distiller or importer of distilled spirits from which defendant or any other wholesaler, as defined herein, purchases or has purchased distilled spirits.

9. "Wholesaler" means any person holding a wholesaler's license for distilled spirits from the government of the Virgin Islands, and who is engaged in the business of purchasing distilled spirits from suppliers and reselling them to other wholesalers or to retailers located in the Virgin Islands.

#### IV. TRADE AND COMMERCE

10. Most distilled spirits sold within the Virgin Islands are imported from outside of the Virgin Islands. The imported distilled spirits are transported to the Virgin Islands mainly in container ships. A few brands of distilled spirits are produced within the Virgin Islands. Wholesalers like Topa purchase distilled spirits from suppliers, store them in warehouses and sell them to retailers who in turn sell to consumers in retail outlets. Every wholesaler and retailer must be licensed by the Virgin Islands government. Under Virgin Islands law, a wholesaler must obtain a license for distilled spirits wholesaling and is prohibited from retailing such products.

11. In the world distilled spirits market, production and distribution of most distilled spirits are controlled by several large international conglomerates. These conglomerates own the companies that produce most of the distilled spirits available in the world market, and each conglomerate offers a portfolio of products from the various distilled spirits categories. The conglomerates produce or handle the worldwide distribution of most of the distilled spirits sold in the Virgin Islands, and in 1991 their products accounted for approximately 64% of all distilled spirits sold in the Virgin Islands.

12. In the world distilled spirits market, liquor suppliers often grant exclusive distribution rights to wholesalers. In the Virgin Islands, Topa and other wholesalers generally hold exclusive distribution rights for the distilled spirits that they sell. The distribution rights usually are limited to the Virgin Islands. Topa has the exclusive Virgin Islands distribution rights to almost every popular brand of distilled spirits available in the world market.

13. Exclusive distribution rights for the most popular brands of distilled spirits, including those brands forming the portfolios of the large international distilled spirits conglomerates, are important to the success of a Virgin Islands distilled spirits wholesaler. A significant entrant in the Virgin Islands wholesale distilled spirits market would need the rights to distribute the products of one or more major suppliers to have a successful business. It is difficult, however, for a

potential or existing wholesaler to obtain a brand or portfolio that is already being distributed by another wholesaler in the market, in part because a Virgin Islands law, Title 12A V.I.C. §§ 131 and 132, allows a dealer to sue a supplier for wrongful termination.

14. The distribution of distilled spirits by wholesalers constitutes a relevant product market. The relevant geographic market for the relevant product is the Virgin Islands.

15. Most retail distilled spirits business in the Virgin Islands takes place on the island of St. Thomas. On St. Thomas, warehouse space suitable for the operation of a wholesale distilled spirits business is scarce and expensive because of the restricted terrain. An entrant in the Virgin Islands wholesale distilled spirits market would need adequate and accessible storage space for its distilled spirits on St. Thomas to have a successful business.

16. The potential for litigation under the Virgin Islands wrongful termination statute helps to protect Topa's exclusive rights to distribute the various brands of distilled spirits in the Virgin Islands and makes it more difficult for a potential or existing competitor to obtain the rights to distribute these brands. This potential for litigation and the scarcity of warehouse space on St. Thomas are among the most important barriers to entry which make entry for a competitor difficult and costly, and significant entry has not occurred in at least ten years and is unlikely to occur without a Court order.

V.

VIOLATION ALLEGED

17. Topa entered the Virgin Islands wholesale distilled spirits market through a predecessor company in 1980. Through this entry and a series of acquisitions of competitors, Topa acquired the exclusive Virgin Islands distribution rights to almost every brand of distilled spirits in the world market. Topa has retained these distribution rights through continuing contractual relationships, both written and oral, with its suppliers. As a result of its acquisitions, and its retention of the exclusive distribution rights acquired, in 1991 Topa had a market share of approximately 96% of wholesale distilled spirits sold in the Virgin Islands market.

18. Topa obtained and has retained its monopoly position in the Virgin Islands through the exclusive Virgin Islands distribution rights to almost every brand of distilled spirits in the world market. Topa's possession and retention of these distribution rights has made significant entry extremely difficult in the Virgin Islands.

19. The contracts in restraint of trade by which Topa obtained and has retained its monopoly position have had the following effects, among others:

a. The wholesale distribution of distilled spirits in the Virgin Islands is a monopoly;

b. Competition in the wholesale distribution of distilled spirits in the Virgin Islands has been reduced;

c. Retailers of distilled spirits in the Virgin Islands have been deprived of the benefits of free and open competition in that Topa is their only source for almost all distilled spirits and there are no alternative sources in the Virgin Islands for competing distilled spirits; and

d. Suppliers of distilled spirits to the Virgin Islands have been deprived of the benefits of free and open competition, in part because Topa has inherent conflicts of interest in the representation of their distilled spirits such that the representation of one product necessarily results in diminished representation for competing products.

20. The violation alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

PRAYER

WHEREFORE, plaintiff prays:

1. That the series of acquisitions of competitors through which Topa acquired the exclusive Virgin Islands distribution rights to almost every brand of distilled spirits available in the world market and its retention of those exclusive distribution rights be adjudged contracts in restraint of trade in violation of Section 3 of the Sherman Act;

2. That plaintiff have such other and further relief as the Court may deem just and proper; and

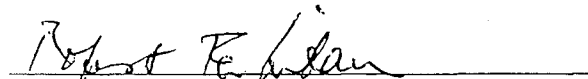
3. That plaintiff recover the costs of this action.



ANNE K. BINGAMAN  
Assistant Attorney General

---

JOHN T. ORR



ROBERT E. LITAN  
Deputy Assistant Attorney  
General

---

JUSTIN M. NICHOLSON



MARK C. SCHECHTER  
Deputy Director of Operations

---

JAMES L. WEIS

U.S. Department of Justice  
Antitrust Division

Attorneys, Antitrust Division  
U.S. Department of Justice  
Richard B. Russell Building  
Suite 1176  
75 Spring Street, S.W.  
Atlanta, GA 30303  
(404) 331-7100

---

United States Attorney  
District of the Virgin Islands

Dated: